

+The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office for Refugees and Immigrants
600 Washington Street, 4th Floor
Boston, Massachusetts 02111

CHARLES D. BAKER
Governor

KARYN E. POLITO
Lieutenant Governor

MARYLOU SUDDERS
Secretary

Tel: (617) 727-7888
Fax: (617) 727-1822
TTY: (617) 727-8147

MARY TRUONG
Executive Director

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"
(DHS Docket No. USCIS-2010-0012)

Dear Chief Deshommes:

The Massachusetts Office for Refugees and Immigrants (ORI) submits this comment to the Department of Homeland Security (DHS) in response to DHS' proposed rule on Inadmissibility on Public Charge Grounds, DHS Docket No. USCIS-2010-0012. The Commonwealth of Massachusetts and ORI oppose the proposed rule and urge DHS to withdraw the rule in its entirety.

Massachusetts values the immigrant community's role in making our state a vibrant and competitive Commonwealth. ORI believes that the public charge rule proposed by DHS would harm these interests by discouraging lawfully-present immigrants from accessing basic supports such as medical care and other programs intended to help them build economic self-sufficiency. The revised policy would as a result cause harm to the children and families ORI serves, create unfunded mandates for Massachusetts and other states, and negatively affect the overall Massachusetts' economy.

ORI annually serves over 5,000 immigrants residing in Massachusetts through the Massachusetts Refugee Resettlement Program, employment services, and citizenship services. ORI's mission is to promote the full participation of refugees and immigrants as self-sufficient individuals and families in the economic, social, and civic life of the Commonwealth. ORI's programs are specifically designed to

help people who immigrate to our State to integrate into their new community. Accordingly, ORI provides recipients with supports to enable skills development and employment, in addition to case management and cash assistance. ORI strongly supports the idea that families and individuals are much better prepared to become self-sufficient with the receipt of these additional supports. Our office has extensive experience with permanent residents, immigrants, and the refugee resettlement program, providing our office with a deep understanding of the concerns of the immigrant population and the implications of the proposed changes.

According to the record published in the Federal Register, the proposed changes to the “public charge” rules are intended to permit DHS to evaluate whether certain immigrants are likely to become reliant on public benefits. 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. The “totality of the circumstances” analysis must consider, at a minimum, the applicants age, health, family status, financial resources, and education and skills.

The proposed rule states that a positive financial factor is an immigrant’s household income above 250% of the federal poverty level (FPL). Therefore, any individual or a family that cannot prove its income is above 250% of the FPL will automatically be subject to an expanded “public charge” analysis.

One measure of the unreasonableness of DHS’s proposed financial factor is that an average American family currently living in the U.S. could not pass the income evaluation. In 2018, the average American family of four’s household income is \$61,372. This is \$1,378 less than the 250% FPL index of \$62,750 that DHS has proposed to use for measuring economic self-sufficiency in the public charge determination. By default, any family unit with dependents and any individual making less than \$30,350 annually (or \$14.59/hour for 40 hours a week over 52 weeks) would be deemed potentially unfavorable and then likely ineligible for admission or adjustment of status. ORI urges DHS to eliminate these elements of the proposed public charge determination.

ORI is likewise concerned that DHS has selected an arbitrary financial threshold for receipt of a “monetizable” public assistance benefit that could lead to negative consideration in the public charge determination. The proposed rule concludes that an immigrant’s use of any “monetizable” benefit (cash, SNAP, Section 8 vouchers, rental assistance) that constitutes 15% or more of the Federal Poverty Guidelines (FPG) within a single 12 month time period in the future should trigger negative consideration. According to the example provided by DHS in its filing, an individual’s receipt of more than \$1,821 in benefits (or \$151.75 monthly) in a one-year period would be considered a negative factor and support a DHS determination that the individual should be inadmissible or ineligible for a change in status on public charge grounds. Furthermore, receipt of the same value of 15% FPG (\$1,821) in non-monetizable benefits (Medicaid, Medicare Part D Low Income Subsidy, and Public Housing) but within a period of 36 months (three years) would be considered a negative factor and result in DHS considering the individual inadmissible or ineligible for a change in status on public charge grounds. Neither of these standards can be objectively executed because the DHS worker is allowed to “predict the future” on what may or may not happen. Furthermore, the time frame of 12 months and 36 months do not have a clear start date.

Of equal concern is the fact that the proposed standard of 15% FPG would change the existing standard from disqualifying individuals that are “primarily” dependent on cash benefits (50% or more of their

income) to penalizing any applicant who might receive assistance at the specified level from the multiple categories DHS proposes. DHS has not provided substantive reason for why such a drastic change to 15% of the FPG is necessary and is a reasonable change from the established application of the current Public Charge analysis. ORI urges DHS maintain the historical standard for measuring dependency on cash benefits.

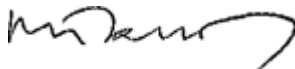
The proposed rule fails to account for the increased economic and social costs that will result when families and individuals eligible for “safety net” programs do not seek or discontinue receiving such assistance in order to avoid the significant negative immigration consequences that would follow DHS’ determination that an immigrant may become a public charge. As a result of reduced benefit usage, more children living in the United States will likely experience poverty, go hungry and become homeless. These deprivations directly correlate with increased learning delays, behavioral problems, and health issues for affected children. It is unclear whether DHS has considered in its overall cost analysis the long-term increased public costs of education (including special education), communicable diseases, emergency medical care, and law enforcement that are likely to arise as second order effects of its proposed rule. A full weighing of these costs strongly rebuts the proposed rule’s approach of discouraging lawfully present immigrants from securing the support that these safety net programs are intended to provide as immigrants work to build self-sufficiency.

ORI is charged to help its clients by providing needed assistance. This mission will be difficult to fulfill if ORI clients increasingly refuse to access benefits and services out of fear that reliance on these programs will put at risk any future citizenship or family reunification prospects.

Finally, if the rule proceeds in its current form, ORI case managers and others who support immigrants newly arrived in the U.S. will have to be trained extensively on the new rules and will have to 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 is a negatively weighted consideration, the final determination in any individual case is left to the broad discretion of a DHS case officer.

The revised public charge rule that DHS has proposed will place unacceptable social and economic costs on Massachusetts and other states. ORI urges DHS to withdraw its proposed rule in light of our country’s long history as a place where immigrants are welcome and where basic government assistance helps newly-arrived immigrants to become self-supporting and productive contributors to society.

Sincerely,



Mary Truong
Executive Director/State Refugee Coordinator

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