December 10, 2018

Samantha Deshommes, Chief
Regulatory Coordination Division, Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

RE: DHS Docket No. 2010-0012-0001, CIS No. 2499-10, RIN 1615-AA22,
Comments in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds
Submitted via www.regulations.gov

Dear Chief Deshommes:

Below please find comments submitted in response to the Department of Homeland Security’s (DHS) and the Notice of Proposed Rulemaking (hereinafter “proposed rule”) published in the Federal Register on October 10, 2018 on behalf of the Asian Pacific Institute on Gender-Based Violence (API-GBV). The API-GBV is a national resource center on domestic violence, sexual violence, trafficking, and other forms of gender-based violence in Asian and Pacific Islander and immigrant communities. The API-GBV works in partnership with various national networks of advocates, community-based service programs, federal and state government agencies, national and state organizations, legal, health, and mental health professionals, researchers, policy advocates, and activists from social justice organizations to better address the needs of Asian and Pacific Islander and immigrant victims. API-GBV analyzes critical issues, promotes culturally relevant evidence-informed intervention and prevention, provides consultation, technical assistance and training; develops resources, conducts and disseminates research, and impacts systems change through administrative advocacy and policy analysis. Based on our experience supporting victim services providers who work with Asian and Pacific Islander and immigrant survivors of gender-based violence, and in working directly with immigrant survivors, we strongly oppose the proposed public charge rule.

The proposed rule undermines the progress that our communities have made to advance victim and public safety and health, jeopardizing domestic violence, sexual assault, and human trafficking victims in the following ways:

a. The proposed rule undermines Congressional intent to protect and support victims of domestic violence, sexual assault, and human trafficking, representing a significant change in longstanding policy.
b. The proposal discourages survivors from seeking or utilizing safety net benefits that are crucial to survivors’ ability to escape or recover from abuse and trauma.

c. The proposed rule punishes survivors of domestic violence and sexual assault for the violence they’ve experienced.

d. The proposal isolates survivors from their families, which are often essential sources of support when escaping and recovering from abuse.

Not only will the proposed rule impose significant human suffering on victims and their families, it will also impose long-term economic costs on our communities due to increased injury and health consequences of unmitigated trauma as well as increased burdens for victim advocacy organizations working to support immigrant survivors. Due to these detrimental impacts, API-GBV submits the following comments on the proposed regulation as follows:

1) **The proposed rule is inconsistent with clear Congressional intent to protect and provide support for victims of domestic violence, sexual assault, and human trafficking, and undermines victims’ ability to obtain and maintain safety as a result of abuse.**

The proposed rule exempts several categories of non-citizen victims of domestic violence and sexual assault seeking admission or adjustment of status who are statutorily exempt from application of the public charge ground of inadmissibility pursuant to INA §212(a)(4), such as those seeking status pursuant to the Violence Against Women Act, U visas, and asylum, among others. The proposed rule also exempts certain victims of human trafficking seeking admission. However, the exemptions at proposed **8 CFR 212.20** fails to protect large numbers of victims from the negative impacts of the proposed public charge rule. Many victims of domestic violence, sexual assault, and human trafficking, along with their family members, seek status in other, non-victim based, immigration categories and will be harmed as a consequence.

Victims hold all forms of immigration status, from U.S. citizenship to permanent residency to those immigrating through family or employment sponsorship, or as foreign students, temporary workers, or diversity visa applicants.$^1$ Even in instances where survivors have secure status and the proposed rule does not directly apply to them because they are not seeking admission or adjustment, their family members who may be seeking admission or permanent residence will be harmed.

Domestic and sexual violence are widespread in our communities – with one in three women and one in six men experiencing some form of sexual violence in a lifetime$^2$ and more than 12 million men and women experiencing rape, physical violence, or stalking

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by an intimate partner each year in the United States. In the Asian and Pacific Islander (AAPI) community, 21-55% of women report experiencing domestic or sexual violence during their lifetime. AAPIs are among the fastest growing populations in the U.S., and in recent years, three out of every ten individuals obtaining permanent residence status are from Asia and Pacific Island nations, as well as forty percent of the millions of individuals waiting in the family-based immigration category backlogs.

Due to the prevalence of domestic and sexual violence and human trafficking, our communities have provided for many important protections and programs to ensure all victims’ ability to access safety and justice and promote healthy communities. Congress has affirmed its commitment to supporting victims to escape, recover from, and overcome abuse in various legislative enactments, including the Violence Against Women Act (“VAWA”), the Family Violence Prevention and Services Act (“FVPSA”), the Child Abuse Prevention and Treatment Act (“CAPTA”), the Victims of Trafficking and Violence Protection Act (“TVPA”), and the Victims of a Crime Act (“VOCA”). In addition, while reforming federal welfare programs in 1996 in the Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”), Congress established the Family Violence Option (“FVO”) to prevent reforms from unfairly penalizing or putting domestic violence victims at further risk of abuse.

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13 42 U.S.C. § 602 (a)(7)
The public charge rule should be interpreted to contribute to the goals of these vital federal and state protections and services that support victim safety and recovery from trauma, healthy families, and violence prevention. As written, it is overbroad and undermines congressional intent.

2) The proposed public charge rule represents a drastic change in well-established, longstanding policy, contravening Congressional intent

a. Definitions: Public charge: Proposed section 212.21:

Proposed Section 212.21(a) defines Public Charge as “an alien who receives one or more public benefit as defined in paragraph (b) of this section. API-GBV strongly opposes this definition and recommends that the current definition of public charge be retained. Current guidance defines “public charge” as anyone “who has become or who is likely to become primarily dependent (emphasis added) on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense.” The proposed language is a dramatic change to the long-understood meaning of public charge and is inconsistent with Congressional intent in providing non-cash benefits as supports to help victims overcome abuse and to supplement the employment of low-income working families as well as the prospective nature of the public charge determination.

In addition, receipt of non-cash benefits as listed in proposed Section 212.21(b) is significantly more expansive than the current consideration of the use of two categories of public benefits for subsistence. DHS proposes to look at receipt of cash assistance for income maintenance, SNAP benefits, Section 8 Housing assistance under the Housing Choice Voucher Program, Section 8 Project-Based Rental-Assistance (including Moderate Rehabilitation), Medicaid (with certain listed exceptions, Premium and Cost Sharing Subsidies for Medicare Part D, and Subsidized Housing under the Housing Act of 1937 in making determinations of public charge. Expanding consideration of the listed non-cash programs for public charge determinations contradicts Congressional intent to alleviate hunger and illness. Unlike the proposed rule, prior guidance, which stated that the receipt of non-cash benefits should not be a determining factor in deciding whether an individual is likely to become a public charge,14 furthers Congressional intent to expand access for identified immigrant populations to access certain public benefits. For example, Congress sought to provide access for immigrant children and immigrants receiving disability benefits to the Supplemental Nutrition Assistance Program (SNAP) in the 2002 Farm Bill,15 and pregnant women and lawfully present children for Medicaid and CHIP without a 5-year waiting period in the Children’s Health Insurance Program Reauthorization Act (CHIPRA).16 Penalizing individuals who received these benefits by

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14 Specifically, the guidance states that “officers should not place any weight on the receipt of non-cash public benefits (other than institutionalization) or the receipt of cash benefits for purposes other than for income maintenance with respect to determinations of admissibility or eligibility for adjustment on public charge grounds.”


putting them in an impossible predicament where they cannot both receive the public benefits and immigration status they are eligible to receive, contravenes Congressional intent.

Furthermore, rather than amending the public benefits or public charge statutes to include additional public benefits programs to be considered, Congress has continued to affirm existing administrative interpretations of the law. For example, in 1986, Congress enacted a “special rule” to overcome the public charge test if an immigrant “demonstrates a history of employment in the United States evidencing self-support without receipt of public cash assistance” (emphasis added).\(^\text{17}\) “Public cash assistance” was defined as “income or needs-based monetary assistance” such as SSI, a program that is currently part of the test, but specifically excluded food stamps, public housing and medical assistance.\(^\text{18}\) Subsequently, the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)\(^\text{19}\) limited eligibility for “federal means-tested public benefits,” such as Medicaid and SNAP to “qualified” immigrants, and defined “qualified” to lawful permanent residents, asylees, refugees, VAWA self-petitioners, among others. Despite restricting eligibility for these benefits in this way, Congress declined to use the term “means-tested public benefits” in the adjustment of status statute, indicating its intent to maintain the distinction. After passage of the PRWORA, the INS issued field guidance consistent with language distinct for eligibility for benefits programs and overcoming a public charge determination. Thus, adding programs such as SNAP, Section 8 housing assistance, many forms of Medicaid and the Medicare Part D Low-Income Subsidy Program to the public charge determination, is inconsistent with Congressional intent.

As part of PRWORA, in passing the Family Violence Option, Congress recognized the importance of access to benefits to support victims of domestic violence and provided exemptions from program requirements that would unfairly punish or put victims at further risk of family violence.\(^\text{20}\) Similarly, putting immigrant victims in a position to be found ineligible for admission or adjustment of status based on receipt of benefits that would be critical for them in obtaining safety, contravenes Congressional intent and both unfairly punishes them for needing the benefits to escape or recover from abuse, and puts victims at further risk.

**The proposed rule’s new income threshold has no statutory basis**

API-GBV strongly opposes the usage of the new income thresholds proposed in the definition of Public Benefit in **Section 212.21(b)(1)**, which proposes a 15% of the federal poverty level as a threshold for when “monetizable” benefits should be counted. At **83 FR 51165**, DHS seeks input on whether to consider the receipt of designated monetizable


\(^{18}\) See 8 CFR 245A.1(i), explicitly stating that “public cash assistance” “does not include assistance in kind, such as food stamps, public housing, or other non-cash benefits.”


\(^{20}\) 42 U.S.C. § 602 (a)(7)
public benefits at or below the 15 percent threshold. API-GBV strongly opposes consideration of any receipt of benefits below the designated threshold. As DHS acknowledges in the preamble, consideration of any lower level of benefits could have significant unintended consequences.

The proposed rule would penalize non-citizens, including survivors of domestic violence, sexual assault, and human trafficking, who are considered, but for the usage of a small amount benefit, essentially self-sufficient. If a survivor of domestic or sexual violence used even limited benefits for a relatively short amount of time in order to escape or overcome abuse, they could be barred from admission or adjustment. This absolute standard overlooks the extent to which the individual is supporting themselves or their family members. For example, a family of four that with a $43,925 annual income that receives just $2.50 per day per person in monetizable public benefits would be receiving just 8.6 percent of their income from the government programs, meaning that they are 91.4 percent self-sufficient.21

DHS further acknowledges that in other contexts, such as the determination of whether an individual is a dependent for tax purposes, or HHS’s indicators of welfare dependence, the test that is applied is whether the individual or household receives more than half of their total annual income from the designated source. However, at 83 FR 51164, DHS rejects this definition simply because it “believes that receipt of such benefits, even in a relatively small amount or for a relatively short duration would in many cases be sufficient to render a person a public charge.” The only justification provided for the lower threshold is that the current policy is “insufficiently protective” of the public budget, which is not an appropriate or relevant factor for DHS to consider.

The INA refers only to the income threshold for sponsors who are required to submit an affidavit of support, not to the individual seeking admission or adjustment of status. In imposing a standard not contemplated in the statute, DHS provides no justification for why usage of this threshold is appropriate.

Proposed Section 212.21(d) Definition of Household includes people to whom an immigrant provides financial support, even if they do not live with the immigrant. This definition is then used in determining whether the household has income sufficient to meet the 125% and 250% of the federal poverty level thresholds that this rule creates. Domestic and sexual violence survivors may be unjustly penalized in a public charge determination for providing continuing to provide financial support to former partners or family members even if they are involuntarily coerced into providing such support, or have managed to cease living with them due to the abuse.

In addition, individuals seeking admission or to immigrate can be penalized for providing family support to a sibling or parent to whom they have no legal obligation. This is true even if the support they provided means their family members can avoid seeking public assistance that they are eligible for. Furthermore, many immigrants provide financial

support to family members who remain in their countries of origin, where the cost of living is often lower. In some countries, as little as $100 a month could well constitute more than 50 percent of an individual’s financial support. However, this would mean that the person should be counted as part of the immigrant’s household size, which would drive up the earnings they would need to meet the threshold by much higher amounts.

3) **DHS Fails to Adequately Evaluate the Impacts of the Proposed Rule on Survivors of Domestic Violence, Sexual Assault, and Human Trafficking**

Economic resources play a critical role in supporting the safety of victims of domestic violence, sexual assault, and human trafficking. Not only does the public charge rule undermine federal and state policies to support victims by discouraging them from accessing critical services, the proposed rule exacerbates the harmful impacts of the abuse, possibly by keeping them trapped in abusive and exploitative situations. Without sufficient resources, victims are either compelled back into an abusive or exploitative relationship, or face destitution and homelessness. The broad definition of “ Likely at any time to become a public charge” found at proposed Section 212.21(c) will likely unfairly exclude large numbers of survivors of domestic and sexual violence and human trafficking, given the importance of access to economic support to escape and recover from abuse over their lifetimes.

a. The proposed rule is inconsistent with the prospective nature of the public charge determination, ignoring the positive long-term impacts of supports for survivors to overcome abuse

**Proposed Section 212.22(a) Prospective determination based on the totality of circumstance** accurately reflects the statutory language about the totality of circumstances. However, API-GBV opposes the subsequent listing of factors and additional criteria, which serve to undermine this intent by creating a large number of ways to fail, and a limited number of ways to overcome the inadmissibility ground, barring many low- and moderate-income individuals to qualify.

**Proposed Section 212.22 (b) Minimum factors to consider** include age, health, family status, assets, resources, financial status, education and skills, prospective immigration status and expected period of admission, an affidavit of support, if required. We strongly oppose the addition of additional criteria to the statutory totality of circumstances test, in particular, because survivors of domestic violence, sexual assault, and human trafficking are likely to be negatively impacted by the criteria, for reasons often directly related to the abuse or trauma that they have experienced.

**Proposed section 212.22 (b)(1) Age** While age is one of the statutory criteria to include in the public charge test, we strongly oppose treating being under age 18 or over age 61

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23 *Id.*
as a negative factor, in particular, because for children, deeming them as a public charge because they are not working is contrary to assertions that the public charge determination is a prospective test.

**Proposed section 212.22 (b)(2) Health** While health has always been a factor in the public charge test, the proposed rule codifies and unduly weights the specific standard for evaluating an individual’s health. The new standard includes any medical condition likely to require extensive medical treatment or institutionalization or that will interfere with a person's ability to provide and care for him- or herself, to attend school, or to work. This category will significantly impact survivors of domestic and sexual violence who have experienced the physical and mental health consequences of the trauma they’ve experienced.

Survivors overcoming abuse and trauma face often experience lower mental and physical health. A study by the Centers for Disease Control and Prevention (CDC) found that more than 550,000 injuries due to intimate partner violence require medical attention each year.\(^{24}\) Data from the Behavioral Risk Factor Surveillance Survey (BRFSS), which is conducted annually and is the largest U.S. nationally representative phone survey about general health behaviors and conditions, highlight the increased risk of chronic conditions such as asthma, arthritis, stroke, and cardiovascular disease in individuals who have ever experienced partner violence.\(^ {25}\) Sexual violence can also have harmful and lasting physical and psychological consequences including chronic pain, gastrointestinal disorders, gynecological complications, migraines or other frequent headaches, sexually transmitted infections, cervical cancer, genital injuries,\(^ {26}\) as well as post-traumatic stress disorder, or attempted or completed suicide.\(^ {27}\) Thus, many survivors of domestic violence, sexual assault, and human trafficking will have this factor weigh against them in the public charge determination.

**Proposed section 212.22 (b)(3) Family status** DHS proposes to consider the number of people in a household as defined in the proposed 212.21(d), thus, having a large household will be counted as a negative factor in itself, as well as making it harder for

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families to achieve the income thresholds required to avoid a negative factor under “assets, resources and financial status.” The proposed rule will penalize survivors of domestic and sexual violence and human trafficking who often seek the help of family members to not only overcome the trauma they have experienced, but also help alleviate housing and childcare expenses, and strengthen their ties to the United States. Traditionally, having family members who can be expected to help someone who is immigrating has been treated as a positive factor under the totality of circumstances test, as discussed at 83 FR 51178-79. As drafted, the proposed rule’s treatment of family status disregards the beneficial nature of a large household in considering the totality of circumstances.

Proposed section 212.22 (b)(4) Assets, resources and financial status The large number of criteria that will be taken in account in assessing assets, resources and financial status will likely harm immigrant survivors. It proposes to treat failing each of these criteria negatively against an immigrant that must be offset by a corresponding positive factor. The cumulative effect of each criteria listed makes this factor weigh more heavily than any of the other statutorily mandated factors -- even beyond the additional weighting DHS explicitly proposes of certain elements of this factor.

Proposed section 212.22 (b)(4)(i)(A) Income Threshold At 83 FR 51187, DHS invites comments on the 125 percent of Federal Poverty Guidelines (“FPG”) threshold. API-GBV strongly opposes the use of this arbitrary threshold, as it penalizes domestic violence and sexual assault survivors, those who are caregivers for children, the elderly, or other family members, and immigrant women generally. A recent study by the Migration Policy Institute found that women may be more likely to be denied their green cards under the proposed rule because, in comparison to immigrant men, they are less likely to be employed, more likely to be primary caregivers for children and family members, and more likely to have lower incomes. Among recent green card recipients, women comprised 70 percent of those not employed nor enrolled in school.

In addition, immigrant survivors may lack employment experience or job skills due to isolation or sabotage by their violent partner. Several studies have documented how domestic violence perpetrators deliberately try to sabotage their victims’ efforts to obtain and keep paid employment. Such tactics, also known as economic abuse, include damaging or destroying victims’ work clothes or other items associated with their jobs or job training, inflicting facial bruises or cuts, or other visible injuries to keep them from going to work, promising to care for their children but not showing up or becoming unavailable at the last minute, and stalking women while they are at work. In addition, perpetrators often obstruct victims’ ability to manage their own finances, or use wages

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29 Id.

the wages that they are able to earn to establish economic independence. Violent partners of immigrant victims often engage in economic abuse by prohibiting their victims from learning English or from working outside the home in order to maintain control.

Finally, even individuals who work full-time year-round at the federal minimum wage, who does not miss a single day of work would fail to achieve the 125% of FPG threshold, demonstrating the arbitrary nature of the listed threshold. Given that immigrant women are frequently targeted for sexual abuse in the workplace, especially in low wage jobs, and traumatized as a result, this provision of the public charge proposal has particularly harmful impact on survivors. Proposed section 212.22 (b)(4)(ii)(H) Credit History and Credit Scores At 83 FR 51189, DHS invites comments on how to use credit history and scores. API-GBV opposes the use of credit scores as part of the “public charge” determination. Neither credit reports nor credit scores were designed to provide information on whether a consumer is likely to rely on public benefits or on the character of the individual.

Survivors of domestic violence, sexual assault or stalking frequently have poor credit as a result of the exploitive control tactics employed by their abusers. For example, abusers have been shown to interfere with a victim’s ability to maintain economic resources by having debt generated in the victim’s name. Research suggests that some domestic violence abusers refuse to pay rent or make mortgage payments and refuse to pay other bills, thereby placing the responsibility and consequences on their partners. Another way that abusive partners have been shown to generate debt for their partners is by identity theft, such obtaining credit cards in the victim’s name without consent. Thus, domestic violence and stalking victims are at risk for accruing personal debt and poor credit history.


34 Consumer Financial Protection Bureau, *Data Point: Credit Invisibles*, 2015, http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf (most credit scoring models predict likelihood that consumer will become 90 or more days past due in the following two years).


37 Id.
Finally, using credit reports and credit scores to determine public charge status is also inappropriate because many immigrants will not even have a credit history for USCIS to consider.

**Proposed section 212.22 (b)(4)(i)(C) and Section 212.22 (b)(4)(ii)(F) Applying for, receiving, or being approved to receive public benefits, as defined in the proposed CFR 212.21(b)** This section proposes to consider the any receipt of -- or application for or approval for -- any of the specified public benefits on or after the effective date of the final rule, no matter how long ago it occurred, or whether the immigrant was a child at the time of receipt. API-GBV opposes inclusion of this criteria in the rule. Programs that support basic economic security are of critical importance for domestic and sexual violence and human trafficking victims. While domestic violence and sexual assault occur across the socio-economic spectrum, there are unique challenges and barriers at the intersection of these forms of violence and economic disadvantage:

- Significant numbers of low-income women are abused or assaulted, and the violence perpetrated against them can make it nearly impossible to climb out of poverty without public assistance.  
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- Abuse can result in victims falling into poverty: either because the domestic violence itself included financial abuse or because the consequences of abuse or assault have undermined the victim’s ability to work, maintain their housing, or otherwise access financial security.
- Poverty and economic instability can exacerbate the physical health, mental health, and financial impacts of domestic violence and sexual assault due to, for example, lack of access to affordable counseling and health services, transportation, and/or legal assistance.  
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The proposed rule also ignores the fact that victims often use these economic benefits as work supports which help them and their family members escape abuse, overcome trauma, and become healthier, stronger, and more employable in the future. Receipt of benefits that cure a significant medical issue or provide an individual with the opportunity to complete their education can be highly significant positive factors that contribute to future economic self-sufficiency.

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39 Id.
In addition, as discussed in more detail further below, the consideration of any use of even a small amount of public benefits, no matter how long ago, will greatly increase the chilling effect of this rule, limiting the ability of victims to escape abuse and heal and recover from trauma. If they are concerned receipt of health care, housing, or food assistance today could limit their immigration options in the future, they will be unwilling to participate in these programs, even if it puts their health and well-being at risk.

**Proposed section 212.22 (b)(5) Education and skills** Similar to the impact of domestic violence, sexual assault and stalking on victims’ income, the ability of victims to obtain education or learn the English is often compromised by their abusers’ sabotage or isolation tactics. In addition, the English Language Proficiency criterion found at Section 212.22 (b)(5) is unreasonable considering that the public charge assessment applies to individuals when they first enter the U.S. or apply for lawful permanent residence. People from non-English speaking countries who are newly entering the U.S. or applying to adjust status are less likely to have gained proficiency in English. Our immigration laws explicitly require an English test for lawful permanent residents who have lived in the U.S. for a number of years- i.e., when they apply to become a U.S. Citizen, not when individuals are seeking lawful permanent status. In addition, the application of this factor is inappropriate for seeking admission as non-immigrants, as they may be entering for the very purpose of learning English, or entering for limited periods of time for limited purposes, for which English proficiency may be irrelevant. Thus, applying such a consideration at the step of admission or adjustment is illogical and conflicts with the statute.

**Proposed section 212.22 (b)(6) Prospective Immigration Status/Period of Admission**

We highly recommend that the proposed rule include, in considering the totality of the circumstances, the protective effect of secure immigration status against abuse and exploitation, as well as the bolstering effects on family stability. Research conducted among immigrant victims across the U.S. found that 65% of immigrant victims reported that their violent partner had used some form of a threat of deportation after arrival in the U.S. as a form of abuse.40

In applying the public charge rule, DHS should consider the supportive and protective effects of stable immigration status to victims. DHS should support the purpose and guidance of the important protections that Congress has afforded for victims in federal laws like VAWA, FVPSA, the TVPA, VOCA, and the Family Violence Option of the PRWORA,41 and other important laws protecting victims, even if they are not seeking admission under an exempt victim-specific category. As recognized under VAWA, admission to the United States or adjustment of status can help victims access employment and increase their ability to escape the violence or overcome the trauma they’ve suffered. Furthermore, stable immigration status helps individuals obtain secure

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41 *Supra*, notes 7-13.
better paying jobs, reducing the stress associated with exploitative working conditions, leading to better short-term and long-term outcomes for their families.\textsuperscript{42}

**Proposed section 212.23: Exemptions and waivers for public charge ground of inadmissibility** We believe this section generally captures the exemptions and waivers for the public charge ground inadmissibility, with the exception of DHS’ statement of the law as it applies to public charge exemptions for victims of human trafficking when applying for T-visas and T-visa based adjustment of status. The TVPA explicitly created a waiver of the public charge ground for T Visa applicants.\textsuperscript{43} The TVPA likewise allowed the Attorney General to waive the public charge inadmissibility ground for any T Visa holder seeking to adjust status to that of a permanent resident.\textsuperscript{44} However, in the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Congress continued to expand protections and services for human trafficking survivors and added them to the list of “qualified aliens” eligible for federal, state and local public benefits.\textsuperscript{45} And, in the subsequent 2013 reauthorization of the TVPA, Congress amended the public charge provision by adding such qualified aliens to the list of individuals exempt from the public charge ground.\textsuperscript{46} In other words, this amendment made even clearer that both individuals applying for and persons already granted T Visas are exempt from the public charge ground of inadmissibility. Thus, the public charge ground of inadmissibility should not apply to individuals who have been granted T Visas seeking adjustment of status to lawful permanent residency.

In addition to changing the language to reflect this exemption for survivors of human trafficking, DHS should further the ameliorative purposes of VAWA, the TVPA and other victim protections and clearly provide waivers in \textit{section 212.23(b)} for individuals who would otherwise qualify for protections provided for victims of domestic violence, sexual assault, and human trafficking afforded under VAWA, the TVPA, and other humanitarian immigration provisions, and are seeking admission or adjustment of status under another provision in the INA. Doing so not only provides increased protection for victims, but also reduces the burden on the immigration system, by decreasing additional processing of immigration applications, and reducing pressure on immigration court dockets.

**Proposed Section 214: Nonimmigrant Classes and proposed Section 248: Change of Nonimmigrant Classification** For nonimmigrants, including F-1 students, J-1 exchange visitors, H-1B speciality workers, or migrants from Compact of Free Association (COFA) nations, i.e., the Republic of the Marshall Islands, Federated States of Micronesia, and Republic of Palau, or their dependents, the public charge test would be applied when they apply to extend or adjust their nonimmigrant status. For survivors of domestic and sexual

\textsuperscript{42} D. Papademetriou, M. Sumption, and W. Somerville, \textit{The Social Mobility of Immigrants and Their Children}, Migration Policy Institute, (2009), Available at: https://www.migrationpolicy.org/research/social-mobility-immigrants-and-their-children.

\textsuperscript{43} Trafficking Victims Protection Act of 2000, Pub. Law 106-386 Sec. 107(e)(3).

\textsuperscript{44} Pub. Law 106-386 Sec. 107(f).

\textsuperscript{45} Pub. Law 110-457 Sec. 211 and codified at 8 § U.S.C. 1641(c).

\textsuperscript{46} Pub. Law 113-4 Sec. 804 and codified at 8 § U.S.C. 1641(c).
violence who hold such non-immigrant statuses, the proposed rule would create additional barriers for these individuals, as they would be subject to the public charge test each time they extend or change their status. For example, an international student on a F-1 who has been sexually assaulted on campus who has accessed economic or health supports to recover from the trauma could be negatively impacted under the proposed public charge test when they apply to renew their visa in the future.

In addition, many nonimmigrant classifications require the individual to demonstrate that they can support themselves financially. For example, F-1 and M-1 students, must show “sufficient funds available for self-support during the entire proposed course of study.” B-1 and B-2 tourists must also demonstrate that they have adequate means of financial support during the course of their stay in the U.S. By definition, most employment-based nonimmigrant visas require a sponsor and compensation by employers. Thus, financial stability is already incorporated in most nonimmigrant visa categories. Given these existing safeguards, expanding existing public charge assessment to these categories is a poor use of USCIS resources.

4) The public charge rule will discourage survivors from seeking or utilizing safety net benefits that are crucial to survivors’ ability to escape or recover from abuse and trauma

a. Hindering Access to Economic Supports Undermines Survivor Safety

Victims are already afraid to access basic needs programs, and the proposed rule will exacerbate those fears. The proposed change in public charge policy is already deterring immigrant families and survivors from accessing the services and programs they need to escape and overcome violence, even though the proposed rule has not taken effect. Survivors and their families are already withdrawing from assistance programs that support their basic needs. According to researchers at the Boston Medical Center, among eligible immigrant families who have been in the U.S. for less than five years, participation in SNAP decreased by nearly 10 percent in the first half of 2018-before the rule was even published or implemented. Other studies by the Kaiser Family Foundation and The Children’s Partnership and the California Immigrant Policy Center, conducted prior to publication of the proposed rule, also found that immigrant families—including those with lawful status—were experiencing high levels of fear and anxiety leading to decreased enrollment and disenrollment of their children in basic health and nutrition programs.

47 USCIS, Students and Employment Noncitizen Eligibility for Federal Public Assistance: Policy Overview. (Feb. 6, 2018)
b. **Access to Housing, Health, Food, And Other Key Supports Helps Survivors Escape and Overcome Abuse, with Positive Long-Term Effects on Safety and Health, Which Support Well-Being and Self-Sufficiency**

At *83 FR 51164*, the proposed regulation explains that the list of programs included in the rule was identified, in large part based on levels of Federal government expenditures. However, it is inappropriate and outside of DHS's authority for the agency to try to reduce spending in other federal agencies by trying to discourage people from using benefits that Congress intended that they be able to access. Whether or not there are large government expenditures in particular programs is irrelevant to whether a particular individual may become a public charge. Under the INA, a public charge determination must be an individualized assessment, and reduction of government expenditures on other programs that Congress has authorized is not an appropriate consideration.

The proposed rule greatly expands the range of public assistance programs that will now count against an individual in deciding whether someone is likely to become a public charge, including crucial programs that victims need to escape abuse and meet basic needs. As noted previously, while domestic violence and sexual assault occur across economic groups, there are unique challenges and barriers at the intersection of domestic and sexual violence and financial hardship: abuse can result in victims falling into poverty. Survivors’ ability to meet basic needs is central to their decision-making about whether or not they can leave abusive relationships. For example, two-thirds (67%) of survivors surveyed said that they stayed longer than they had wanted or returned to abusive relationships because of financial concerns, such as not being able to pay bills, afford rent/mortgage, or feed their families.\(^{51}\)

The Centers for Disease Control has concluded that improving financial security for individuals and families can help reduce and prevent intimate partner violence.\(^{52}\) Access to economic security programs and other safety net benefits therefore play a pivotal role in a victim’s ability to escape and overcome domestic violence and sexual assault, helping victims afford the basics (such as food, housing, and healthcare) and rebuild their lives after violence.

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**Housing**

API-GBV opposes consideration of the utilization of the named housing programs at proposed 212.21(b)(1)(ii)(B) and (C) in making a public charge determination. The proposed rule fails to account for the harms that will be caused by including housing programs as a program to be considered for public charge purposes. One of the greatest needs identified by survivors is affordable housing. In a single day, domestic violence programs across the United States received, but were unable to meet nearly 7,500 requests for housing services. Housing assistance is a critical resource for survivors, giving them the security that they need to leave violent or exploitative relationships without having to fear that doing so will result in homelessness, as well as providing a safe environment to begin their recovery. For many domestic violence survivors, the lack of economic independence can be devastating, as evidence suggests that domestic violence is among the leading causes of homelessness nationally for women.

For many survivors, the decision to leave abuse hinges on the question of where they will live. Between 22 and 57% of all homeless women report that domestic violence was the immediate cause of their homelessness, and victim service providers, advocates, and allies across the United States report that survivors became homeless as a result of sexual violence. Sexual assault survivors may be forced to leave their housing and/or employment as a result of the violence, and become even more at risk for sexual violence as a result. Without housing, sexual assault victims report that other services to address the violence were not likely to be helpful.

In addition, having safe and stable housing is crucial to survivors’ physical and mental health, and obtaining and sustaining employment, which are critical to overcoming the trauma of abuse. For survivors’ children, many of whom are U.S. citizens, stable housing is also critical for them to overcome the trauma of living in abusive homes. Research has shown that economic and housing instability harms, leading to poorer life outcomes as

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Lack of stable housing is also correlated to decreases in student retention rates, and contributes to homeless students’ high suspension rates, school turnover, truancy, and expulsions, limiting students’ opportunity to obtain the education they need to succeed later in life. Housing assistance provides the answer that survivors and their children need, and creates a pathway to safety.

**Supplemental Nutrition Assistance Program (SNAP)**

API-GBV also opposes the inclusion of SNAP at proposed 212.21(b)(1)(ii)(A) as a program listed for consideration in a public charge determination. The proposed rule fails to recognize that many people receive SNAP benefits as a supplement to their employment earnings. The inclusion of SNAP is inconsistent with the SNAP statute which states that "the value of benefits that may be provided under this chapter shall not be considered income or resources for any purpose under any Federal, State, or local laws," and inconsistent with Congressional intent to expand SNAP eligibility to immigrant children.

Furthermore, the proposed rule fails to account for the harms that will be caused by the inclusion of SNAP. SNAP helps survivors overcome an immense barrier to escaping and recovering from abuse: food insecurity. Being able to meet basic food and nutritional needs provides a means for survivors to take care of themselves and their children while working to address their trauma and take steps toward independence. Service providers report that SNAP is an invaluable program for survivor empowerment and post-trauma healing with 80% of most domestic violence victims and 55% of most sexual assault victims using the program to restore safety and stability in their lives. Limiting access to SNAP may translate to many domestic and sexual violence survivors and their families going hungry, leading survivors to feel that they have no choice but to return to their abusers.

**Healthcare Benefits**

In addition, API-GBV opposes the inclusion of Medicaid programs and Medicare Part D at proposed 212.21(b)(2) as program identified for consideration in a public charge determination. The proposed rule fails to recognize the prevalence and reality of low-wage work in the U.S. and the fact that only one-third of low-income workers, i.e., those who earn the bottom 25% of the earnings have access to employer-sponsored insurance

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62 7 USC §2017(b), (Benefits not deemed income or resources for certain purposes)

through their workplace. The rule tries to justify the inclusion of Medicaid based on the high costs of health care, but does not recognize that immigrants use less health care, on average, than U.S. born residents.

The proposed rule also fails to account for the harms that will be caused by the inclusion of Medicaid. For example, the Migration Policy Institute has estimated that 1.4 million AAPIs who are not U.S. citizens are members of families who rely on Medicaid and CHIP. This includes 182,000 children. While the proposed rule provides certain exemptions, such as services received for an “emergency medical condition” and those provided under the Individuals with Disabilities Education Act (IDEA), through school-based benefits provided under Medicaid from consideration in the public charge determination, or benefits provided to certain children of U.S. citizens or children in the process of adoption will not be counted, these program provisions are confusing and too complicated to actually mitigate the harm.

Furthermore, access to Medicaid and other health care programs provide a critical lifeline for survivors of domestic violence, sexual assault, and human trafficking in to treat the significant health consequences of abuse including: acute injury, chronic pain, sexually transmitted infections, gastrointestinal problems, diabetes, hypertension, and traumatic brain injury, among others.

Service providers report that Medicaid is valuable to the recovery of survivors as it is a benefit many survivors cannot afford, with 76% of providers reporting that healthcare assistance consistently helps the survivors with whom they work. New CDC data found the lifetime per-victim cost of intimate partner violence was $103,767 for women victims with 59% going to medical costs. Public funding paid 37% of this total cost. It is clear that Medicaid coverage helps survivors access care: when looking at trauma care alone, Kaiser Family Foundation found that Medicaid increased coverage of individuals with traumatic injuries for acute and post-acute care and protects against unexpected medical bills. Survivors are also more likely than others to need health, mental and behavioral health services because of increased risk for suicide, depression, anxiety, posttraumatic

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69 S. Goodman, Supra, Note 63, at 11

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stress disorder, and substance abuse. Ensuring they can get the care they need, when they need it, can improve their health and well-being for the rest of their lives.

Additionally, of particular interest to survivors, coverage of screening and brief counseling for DV/IPV is a covered women’s preventive health benefit. Maintaining this coverage is extremely important because in addition to treating the health consequences of abuse, the health care setting may be the first place that survivors are asked about abuse and connected with community-based victim services.

The proposed rule exacerbates the harmful health impacts of domestic violence and sexual assault. Survivors of domestic and sexual violence will likely forego critical health services they need to remain healthy and safe. Rather than seek help from a health care professional or get treatment for related health issues, survivors may instead stay in an abusive situation. We strongly urge that receipt of Medicaid and Medicare Part D benefits be excluded from the final rule.

**Children’s Health Insurance Program (CHIP)**

At 83 FR 51174, the Department specifically requests comment on whether the Children’s Health Insurance Program (CHIP) should be included in a public charge determination. For many of the same reasons that we oppose the inclusion of Medicaid, API-GBV opposes the inclusion of CHIP in consideration in a public charge determination in the final rule.

CHIP is a health insurance program for children in working families who have too high of an income to be eligible for Medicaid, but not enough to buy private insurance. In some states, CHIP covers pregnant women. All states offer CHIP, and CHIP/Medicaid work closely together. The Department would be contravening Congressional intent by including the Children’s Health Insurance Program (CHIP) in the list of public benefits considered in the public charge test in the final rule. As mentioned previously, Congress’ explicitly intended to expand coverage to lawfully present children and pregnant women in §214 of the 2009 Children’s Health Insurance Program Reauthorization Act (CHIPRA). Under CHIPRA states can cover lawfully residing children and pregnant women under Medicaid and CHIP during their first five years in the U.S. with regular federal matching dollars. This was enacted because Congress recognized the public health, economic, and social benefits of ensuring that these populations have access to care.

Including CHIP in a public charge determination would likely lead to many eligible children foregoing health care benefits, both because of the direct inclusion in the public charge determination as well as the chilling effect detailed elsewhere in these comments. Nearly 9 million children across the U.S. depend on CHIP for their health care. Due to the chilling effect of the rule, many eligible citizen children likely would forego CHIP—and health care services altogether—if their parents think they will be subject to a public charge determination.
Continuous, consistent and uninterrupted coverage is particularly critical for young children, as experts recommend 16 well-child visits before age six, more heavily concentrated in the first two years, to monitor their development and address any concerns or delays as early as possible.\(^{70}\) As noted by the Center for Children and Families: A child’s experiences and environments early in life have a lasting impact on his or her development and life trajectory. The first months and years of a child’s life are marked by rapid growth and brain development.\(^{71}\) Children covered by CHIP and Medicaid have improved health outcomes, including reductions in avoidable hospitalizations and child deaths. For children who’ve experienced abuse or who are in homes where domestic violence is present, access to CHIP may be a critical link for overcoming trauma and recovering from abuse. CHIP improves health, which translates into educational gains, with potentially positive implications for both individual economic well-being and overall economic productivity.

The benefits of excluding CHIP and Medicaid certainly outweigh their inclusion in a public charge determination. We recommend that DHS continue to exclude CHIP from consideration in a public charge determination in the final rule but also exclude receipt of Medicaid for the same reasons.

**Cash Assistance**

At Section 212.22(d), DHS states that it will consider as a negative factor any amount of cash assistance for income maintenance, including Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), State and local cash assistance programs that provide benefits for income maintenance (often called “General Assistance” programs), and programs (including Medicaid) supporting aliens who are institutionalized for long-term care, received, or certified for receipt” received before the effective date of the final rule. (Emphasis added.) However, under the prior 1999 Public Charge guidance, only receipt of such benefits to the extent that an individual was primarily dependent upon them for subsistence was considered. The proposed regulation does not make any justification for the inclusion of these benefits, other than their monetary value, most likely because they may already be considered under the 1999 guidelines already in place to determine public charge. However, the change from only considering these programs when individuals are “primarily dependent” on them, to counting them when someone receives as little as $1,821 per year, even if combined with income from employment, means that further justification is needed. Since 1999, individuals have relied upon this guidance, including based on advice from counsel, and API-GBV strongly opposes retroactively changing the standard such that receipt of even a modest amount of benefits by someone with other income sources could count against them. The 1999 Guidance, in its entirety, should be applied to any receipt of benefits prior to the effective date of the final rule. Changing the standard regarding the

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\(^{71}\) Id.
amount of cash benefit received in the public charge determination will be detrimental to survivors and their ability to escape and recover from abuse.

For many survivors, cash assistance, such as Temporary Assistance for Needy Families or state-funded cash benefits, provides the crucial support they need to begin the journey of re-stabilizing their lives and achieving self-sufficiency. In a 2017 survey of service providers and victim advocates working with victims of violence, nearly 85% of respondents said that TANF is a very critical resource for a significant number of domestic violence and sexual assault victims. Specifically, more than two-thirds of respondents said that most domestic violence victims rely on TANF to help address their basic needs and to establish safety and stability, and 45% of respondents said the same is true of most sexual assault victims. With financial instability posing limited options for escaping or recovering from abuse, access to cash assistance is an important factor in victims’ decision-making about whether and how they can afford to leave a dangerous situation, and in planning how to keep themselves and their children healthy, well, and housed.

Other benefits
At 83 FR 51173, DHS asks for comment about unenumerated benefits, including whether additional programs should explicitly be counted in the public charge determination, and whether use of other benefits should be counted in the totality of circumstances. API-GBV strongly opposes adding any additional programs to those already counted under the 1999 guidance, including the list of counted programs to be considered in this proposed regulation, and we oppose considering the use of non-listed programs in any way in the totality of circumstances test.

Survivors of domestic violence, sexual assault, and human trafficking should not be discouraged from seeking and utilizing the assistance they need to escape and recover from the harm they have experienced. The programs enumerated in the proposed rule already go far beyond what is reasonable to consider and will harm millions of families, including those made up of survivors of domestic and sexual violence. Adding any more programs would increase this harm as well as have larger public safety and health considerations for communities at large. No additional programs should be considered in the public charge determination.

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72 Id. At 13
In addition, at 83 FR 51174, the DHS seeks comments on public charge determinations for non-citizen children under age 18 who receive one or more public benefit programs. API-GBV strongly believes that receipt of benefits as a child should not be taken into consideration in the public charge determination for multiple reasons. First, doing so provides little information on their likelihood of receiving benefits in the future. Second, receipt of benefits that reduces toxic stress in children’s lives, supports children’s health, alleviates hunger, and provides for children to live in stable families and succeed in school will contribute to the development of adults who grow up and contribute to their communities. The value of access to public benefits in childhood has been documented repeatedly. Safety net programs such SNAP and Medicaid have short and long-term health benefits and are crucial supports to prevent of multi-generational cycles of poverty.74

2) The public charge rule punishes survivors of domestic violence, sexual assault, and human trafficking for the violence they’ve experienced.

Heavily weighted factors
The heavily-weighted negative factors described at proposed section 212.22(c) will disproportionately harm survivors of domestic violence, sexual assault, and human trafficking. DHS fails to provide any basis for weighing some factors more heavily than others. The public charge determination was designed to be a confined tool to identify individuals likely to become primarily dependent on the government for support. The test was never designed or intended to prevent the admission of low- and moderate-income individuals that may at some point need access to public program, i.e, to help survivors of domestic and sexual violence escape and recover from abuse, which allows them to help them continue working.

In addition, the proposed rule only identifies one heavily weighed positive factor – that the household has or will make at least 250% of the Federal Poverty Guidelines, meaning that low- and middle-income families will not have the benefit of a heavily weighed positive factor as part of their calculation to offset any negative factors.

Domestic violence abusers, sexual assault perpetrators, and human traffickers cause significant physical, emotional, and often, financial injury to their victims, which increases the likelihood of the public charge ground of inadmissibility being applied. Many abusive partners, in order to dominate or control their partners and their children, will try to prevent or sabotage their partners from attaining economic independence or stability by limiting their access to financial resources, interfering with employment, ruining credit, and more.75 Victims who might not have previously been considered low

74 M. Page, Safety Net Programs Have Long-Term Benefits for Children in Poor Households, University of California, Davis, (2017), Available at: https://poverty.ucdavis.edu/sites/main/files/file-attachments/cpr-health_and_nutrition_program_brief-page_0.pdf.
income may experience financial abuse; become impoverished due to the abuse; or abuse may have undermined the victim’s ability to work, maintain housing, health, or otherwise obtain financial security.  

Examples of the detrimental impact of the heavily weighted negative factors include, but are not limited to, the following:

**Proposed section 212.22(c)(1)(i)** *Not a full-time student/ authorized to work, unable to demonstrate current employment/no employment history/no reasonable prospect of future employment.* Survivors whose partners have sabotaged their ability to find or hold employment, restricted their access to bank and other financial accounts, built up debt in their name, or exerted other forms of economic exploitation and control are forced to become dependent on their abusive partners’ incomes. Survivors of domestic violence and sexual assault may also lose their jobs due to intense trauma, reduced productivity, harassment at work by perpetrators, and other reasons stemming from the violence. Half of women who experienced sexual assault had to quit or were forced to leave their jobs in the first year after the assault. Total lifetime income loss for sexual assault survivors who experienced rape during adolescence is estimated to be nearly $250,000 each, with an estimated cost of $1,611,298,780,921 in lost productivity to the overall U.S. population. By heavily weighting this factor, the proposed rule doubly penalizes a victim for the economic abuse that domestic violence and sexual assault abusers perpetrate.

**Proposed section 212.22(c)(1)(ii)** *Use of public benefits* As stated previously, access to public assistance programs and other safety net benefits play a pivotal role in a victim’s ability to escape and overcome domestic violence, sexual assault, and human trafficking, and rebuild their lives after violence. DHS’ proposal to heavily weigh receipt of public benefits – including benefits previously considered under the 1999 public charge guidance – is deeply problematic and inconsistent with the plain meaning of the INA’s totality of the circumstances test. Even if someone has received cash assistance or long-term care at government expense, DHS must assess the

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individual’s overall circumstances with respect to the future likelihood of the applicant becoming a public charge.

At 83 FR 51200, DHS asks whether 36 months is the appropriate look-back period for considering previous use of public benefits and whether a shorter or longer timeframe would be better. We strongly oppose any arbitrary lookback period for use of public benefit programs. Inclusion of a retrospective test is fundamentally inconsistent with the forward-looking orientation of the public charge determination. Past use of a government-funded program is not necessarily predictive of future use, and can serve as the initial stepping stone for a survivor’s future self-sufficiency. Furthermore, if the specific circumstances that led to the use of public benefits, such as injury, trauma, or homelessness related to domestic or sexual violence or exploitation no longer apply, the previous use of benefits is irrelevant.

Proposed section 212.22(c)(iv)(A) Medical condition requiring extensive medical treatment/institutionalization/interferes with ability to provide for self/attend school, or work As described previously, API-GBV strongly opposes this provision of the proposed rule. Domestic violence, sexual assault, and human trafficking is linked to many long-term physical and mental health problems. In addition to the immediate trauma and injuries caused during violent incidents, domestic and sexual violence contribute to a number of chronic health problems, including depression, alcohol and substance abuse, and sexually transmitted diseases such as HIV/AIDS, and often limits the ability of women to manage other chronic illnesses such as diabetes and hypertension.81 Physical and psychological abuse are linked to a number of adverse physical health effects including arthritis, chronic neck or back pain, migraine and other frequent headaches, stammering, visual problems, sexually transmitted infections, chronic pelvic pain, and stomach ulcers.82 Again, by heavily weighting this factor, the proposed rule doubly penalizes a victim for the physical and psychological injuries caused by domestic and sexual violence perpetrators and human traffickers.

(2) Heavily weighed positive factors

Proposed section 212.22(c)(2) f assets, resources, and support of at least 250 percent of the FPG or income of at least 250 percent of the FPG for the household The proposed 250 percent FPL threshold disregards the fundamental meaning of public charge, as well as the efforts and contributions of many workers. A standard of 250 percent of the FPL is nearly $63,000 a year for a family of four -- more than the median household income in

the U.S.\textsuperscript{83} According to Bureau of Labor Statistics (BLS) data, the seasonally adjusted annual mean wage for private, nonfarm occupations was less than $50,000 in October, 2018 - below 250 percent FPL for a three-person household.\textsuperscript{84} Among production and nonsupervisory workers, mean wage was just over $40,000 - less than 250 percent FPL for a household of two.\textsuperscript{85} Indeed, 61% of recently admitted lawful permanent residents did not meet the 250% FPL threshold.\textsuperscript{86}

As noted previously, the 250% threshold means that survivors who find themselves with limited or moderate income or assets, often as a consequence of the injury or abuse they suffered, will not have the benefit of a heavily weighed positive factor as part of their calculation to offset any negative factors.

5) **The public charge rule will isolate survivors from their families and vital systems of support.**

The increased barriers to admission and adjustment of status in the proposed public charge rule will likely also harm survivors of domestic violence, sexual assault, and human trafficking, including those with U.S. citizenship, or who have already obtained lawful status, by barring entry for supportive family members. Parents, siblings, fiancés, children, and sons and daughters seeking admission or adjustment of status can serve as critical sources of emotional, financial, and physical support for survivors, and the presence of a strong support system can be vital to a survivor’s ability to disclose, escape, and heal from the trauma of domestic violence, sexual assault, and other gender-based abuses. Survivors often stress that having family in their lives is essential to their recovery, providing survivors with the affirmation, encouragement, stability, and resources they need to grow and move forward.\textsuperscript{87} The proposed public charge rule threatens to isolate victims from their families and support system if they access critical economic, health, housing, and other programs to escape or heal from violence. Survivors will be forced to choose between reuniting with loved ones and using benefits available to them – both of which are vital to overcome the trauma of abuse. The proposed public charge rule will only serve to undermine or prolong a survivor’s recovery process.


6) The proposed rule will lead to significant short and long-term costs for states, localities, service providers, and society at large.

By proposing to change the public charge rule in such a drastic way, states and localities, victim advocacy providers, human and health service providers, and entire communities are likely to experience significant costs. Such costs include increases in costs for social services such as emergency food banks, domestic violence and homeless shelters and other safety net resources, as individuals may decide to not apply for the public benefits they are eligible to receive. Additionally, they may see increased uncompensated health care costs from overutilization of emergency room for medical care, as well as increased caseloads in the child welfare system. These increased costs are ones that States, county, and city budgets would need to address funding to cover these costs would limit their ability to cover other needed public services, such as public education or transportation.

At 83 FR 51270, in the cost-benefit analysis section, DHS acknowledges that the rule could lead to “worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children... increased prevalence of communicable diseases...increased rates of poverty and housing instability; and reduced productivity and educational attainment.” Yet DHS fails acknowledge how extensive these impacts would be, particularly for survivors of domestic violence, sexual assault, and human trafficking, and their families.

The proposed rule changes will limit a survivor’s ability to access concrete supports and services that allow them to leave an abusive home, access physical and mental health care to treat the injuries they’ve suffered, and other critical services to support their safety and well-being. As a result, victims and their children will likely continue suffer from, or be exposed to domestic and sexual violence, with increased injury, and with long-lasting physical, mental, and financial after-effects. Children who live in homes where domestic violence is present have been shown to display a variety of bio-psycho-social deficiencies, including: increased levels of anxiety, behavior problems, decreased performance in school, aggression, somatic complaints, depression, greater acceptance of violence as a means of resolving conflict, increased risk of long-term delinquent behavior and criminal activity.

Furthermore, as a result of the withdrawal from safety-net supports, survivors risk falling deeper into economic difficulty and they and their children will not have access to needed supports that promote recovery and well-being. The proposed rule would also undermine the ability of survivors to maintain employment that helps support economic self-sufficiency. There is extensive research demonstrating positive long-term effects of

receipt of public benefits such as, but not limited to, SNAP and Medicaid. In particular, the use of these benefits often enables low-wage (and other) workers to remain employed. This is because it is highly challenging, if not impossible, for women working in many low-wage jobs to support themselves and their families on their wages alone. Thus, the proposed rule’s counting SNAP, non-emergency Medicaid, and housing assistance against individuals for the purposes of a public charge determination will likely make it more difficult for immigrant survivors to be self-sufficient.

**Burden on Victim Service Providers**

The rule’s impact will not be limited to immigrant victims and their families. Victim advocates will have to be prepared to address questions about the new rule in conducting safety planning with victims. They will also have to update victim information materials, to ensure that they are providing victims with accurate information about the potential consequences of receiving certain public assistance. Of particular concern for domestic violence, sexual assault and human trafficking victim advocates, will be that they need to familiarize themselves with the myriad of funding sources for the variety of supports, such as housing and medical programs, that they assist victims with in accessing in order to provide informed information for victim safety-planning. These are significant administrative costs that have been placed on victim advocacy programs that is completely unaccounted for in the rule.

Furthermore, the rule would generate an increased workload for already often overburdened victim advocates and other service providers who will be helping support individual immigrant victims with obtaining the documentation regarding their history of public benefits receipt. The draft form I-944, Declaration of Self-Sufficiency instructions provided with the NPRM, directs individuals to provide documentation if they have ever applied for or received the listed public benefits in the form of “a letter, notice, certification, or other agency documents” that contain information about the exact amount and dates of benefits received. Assisting survivors with obtaining this documentation will create a significant administrative burden for victim advocates and other service providers, many of which are not well-equipped to respond to these queries.

Additionally, domestic violence and human trafficking emergency shelter and transitional-housing providers are anticipating that the chilling effect of this rule will result in many eligible immigrant victims choosing to forgo public benefits, including cash, medical, food, housing assistance, leading to longer utilization of emergency shelter.

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and housing programs, resulting to increased turn-aways for other domestic violence victims. Again, these costs and burdens on service providers are not addressed in the rule. DHS should partner with HHS and HUD to perform a comprehensive study on the impact the public charge rule will have on domestic violence and shelter and housing providers and victim advocacy organizations more generally, before finalizing the proposed rule.

Proposed Section 245: Adjustment of Status to that of a Person Admitted for Permanent Residence  

The proposed rule would require DHS to process Forms I-944, Declaration of Self-Sufficiency, in connection with an estimated 382,264 adjustment of status applications annually. API-GBV opposes the requirement of this overly broad form which will be an impossible burden for many applicants and will deepen existing processing delays. As previously noted, the draft I-944 instructions direct applicants to provide documentation regarding any of listed public benefits they have ever applied for or received in the form of “a letter, notice, certification, or other agency documents” detailing the amount and dates of benefits received. This requirement does not include any minimum thresholds on the quantity of, or duration of benefits received. Nor does the form include a provision limiting information required to benefits received after effective date of final public charge regulation. With no time limit, it is highly unlikely that applicants still possess old notices from benefits-granting agencies, meaning they will need to contact the agency that administered the benefit to obtain documentation. In many cases, this will require a special request to the benefits-granting agency to prepare replacement or summary documents. This will generate an increased workload for benefits-granting agencies and may require access to information that has been archived from no longer functional eligibility systems that have been replaced. These increased costs have budgetary implications that will negatively impact the delivery of benefits and services to other individuals.

DHS estimates just 4½ hours per applicant to file Form I-944 and to receive certified documents. However, this appears to be greatly underestimated. In addition to preparing the I-944 and gathering supporting documentation from benefits-granting agencies, attorneys and advocates will need to spend significantly more time to advise, document, and complete forms, as the public charge assessment will be significantly more complex.

In addition, requiring a Declaration of Self-Sufficiency for individuals seeking adjustment of status to lawful permanent residence would consume significant USCIS resources and exacerbate existing delays in immigration benefit form processing. The increased workload would fall on an agency that already faces significant capacity shortfalls. With almost 6 million pending applications as of March 31, 2018, DHS has

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92 E. M. Fisher, A.M. Stylianou To Stay or to Leave: Factors Influencing Victims’ Decisions to Stay or Leave a Domestic Violence Emergency Shelter, Journal of Interpersonal Violence 1–27 (2016) (one primary factor influencing participants’ decisions to stay or leave domestic violence shelters was affordability of alternative options) DOI: 10.1177/0886260516645816

conceded that USCIS lacks the resources to timely process its existing workload. In fact, processing times for many of the agency’s product lines has doubled in recent years.

These processing delays have significant impacts on the lives of immigrant survivors and their U.S. citizen families. Lengthy wait times can result in victims remaining in or returning to abusive or exploitative relationships due to lack of resources, losing their jobs, thus depriving their families of income essential to necessities like food and housing. Delays also prolong family separation for those awaiting case approval for their reunion. Despite DHS’ admission of USCIS’s inability to accommodate its existing workload, the proposed rule would substantially burden the agency’s lack of capacity and worsen USCIS case processing delays.

Conclusion

For the reasons detailed in these comments regarding the harm that the proposed public charge rule will have on survivors of domestic violence, sexual assault, and human trafficking we strongly oppose any change to the public charge rule that will make it more difficult for survivors of violence to access critical protections they need to escape or recover from abuse. The changes to public charge policies as outlined in the proposed rule are having, and will continue to have, a significant detrimental impact on survivors of domestic violence and sexual assault.

We instead urge that the current guidance on public charge remain in effect. 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 – and only when it represents the majority of a person’s support. The proposed rule would alter the test dramatically, abandoning the enduring meaning of a public charge as a person who depends on the government for subsistence, changing it to anyone, including a survivor, who simply receives assistance with support for health, nutrition, or housing to meet their basic needs. There is ample evidence that there is no issue with the current guidance and no persuasive rationale for change, and we therefore urge that DHS maintain existing guidance.


95 USCIS, Historical National Average Processing Time for All USCIS Offices, 2018, Available at: https://egov.uscis.gov/processing-times/historic-pt.


The Asian Pacific Institute on Gender-Based Violence urges DHS to withdraw the proposed rule and to advance policies and guidance that protect the health, safety, and best interests of survivors of domestic violence, sexual assault, and other trauma and their families. Please contact me if you have any questions or concerns relating to these comments. Thank you.

Respectfully submitted,
ASIAN PACIFIC INSTITUTE ON GENDER-BASED VIOLENCE

GRACE HUANG
Policy Director