Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Transitional Assistance

CHARLES D. BAKER
Governor

KARYN POLITO
Lieutenant Governor

MARYLOU SUDDERS
Secretary

JEFF McCUE
Commissioner

December 10, 2018

Ms. 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, D.C. 20529-2140
ATTN: DHS Docket Number USCIS-2010-0012

RE: Notice of Proposed Rulemaking, "Inadmissibility on Public Charge Grounds"

Dear Chief Deshommes:

The Massachusetts Department of Transitional Assistance (DTA) submits this comment to the Proposed Rule, Inadmissibility on Public Charge Grounds, 83 FR 51114, DHS Docket No.: USCIS-2010-0012. DTA opposes the proposed changes to the public charge rule and strongly advises that it be withdrawn. The Commonwealth of Massachusetts values the immigrant community's role in making our state a vibrant and competitive commonwealth and **believes the proposed changes to the public charge rule would harm these interests by discouraging lawful Massachusetts residents from accessing basic supports such as medical care and other programs intended to help lawful immigrants to build economic self-sufficiency.** As a result, the revised policy would negatively affect the children and families DTA serves, as well as the overall Massachusetts economy. The proposed rule would also result in unfunded mandates for Massachusetts and other states.

DTA's mission is to assist and empower low-income individuals and families to meet their basic needs, improve their quality of life, and achieve long term economic self-sufficiency. DTA's programs are specifically designed to help people escape poverty, not to act as an income maintenance vehicle. Accordingly, recipients receive supplemental supports to enable skill development and employment in addition to cash assistance and food benefits. DTA strongly

supports the idea that families and individuals are much better prepared to become self-sufficient with the receipt of these additional supports.

DTA administers the Supplemental Nutrition Assistance Program (SNAP) and Transitional Aid to Families with Dependent Children (TAFDC), Massachusetts' Temporary Assistance to Needy Families (TANF) cash assistance program. It also administers the wholly state-funded cash assistance program for disabled and elderly individuals, Emergency Aid for the Elderly, Disabled, and Children (EAEDC). DTA serves over 776,000 Massachusetts individuals with its SNAP, TAFDC, and EAEDC programs. The SNAP program alone serves over 770,000 individuals. DTA serves approximately 68,000 noncitizens and the greatest number of these receive SNAP benefits. The new public charge rules treat all three programs as public benefits. This is a dramatic change from long-established policy, which treats only TAFDC and EAEDC benefits as public benefits for purposes of determining whether certain immigrants may become a public charge.

According to the record published in the Federal Register, the proposed changes to the public charge rules are intended to better evaluate whether certain immigrants are likely to become reliant on public benefits. The United States Department of Homeland Security (DHS) favors immigrants who "rely on their own capabilities" and the resources of family members, sponsors, and private organizations, rather than public resources. The rules propose a new way to determine who is, or is likely to become, a public charge by reviewing the "totality of the circumstances" of immigrant individuals and their families. In addition, the rules expand the list of benefits to be used in making a public charge determination. One of the major changes is the inclusion of SNAP.

DTA strongly believes that SNAP, a nutrition assistance program that helps millions of families and children stay healthy and fed, should not be added to the public charge indicator list. Instead, use of SNAP benefits should be disregarded just as use of Women, Infant and Children (WIC) benefits are not considered in the proposed rule. An earlier leaked draft of these proposed rules in fact treated WIC benefits as a public benefit that would be considered in the new public charge determination, but WIC was removed from this determination in the final proposed regulations. SNAP should similarly be excluded. Like the WIC program, SNAP is an important nutrition/health-related benefit. There is no substantive reason to distinguish between WIC and SNAP in this context, especially given SNAP's much wider scope and the millions of children, including citizen children, who are eligible for this important program.

DTA is concerned that the proposed rules fail to account for the increased economic and social costs that will result when families and individuals eligible for "safety net" programs such as SNAP do not seek or continue to receive such assistance.[1] These costs will accrue both to the

[1] While DHS is clear that any public benefit receipt prior to the promulgation of the final rule will not count as a negative factor, anecdotally, DTA staff have heard legal noncitizens are already seeking to close their public assistance cases, or failing to apply for them, due to fear, unfounded or not, of deportation or harming future citizenship prospects.

states and to the federal government, and they are not hard to anticipate. Perhaps most concerning is the negative impact on our most vulnerable clients – children, including citizen children of noncitizen parents. As a result of reduced benefit usage, more children living in the United States will likely go hungry and experience homelessness. Such deprivations directly correlate with increased learning delays, behavioral problems, and health issues for affected children. It is unclear whether DHS considered the resulting, long-term increased public costs of education (including special education), communicable diseases, emergency medical care, and law enforcement in its overall cost analysis. A full weighing of these costs militates strongly against the proposed rule's approach of discouraging lawfully present immigrants from taking advantage of the benefits that these safety net programs are intended to provide.

DTA is also concerned about the need for increased administrative resources and staff the proposed rules would place on DTA and other agencies faced with administering the one- to three-year look back period for benefit receipt. In order to implement its proposal successfully, DHS will need state agencies to provide it with very detailed information concerning benefit administration. States with large immigrant populations like Massachusetts will require multiple state agencies with limited resources to help verify public benefit receipt and benefit amounts for DHS purposes. Because many of the households DTA serves are comprised of both citizen and noncitizen members, this calculation will be highly complex and cumbersome. This need for new resources is an unfunded mandate on the Commonwealth and other states.

In addition to the need for more agency staff, implementation of the proposed rules will result in the need for significant training resources. For years, the federal government, through its Food and Nutrition Service (FNS), has required state SNAP agencies to adhere to a policy of strict separation between DHS and SNAP eligibility. FNS explicitly directed State agencies not to delve into the immigration status of so-called "nonapplicant" noncitizens and to instead focus solely on the provision of SNAP, an important nutrition benefit, to eligible household members. This proposed rule is in direct conflict with that longstanding principle, and the adjustment to this dramatic shift in policy will take DTA staff considerable time and retraining to fully implement.

DTA is already struggling with the conundrum raised by exactly how to instruct its over 700 case managers if the proposed rules are promulgated. Agencies like DTA are charged to help its clients—citizens and lawfully present immigrants—by providing needed assistance. This mission will be difficult to fulfill if a client accepting this assistance will be putting at risk his or her future citizenship prospects. Accordingly, case managers will have to be trained extensively upon the new rules and simultaneously proceed with caution – otherwise, their advice may inadvertently threaten a family's ability to stay together or to remain in the U.S. This responsibility presents a particularly daunting challenge in view of the fact that the proposed policy provides no clear lines on how public charge evaluations will be made: while reliance on public benefits such as SNAP is a negatively weighted consideration, the final determination in each individual case is left to the broad discretion of the individual DHS case officer. DTA fears

this will inevitably lead to its staff treating citizen and noncitizen households inequitably, and perhaps, unknowingly endangering its noncitizen clients.

As the Massachusetts SNAP agency, DTA is also concerned about the impact of this proposed rule on Massachusetts' overall economy. While the discussion of the proposed rule in the Federal Register mentions potential "downstream and upstream impacts," it appears that DHS has made no real attempt to calculate or measure these costs. The omission is unwise in the remaking of a policy with such broad reach. DTA notes as well that the proposed rule's adoption of a financial threshold for use of a "monetizable" public assistance benefit receipt that could lead to negative consideration in the public charge determination appears arbitrary. The rule concludes that any use of a monetizable benefit that constitutes 15% or more of the Federal Poverty Guidelines (FPG) within a year should trigger negative consideration. While DTA does not necessarily contest the use of the FPG as a standard, the justification for using a 15% threshold is unsupported beyond a statement that it is "a reasonable approach." The approach is not reasonable. According to the example provided by DHS in its filing, an individual's receipt of more than $1821 in cash benefits (or $151.75 monthly) in a one-year period would be considered a negative factor when determining whether the individual is likely to become a public charge. This standard is both arbitrary and exceedingly low.

DTA urges DHS to withdraw this proposed rule because of the social and economic costs and the unfunded mandate on Massachusetts and other states. If DHS decides to promulgate a new public charge policy, DHS should wholly exclude SNAP benefits from the public charge equation. DHS should delay the effective date of any final rule until 2023 in order to give DTA time to make the changes necessary to implement the new rule.

In closing, I repeat that Massachusetts values the role our immigrant communities play in making the Commonwealth a vibrant and competitive society. DTA has grave concerns with the revised public charge rule proposed by DHS. DTA respectfully encourages DHS to reconsider its proposed policy in light of our country's long history as a place where immigrants are welcome and where basic government assistance helps newly arriving immigrants to become self-supporting and productive contributors to society. As designed, the new public charge rules fundamentally conflict with this essential part of the American story.

Sincerely,

Jeff McCue
Commissioner

cc: Marylou Sudders, Secretary, Executive Office of Health and Human Services