

December 4, 2018

U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

Re: DHS Docket No. USCIS-2010-0012, RIN 1615-AA22, Comments in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds

Dear Sir/Madam:

We are writing on behalf of the Community College Consortium for Immigrant Education and the Presidents' Alliance on Higher Education and Immigration, two higher education organizations committed to supporting immigrant and international students and families. We submit this comment letter in response to the Department of Homeland Security's (DHS or the Department) Notice of Proposed Rulemaking (NPRM or proposed rule) to express our opposition to the changes regarding "public charge," published in the Federal register on October 10, 2018.

The **Community College Consortium for Immigrant Education** is a national network of community colleges and other professional organizations committed to increasing educational and career opportunities for immigrant and refugee students. CCCIE builds the capacity of community colleges to accelerate immigrant and refugee success and raises awareness of the essential role these colleges play in advancing immigrant integration through education. CCCIE's work is guided by a Blue Ribbon Panel of community college leaders, representing over 50 colleges serving an estimated 1.2 million students.

The non-partisan **Presidents' Alliance on Higher Education and Immigration** brings together college and university leaders dedicated to increasing public understanding of how immigration policies and practices impact our students, campuses and communities, and supporting policies that create a welcoming environment for undocumented, immigrant, and international students. The Alliance is comprised of over 420 presidents and chancellors of public and private colleges and universities, serving over four million students in 41 states, D.C. and Puerto Rico.

Under the proposed rule, which substantially expands the definition of "public charge," legally authorized immigrants who access basic nutrition, housing, and health programs, could jeopardize their chances of obtaining green cards or restrict any future opportunities to change or

upgrade their immigration status. Researchers have shown that the proposed regulations will produce fear and confusion as lawful immigrants decide to forego enrollment for themselves and their families in these programs out of fear of harming their future eligibility to stay permanently in this country.

As educators and leaders of higher education institutions and organizations, we know that when students and their families are unable to meet core living and housing needs or face higher costs, the students are less likely to pursue and continue with their educational and career pathways. While Pell Grants and other non-cash benefits that provide education, child development, employment, and job training are not included in the specified public benefits, we believe the proposed regulations will have damaging consequences, affecting students, families, and campuses across the nation. We are very concerned that many eligible immigrant students may mistakenly avoid applying for Pell or other financial aid and will be unable to afford higher education. Indeed, the Association of Community College Trustees and other higher education associations have received reports of students turning down Pell and financial aid awards in fear of repercussions from the changes to public charge.¹

Overall, these changes will bring real and lasting harm to the health and well being of immigrant students, children, parents, and families, and result in significantly diminished prospects for immigrant student success.

Further, the proposed rule would create additional barriers and represent a deterrent to international students and visitors seeking to study and work in the United States. The proposed rule will adversely impact traditional-aged students and adult learners, immigrant students aspiring to contribute to their communities, and international students seeking to stay and work in this country after graduation. While the pursuit of higher education as well as associated English Language Learner (ELL), job training, career pathway and certificate programs, significantly bolster immigrants' future successes and economic contributions, these harsh regulations will result in young immigrant students facing increased barriers to post-secondary education, and will deter hard-working adult learners from participating in job training, certification and ELL programs. In addition, the proposed rule will place significant new burdens on higher education institutions, service providers, and employers.

According to research by New American Economy, more than 364,000 workers in the education and health services industry are likely to be affected by the proposed rule. This includes 84,348 people in New York (3.1% of all workers), 17,881 people in Texas (.6% of all workers), 5,455 people in Pennsylvania (.4% of all workers), 4,045 in Illinois (.4% of all workers), 2,244 people

¹ Association of Community College Trustees, E-Newsletter, "Weigh-In on Changes to Public Charge," November 19, 2018.

in Kentucky (.4% of all workers), and so on. This includes nearly 150,000 workers who have at least some college education, and more than 65,000 have at least a 4-year college degree. Nationwide, more than 1.4 million people likely to be affected by the proposed rule have at least some college education, and more than 660,000 have a 4-year college degree.²

We have expanded on all these grave concerns and issues in the sections below, and urge that the proposed rule be withdrawn in its entirety, and that the 1999 guidance remain in effect. We have provided live links to the research cited in this letter, and ask that you review the research.

1. The proposed rule would substantially expand the definition of “public charge,” and lawfully present immigrants would face increased barriers to maintaining or adjusting their immigration status.

Under the proposed rule, any person who simply seeks support for health, nutrition or housing could face barriers to maintaining or improving their immigration status. Under current policy, only cash “welfare” assistance for income maintenance and government funded long-term care received or relied upon by an applicant can be taken into consideration in the “public charge” test. If implemented, a far wider range of programs would be considered. These include most Medicaid programs, SNAP/Supplemental Nutrition Assistance Program (formerly food stamps), Medicare Part D Low Income Subsidy, and Housing Assistance (public housing or Section 8 housing vouchers and rental assistance).

While the proposed rule suggests that its purpose is to ensure that immigrants are “self-sufficient,” and “do not depend on public resources to meet their needs,”³ it would alter the public charge test dramatically, abandoning the enduring meaning of a public charge as a person who primarily depends on the government for subsistence. The current and longstanding test evaluates whether a person is likely to rely primarily on the government for monthly income, or to become institutionalized. The proposed rules instead try to predict whether a person is likely to use virtually any health care, nutrition assistance, or housing support.

In fact, the proposed rule assigns a negative weight to factors that can actually help people *become* self-sufficient and contribute to our economy. The proposal maintains a “totality of the circumstances” approach, weighing the person’s age, health, resources, educational attainment, English language proficiency, family situation, history of employment, and a sponsor’s affidavit

² New American Economy, “Economic Impact of Proposed Rule Change: Inadmissibility on Public Charge Grounds.” October 31, 2018.

<https://research.newamericaneconomy.org/report/economic-impact-of-proposed-rule-change-inadmissibility-on-public-charge-grounds/> Additional state data obtained directly from New American Economy.

³ See Inadmissibility on Public Charge, Federal Register, Vol. 83, No. 196, Wednesday, October 10, 2018, Proposed Rules, p.51116.

of support. Yet, it assigns a negative weight to many factors, such as accessing a much wider range of public benefits that have never been relevant, and can actually help people become self-sufficient.

As a recent Migration Policy Institute study shows, most of those affected by the changes will have at least one of the factors for which a negative weight is assigned. The ways in which the “totality of circumstances” will be assessed is unclear and left to the discretion of individual immigration officers, and “this vagueness creates a risk that the public-charge standard will be inconsistently applied.”⁴

Furthermore, according to a Cato Institute analysis by David Bier, the proposed rule would impact immigrants “who are up to 95% self-sufficient.”⁵ Specifically, Bier states: “while the rule states that having an income 250 percent of the poverty line or greater will be a ‘heavily weighted’ positive factor, even people above this line could be deemed public charges if they received \$2.50 per day per person in a family of four. Thus, even immigrants who are 95 percent self-sufficient could still be considered public charges.”⁶

Likewise, a recent study by Leighton Ku and Drishti Pillai, shows that “(t)he public charge regulations would disrupt recent immigrants’ ability to remain in the U.S. just when they are able to earn more. This limits not only their ability to improve their earnings and their families’ circumstances, it also short circuits their ability to contribute to the national economy. As their incomes improve, immigrants become more self-sufficient and have less need for means-tested public benefits. The public charge rules could exclude immigrants before they can attain self-sufficiency”⁷

Taking all these reasons into account, the proposed expansion of the definition of public charge should be withdrawn, and the 1999 guidance remain in effect.

2. The proposed rule would mark a fundamental change from our nation’s historic commitment to welcoming immigrants and reshape our legal immigration system.

The rule imposes arbitrary age and income tests, which favor those who are already wealthy and make it even more difficult for individuals under age 18, over age 61, or as individuals living

⁴ Randy Capps, Mark Geenberg, Michael Fix, and Jie Zong, “Gauging the Impact of DHS’s proposed Public-Charge Rule on U.S. Immigration,” Policy Brief, Migration Policy Institute, November 2018.

file://localhost/Users/mf014747/Downloads/MPI-PublicChargeImmigrationImpact_FinalWeb.pdf

⁵ David Bier, “New Rule to Deny Status to Immigrants up to 95% self sufficient,” September 24, 2018.

<https://www.cato.org/blog/new-rule-deny-status-immigrants-95-self-sufficient>

⁶ Ibid.

⁷ Ku, Leighton and Pillai, Drishti, The Economic Mobility of Immigrants: Public Charge Rules Could Foreclose Future Opportunities (November 15, 2018). Available at SSRN: <https://ssrn.com/abstract=>

with disabilities to immigrate. The rule also indicates a preference for immigrants who speak English, which would mark a fundamental change from our nation's historic commitment to welcoming immigrants. These changes would “severely limit legal immigration to the U.S. and undermine our ability to receive hard-working individuals and families that strengthen our communities and bolster our economy.”⁸ The changes would harm America’s standing as a nation that serves as a beacon for the world’s dreamers and strivers.

As educators, we see first hand the drive and dreams of immigrant students and their families, and the long-lasting benefits of their accomplishments. First and second-generation immigrant students and international students, who stay and work in the United States after graduation, have helped propel American prosperity and innovation. The non-profit New American Economy (NAE) has reported that “44 percent of America’s Fortune 500 companies were founded by an immigrant or a child of an Immigrant.”⁹ Additionally, NAE has noted “the outsized role immigrants play as entrepreneurs in the U.S. economy. In 2014, America’s foreign-born population owned close to three million businesses, generating over \$65 billion in business income.”¹⁰

The proposed changes would have a disproportionate impact on family migration and people of color. A Migration Policy Institute analysis “finds that among recently arrived legally present non-citizens 71 percent of Mexicans and Central Americans, 69 percent of Africans, and 52 percent of Asian immigrants would fail to meet” the threshold of 250 percent of the federal poverty line.¹¹ Today, the Hispanic population in the U.S. is over 55 million, and approximately one in four (23%) Latinos are non-citizens.¹² Among Latino children, who account for a quarter of all U.S. children, the majority (52%) has at least one immigrant parent.¹³ Asian Americans and

⁸ New American Economy, “Economic Impact of Proposed Rule Change: Inadmissibility on Public Charge Grounds.” October 31, 2018.

<https://research.newamericaneconomy.org/report/economic-impact-of-proposed-rule-change-inadmissibility-on-public-charge-grounds/>

⁹ Ibid.

¹⁰ New American Economy, “Reason for Reform: Entrepreneurship,” October 2016.

<http://research.newamericaneconomy.org/wp-content/uploads/2016/12/Entrepreneur.pdf>

¹¹ Immigrants making below 250% of the federal poverty line would face greater scrutiny. See Jeanne Batalova, Michael Fix, and Mark Greenberg, “Through the Back Door: Remaking the Immigration System via the Expected “Public-Charge” Rule.” Commentary, Migration Policy Institute, August 2018.

<https://www.migrationpolicy.org/news/through-back-door-remaking-immigration-system-expected-public-charge-rule>

¹² U.S. Census Bureau, American FactFinder: Selected Population Profile in the United States: 2016 American Community Survey 1-Year Estimates; and UnidosUS tabulation of 2017 Current Population Survey, Annual Social and Economic Supplement.

¹³ Richard Fry and Jeffrey Passel, “Latino Children: A Majority Are U.S.-Born Offspring of Immigrants,” (Washington, D.C. Pew Research Center, 2009)

<http://www.pewhispanic.org/2009/05/28/latino-children-a-majority-are-us-born-offspring-of-immigrants/>

Pacific Islanders are among the fastest growing populations in the United States. In recent years, three out of every ten individuals obtaining permanent residence status are from Asia and Pacific Island nations.¹⁴

3. The rule would discourage immigrant youth and U.S.-born youth with non-citizen parents from pursuing a college education and would increase families' financial instability.

The changes could significantly decrease enrollments in higher education: While public education benefits, such as Pell Grants or other financial aid, are not included under the rule, the fear and confusion generated by the rule would deter greater numbers of immigrant young adults who are eligible for federal and state-funded aid programs from applying to college altogether. Over a quarter of undergraduates nationally in higher education are first or second generation immigrant students, and one in five come from a household in which English is not the primary language spoken.¹⁵ While most of first generation immigrants are either legal permanent residents or naturalized citizens, the proposed rule will still impact many current students, their families, and prospective students, especially children, across the country.

Despite our and other educational and community provider efforts to make clear that Pell Grants are not targeted by the new proposed rule, we are very concerned that many eligible immigrant students may mistakenly avoid applying for Pell or any state or financial aid and will be unable to afford college without it. Pell Grants are meant to meet students with the greatest financial need at public and private institutions, providing the largest awards to the lowest-income students. Public institutions account for more than two-thirds of Pell recipients (68%), with 36 percent of public four-year students receiving Pell Grants, and 32% of community college students who are Pell recipients.¹⁶ In addition, community colleges have a much higher proportion of low-income and immigrant students than other higher education sectors.

Further, as noted by the National Skills Coalition, “the rule would increase college students’ financial instability and heighten their risk of dropping out. Many college students are part of larger households – either as adult children or as spouses and parents themselves.” We know that when students and their families are unable to meet core living and housing needs or face higher costs, the students are less likely to pursue educational and career pathways, more likely to cut

¹⁴ Department of Homeland Security, Yearbook of Immigration Statistics 2016
<https://www.dhs.gov/immigration-statistics/yearbook/2016>

¹⁵ Sources: U.S. Department of Education, National Center for Education Statistics, 2011-12 National Postsecondary Student Aid Study; 2016 American Community Survey, Department of the Census, U.S.

¹⁶ Spiros Protopsaltis and Sharon Parrot, “Pell Grants--A Key Tool for Expanding College Access and Economic Opportunity--Need Strengthening, Not Cuts,” Center on Budget and Policy Priorities, July 27, 2017
https://docs.google.com/document/d/1FVKs_KDat81WvqZTg8Sm_4WYk25pYsLmUinsgxKqItE/edit?ts=5bc61576

back on their educational course load, or drop out altogether. While not directly affected by the public charge, the proposed regulations could discourage undocumented immigrant youth from pursuing a postsecondary education and who in the future may have the opportunity to adjust their status and further contribute to our communities and our country.

4. Research shows that postsecondary education boosts economic mobility, improves lives, and helps the economy, yet the proposed rule would deter immigrant youth from enrolling in higher education.

Our colleges and universities serve as key generators of social and economic mobility for all students in our nation. As educators, we know that immigrant and low-income students especially benefit from the transformative power of higher education. Since 2008, the majority of the new jobs created in the economy are going to college-educated individuals.¹⁷

Research studies have shown that a postsecondary education can increase economic mobility and improve lives.¹⁸ Over a career, an average high school graduate earns at least \$1.4 million; an associate's degree holder earns at least \$1.8 million; a bachelor's degree holder earns \$2.5 million; a master's degree holder earns \$2.9 million; a PhD holder earns \$3.5 million; and a professional degree holder earns at least \$4 million.¹⁹ In fact, the benefits of obtaining a postsecondary education are recognized in the proposed rule, when it states, "an alien with educational credentials and skills is more employable and less likely to become a public charge."²⁰ Furthermore, research has found that having a college degree improves health status.²¹ However, as outlined above, the proposed rule would deter rather than encourage the pursuit of higher education by many immigrant students.

Moreover, colleges help to fuel economic growth and prosperity in their communities. The college and career success of immigrant students is critical to meeting state educational goals and

¹⁷ Robert Shapiro, "The New Economics of Jobs is Bad News for Working-Class Americans and Maybe for Trump," January 16, 2018, <https://www.brookings.edu/blog/fixgov/2018/01/16/the-new-economics-of-jobs-is-bad-news-for-working-class-americans-and-maybe-for-trump/>

¹⁸ "The Economics of Higher Education," A Report Prepared by the Department of the Treasury and the Department of Education, December 2012. https://www.treasury.gov/connect/blog/Documents/20121212_Economics%20of%20Higher%20Ed_vFINAL.pdf

¹⁹ Anthony P. Carnevale, "Reauthorizing the Higher Education Act: Accountability and Risk to Taxpayers," Testimony Before the Committee on Health, Education, Labor and Pensions, U.S. Senate, January 20, 2018. <https://www.help.senate.gov/imo/media/doc/Carnevale2.pdf>

²⁰ "Inadmissibility on Public Charge," Federal Register, Vol. 83, No. 196, Wednesday, October 10, 2018, Proposed Rules, p.51189.

²¹ [Centers for Disease Control: National Center for Health Statistics, Office of Communications, "Higher Education and Income Levels, Keys to Better Health, May 16, 2012.](https://www.cdc.gov/media/releases/2012/p0516_higher_education.html) https://www.cdc.gov/media/releases/2012/p0516_higher_education.html

addressing acute skills shortages. According to the nonprofit National Skills Coalition (NSC), many states won't be able to reach their goals without including their immigrant residents.²²

More than 40 states have established goals for postsecondary credential attainment, such as a goal of having 60% of state residents earn a college degree or other postsecondary credential by 2025.

²³ Community colleges have often aligned their own institutions' student completion goals with their states' higher education goals and plans. These colleges depend upon state funding for programs to close achievement gaps and provide students with the skills needed to succeed in college and the workforce. The proposed rule would significantly diminish prospects for immigrant student success and impede state efforts to increase college completion rates.

5. The rule would penalize low-income immigrants who receive or who are likely to receive public benefits that enable them to enroll and succeed in college, and it would create significant and lasting harm to the health and well being of immigrant youth and their families.

It is estimated that in 2016, 710,000 immigrant young adults had Medicaid, which is 22.7% of all immigrant young adults and 11.3% of all young adults receiving Medicaid; and 446,000 immigrant young adults received SNAP, which is 14.5% of all immigrant young adults²⁴. In addition, 45,000 immigrant young adults were in a household that received Housing Assistance.

²⁵ Public benefits support the health and well-being of immigrant students and their families and help low-income students succeed in college and go on to be productive, working adults.

Yet, under the proposed rule, legally authorized immigrants who access these benefits could jeopardize their chances of obtaining green cards or restrict any future opportunities to change or upgrade their immigration status. Immigrant students should not have to sacrifice the health and well being of their families while they are working to complete their education and improve their lives. Low-income, immigrant young adults with lawful status should not be deterred from accessing public benefits for which they are eligible. Researchers have pointed to evidence of eligible families dropping out of nutrition assistance programs, and community health providers have pointed to families paying for health services and not using insurance – both trends

²² "Middle-Skills Credentials and Immigrant Workers: Texas' Untapped Assets," National Skills Coalition <https://www.nationalskillscoalition.org/resources/publications/file/Middle-Skill-Credentials-and-Immigrant-Workers-Texas-Untapped-Assets.pdf>

²³ See overview at <https://www.luminafoundation.org/lumina-goal>

²⁴ U.S. Census Bureau. Current Population Survey: 2016. <https://www.census.gov/programs-surveys/cps/data-detail.html>.

²⁵ U.S. Census Bureau. Current Population Survey: 2016. <https://www.census.gov/programs-surveys/cps/data-detail.html>.

apparently part of the chilling effects of the proposed order.²⁶ For example, in California, it has been estimated that if the public charge order would be implemented, “113,000 to 311,000 children would lose access to SNAP/food stamps despite remaining eligible” due to “chilling effects” of families disenrolling in SNAP out of fear or reluctance.²⁷

The proposed rule targets in particular immigrants earning less than 125 percent of the federal poverty level (\$13,375 annually for a family of four), making it extremely difficult for low-income immigrant adults to meet the new income threshold of the public charge test. Under the proposed rule, all immigrants earning below 250 percent of the federal poverty line would face greater scrutiny.²⁸ These factors would weigh negatively against immigrant young adults in a public charge determination and could result in the denial of admission to the U.S. or denial of “green card” status. The proposed rule only serves to heavily favor immigrants who are wealthy, while punishing low-income immigrant students by depriving them of future opportunities to increase their education, skills, and earnings.

6. The proposed rule would have profound consequences on entire communities.

The proposed rule would undermine access to essential health, nutrition and other critical programs for eligible immigrants, which would impact entire American communities. It would make child poverty and health outcomes worse by discouraging enrollment in programs that address health, hunger and economic security.²⁹ The fear created by these rules would extend far beyond any individual who may be subject to the “public charge” test, harming entire communities as well as the infrastructure that serves all of us.

Increased numbers of uninsured students as well as students coming from uninsured families will increase the burden on campus student health centers; changes in healthcare usage and coverage also can cause additional public health concerns for campus communities.

Healthcare workers have already reported changes in healthcare use, including decreased participation in Medicaid, CHIP, and other programs due to community fears stemming from the

²⁶ See for example, Hamutal Berstein and Archana Pyati, “Expanding the ‘public charge’ rule jeopardizes the well-being of immigrants and citizens,” Urban Institute, October 3, 2018.

<https://www.urban.org/urban-wire/expanding-public-charge-rule-jeopardizes-well-being-immigrants-and-citizens>
²⁷ Children’s Partnership, “Potential Effects of Public Charge Changes on California Children.”
<https://www.childrenspartnership.org/wp-content/uploads/2018/11/Potential-Effects-of-Public-Charge-Changes-on-California-Children-Brief.pdf>

²⁸ 250 percent of the federal poverty line for a family of four is approximately \$62,750. See “Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard”
<https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population>

²⁹ See for example, Samantha Artiga, Rachel Garfield, and Anthony Damico, “Estimated Impact of the Proposed public Charge Rule on Immigrants and Medicaid,” (Washington, DC: Kaiser Family Foundation, October 2018).

leaked draft regulations. For this reason and others presented in this letter with regard to the very dismaying trends of families eligible for important health and welfare benefits deciding to forego them, we strongly urge that CHIP not be included in any expanded definition of public charge, but again, we foremost urge the withdrawal of the entire proposed rule.

7. The proposed rule would discourage adult immigrant learners from participating in workforce training, certification programs, and adult education programs that help to improve their English language skills.

Many adult immigrant learners have enrolled in community colleges to improve their English skills, participate in job training and career development programs, and support their families. These programs have enabled them to pursue productive, meaningful employment and become actively engaged in our communities. One third of community college students have family incomes of less than \$20,000, according to the National Center for Education Statistics ([see Community Colleges FAQs](#)).³⁰ Research has shown that supportive services that help individuals access public benefits programs are often vital to ensuring that working adults succeed in postsecondary education.³¹ Yet, penalizing low-income adult immigrant learners for using these benefits creates a disincentive for them to participate in the educational and job training programs that are intended to help them succeed and contribute economically.

A National Skills Coalition analysis of Bureau of Labor Statistics data shows that 84% of American jobs today require education and skills beyond the high school level.³² These middle-skills jobs, requiring more than a high school diploma but less than a four-year degree, “remain the largest segment of the U.S. economy and represent a crucial pathway to good, family sustaining employment.”³³ Immigrants are critical to meeting the demand for middle-skill positions, and specialized training is often provided by community colleges. Restricting immigrants’ access to public benefits that allow them to obtain these in-demand skills hurts hardworking adult immigrant learners and it hurts our economy.

³⁰ “Community College FAQs,” Community College Research Center, Teachers College, Columbia University, <https://ccrc.tc.columbia.edu/Community-College-FAQs.html>

³¹ *Connecting College Students to Alternative Sources of Support The Single Stop Community College Initiative and Postsecondary Outcomes* (Rand Corp., 2016.) Available at:

http://www.singlestopusa.org/wp-content/uploads/2016/11/RAND-Report_Executive-Summary-1.pdf

³² “United States’ Forgotten Middle,” National Skills Coalition, <https://www.nationalskillscoalition.org/resources/publications/2017-middle-skills-fact-sheets/file/United-States-MiddleSkills.pdf>

³³ Amanda Bergson-Shilcock, “At the Intersection of Immigration and Skills Policies: A Roadmap to Smart Policies for State and Local Leaders,” National Skills Coalition, September 2018, p. 2, https://www.nationalskillscoalition.org/resources/publications/file/At-the-intersection-of-immigration-and-skills-policy_web.pdf

According to the Migration Policy Institute, “tapping into the skills of” recently arrived and increasingly educated immigrant populations “represents an important potential source of skilled labor,” and is especially needed given the labor and skills shortages that have been documented in various fields.³⁴ A National Academies of Science study cited in this report notes that “a typical recent immigrant with a bachelor’s degree contributes almost \$500,000 more in taxes than he or she uses in public benefits over a lifespan.”³⁵ Immigrant professionals often turn to community colleges and universities as “they seek to improve their language skills, fill content gaps, or attain industry-recognized credentials through apprenticeships.”³⁶ Creating any additional barriers for these highly-skilled adult learners is counterproductive.

8. The proposed rule would apply to international students, visitors, and workers seeking to extend or adjust their status.

Despite the significant vetting process already in place with regard to international students and their ability to support themselves during their tenure in the United States, the proposed rule would significantly increase the burden on individuals, USCIS, employers, and educational institutions.

Burden on Individuals: The new public charge test would apply when individuals apply for a green card or seek admission to the U.S. For nonimmigrants, including F-1 students, J-1 exchange visitors, H-1B speciality workers, or their dependents, the public charge test would be applied when they apply to extend or adjust their nonimmigrant status. This rule would create additional tests and barriers for these individuals. Individuals would be subject to the public charge test each time they extend or change their status. For example, an international student with F-1 status applying for an employment status would be subject to the public charge test. The increased uncertainty imposed by the new regulations is likely to deter even well-qualified and affluent international students from attempting to study in the US, as the ability to gain US workplace experience during an Optional Practical Training period is often a key motivation for enrolling in an American college. Drops in international enrollment would have broader ripple effects for US higher education institutions, as outlined below.

Burden on USCIS: Under the proposed rule, USCIS would need to conduct public charge assessments of individuals making requests to extend or change nonimmigrant status.

³⁴ Jeanne Batalova and Michael Fix, “Tapping the Talents of Highly Skilled Immigrants in the United States. Takeaways from Experts Summit,” Migration Policy Institute, August 2018, pp. 6-7.
<https://www.migrationpolicy.org/research/tapping-talents-highly-skilled-immigrants-united-states-takeaways-experts-summit>

³⁵ Ibid, p.1

³⁶ Ibid, pp.15-16.

Extending the public charge test to these populations is not a good use of USCIS resources. F-1 and M-1 students already must provide evidence of “sufficient funds available for self-support during the entire proposed course of study.”³⁷ By definition, most employment-based nonimmigrant visas mandate sponsorship and compensation by employers. Financial stability is there already built into their nonimmigrant visa eligibility. Given the existing safeguards in State Department procedure and individual visa requirements, the additional significant investment of time and personnel in public charge assessments of nonimmigrants by USCIS would be an unnecessary administrative burden and additional cost.

Burden on Employers: Employers who sponsor highly skilled foreign professionals and workers, including educational institutions, also would be burdened by the new procedures, as their employees would have to navigate the additional new barrier of proving that they are not likely to become a public charge *each time* they file for an extension or change of status. The proposal specifies that USCIS will be mandated for the first time to explicitly determine that a nonimmigrant beneficiary of either a change of status or extension of stay request is not a public charge, including (as mentioned above) an F-1 student changing status to H-1B. This will cause complications in the adjudication of nonimmigrant visa petitions filed by employers. USCIS has regularly addressed the public charge ground as part of adjustment of status adjudications but for employment-based immigrants an offer of employment from an employer with the ability to pay has sufficed. The proposed charge alters that standard to state that while having confirmed employment is a positive factor, it would not be determinative. The individual could still be subject to the public charge test (and need to submit additional documentation). This creates far greater burdens on both the employee and employer, and the increased unpredictability creates new uncertainties and risk for employers, which is costly.

Overall impact: Beyond the individual and administrative burdens detailed above, the proposed rule would present another harmful deterrent to international talent coming to the United States to study and work, regardless of their financial status. This will adversely impact colleges and universities, their ability to provide educational programs to all students, and the vibrancy of their communities. From 2004 to 2016, first-time enrollments of international students in U.S. colleges and universities increased significantly, from 138,000 in 2004 to 364,000 in 2016; during this period of time, first-time enrollments of international students doubled or more at public and private baccalaureate institutions, public community colleges, and master’s granting institutions.³⁸ NAFSA has estimated that international students contribute \$39 billion annually to

³⁷ USCIS, Students and Employment (Feb 6, 2018); *Noncitizen Eligibility for Federal Public Assistance: Policy Overview*.

³⁸ See Pew Research Institute, “Facts on International Students,” November 20, 2017.

the economy.³⁹ Declining enrollments of international students coming to the U.S. will be economically detrimental to regions across the country. There was already evidence that first-time international student enrollments in U.S. colleges and universities are declining, and the newest data shows another 6.6% drop in new international student enrollments in 2017-18.⁴⁰

This proposed rule would only further exacerbate this disturbing trend, and requires a careful analysis and quantification of the costs to U.S. higher education and regional economies.⁴¹ We ask that this work is undertaken and a full costs benefits analysis of including international students and visitors in this proposed rule be provided to the public before any final rule determination is made.

9. The proposed rule could affect changes in the U.S. talent pipeline that would ultimately undermine our nation’s global competitiveness.

A highly educated workforce spurs economic growth and strengthens state and local economies.⁴² The rule would discourage and may decrease the number of U.S.-citizen youth with non-U.S. citizen parents, lawful permanent residents, and undocumented immigrant youth who are long-term residents of the United States from completing college degrees and pursuing areas of

³⁹ NAFSA, http://www.nafsa.org/Policy_and_Advocacy/Policy_Resources/Policy_Trends_and_Data/NAFSA_International_Student_Economic_Value_Tool/

⁴⁰ On November 15, 2018, Open Doors released the newest data showing another decline in new international student enrollments: “new international student enrollment fell by 6.6 percent in 2017-18, consistent with the downward trend first observed in the 2015-16 academic year” (See Open Doors Report: <https://studyinthestates.dhs.gov/2018/11/open-doors-report-a-record-high-number-of-international-students>). Thus, last fall 2017, Open Doors released their annual survey showing a total of 291,000 new international students enrolled at U.S. institutions in 2016–17, a 3.3% decrease from 2015–16 (see <https://www.iie.org/Research-and-Insights/Open-Doors> and the 2017 Open Doors data: <https://www.iie.org/Research-and-Insights/Open-Doors/Fact-Sheets-and-Infographics>). In a “snapshot” survey by Open Doors, 45% of U.S. colleges responding reported a decline in international student enrollments for fall 2017, with an average decline of 7% (see this *Inside Higher Ed* article, <https://www.insidehighered.com/news/2017/11/13/us-universities-report-declines-enrollments-new-international-students-study-abroad>). A Student Exchange and Visitor Program (SEVP) report released in April 2018 showed overall declines in international student enrollments (see the SEVP report and these *Inside Higher Ed* and *Wall Street Journal* articles on declining enrollments). Declines of international student enrollments were even more pronounced when OPT participants were excluded from the analysis (see this *Inside Higher Ed* article).

⁴¹ See Jie Zong and Jeanne Batalova, “International Students in the United States,” Migration Policy Institute, May 9, 2018. Zong and Batalova conclude, “(m)ultiple factors contribute to slowed enrollment, including the rising cost of U.S. higher education, student visa delays and denials, and an environment increasingly marked by rhetoric and policies that make life more difficult for immigrants, as well as changing conditions and opportunities in home countries and increasing competition from other countries for students.” <https://www.migrationpolicy.org/article/international-students-united-states>.

⁴² Noah Berger and Peter Fisher, “A Well-Educated Workforce is Key to State Prosperity,” Economic Policy Institute, August 22, 2013, <https://www.epi.org/press/states-investing-education-key-economic/>

national need, including the fields of science, technology, engineering, and mathematics (STEM). In short, public charge would weaken the STEM educational pipeline at a time when the United States needs STEM professionals and would thwart efforts to increase educational attainment levels for the U.S. population.⁴³

The proposed regulations would also impact current workers across different sectors. As noted above according to a New American Economy analysis,⁴⁴ more than 1.4 million people affected by the public charge rule have at least some college education. This includes at least 364,000 workers in the education and health services industries, and more than 125,000 workers in the professional and business service industry. Jeopardizing the employment stability of these workers will have ripple effects not only for the workers themselves, but also for the companies that employ them and the patients and clients who depend on their caregiving and other services.

10. The complex regulations under the proposed rule would create significant administrative burdens on institutions and college advisors, as well as increased uncertainty about use of braided funding for education and career pathway programs.

The National Skills Coalition (NSC) has pointed to the [increased challenges](#) for education and workforce providers to provide students with accurate guidance on their educational and career options and the impact students' use of public benefits would have on their immigration status. NSC also notes the [increased uncertainty](#) about institutions' use of blending multiple funding sources to support education and workforce programs.⁴⁵

“The public charge test pertains to benefits received by *individuals*. Funds that are received by *institutions* – such as community colleges that blend TANF or SNAP dollars with other funds to support an educational program – would *not* be counted against immigrant participants in those programs. However, the uncertainty created by the new regulations may affect education and workforce program administrators and managers as they seek to clarify the implications of the proposal for their institutions and participants.”⁴⁶

⁴³ Joint Economic Committee, U.S. Senate, “STEM Education for the Innovation Economy,” January, 2014, https://www.jec.senate.gov/public/_cache/files/9bfced75-07a0-466b-a94b-8ab399582995/stem-education-for-the-innovation-economy.pdf

⁴⁴ New American Economy, “Economic Impact of Proposed Rule Charge: Inadmissibility on Public Charge Grounds.” October 31, 2018. [https://research.newamericaneconomy.org/report/economic-impact-of-proposed-rule-change-inadmissibility-on-public-charge-grounds/](https://research.newamericaneconomy.org/report/economic-impact-of-proposed-rule-change-inadmissibility-on-public-charge-ground/)

⁴⁵ Amanda Bergson-Shilcock, “Newly Proposed Immigration “Public Charge” Rule Would Harm Immigrant Workers and US Business,” National Skills Coalition, October 12, 2018, <https://www.nationalskillscoalition.org/news/blog/newly-proposed-immigration-public-charge-rule-would-harm-immigrant-workers-and-us-businesses>

⁴⁶ Ibid.

Furthermore, NSC notes: “Higher education institutions, nonprofit organizations, and state and local agencies will also face the challenge of updating enrollment forms, software programs, and other documentation that currently provides blanket reassurance to participants that enrolling in publicly funded programs will not jeopardize their immigration status, and substituting a much more nuanced and complicated disclaimer.”⁴⁷

For these reasons described in this comment letter, the Department should immediately withdraw its current proposal, rely instead on the 1999 policy guidance regarding public charge, and dedicate its efforts to building on the successes of immigrant students and their families and to advancing policies that strengthen—rather than undermine—the ability of immigrants to access postsecondary pathways and support themselves and their families in the future. If we want our communities to thrive, everyone in those communities must be able to stay together and get the care, services and support they need to remain healthy and productive.

Thank you for the opportunity to submit comments on the NPRM. Please do not hesitate to contact Miriam Feldblum (mfeldblum@presidentsimmigrationalliance.org) at the Presidents’ Alliance or Jill CasnerLotto (Jill.CasnerLotto@cccie.org) at the Community College Consortium for Immigrant Education to provide further information.

Sincerely,



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⁴⁷ Ibid.