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Submitted via www.regulations.gov

Re: Comment opposing Proposed Rulemaking: Affidavit of Support on Behalf of Immigrants (October 2, 2020)
RIN: 1615-AC39; USCIS No. 2644-20; DHS Docket No USCIS-2019-0023

Dear Ms. Deshommnes

I am writing on behalf of the Michigan Immigrant Rights Center (“MIRC”) in response to the Department of Homeland Security (DHS) Notice of Proposed Rulemaking, “Affidavit of Support on Behalf of Immigrants” which was published in the Federal Register on October 2, 2020.¹

MIRC is a legal resource center for Michigan’s immigrant communities, employing nearly twenty attorneys and accredited representatives to represent individuals before the Executive Office for Immigration Review (“EOIR”) and the United States Citizenship and Immigration Services (“USCIS”). We advise over 2,000 new clients per year, including hundreds with cases before EOIR and an increasing number of individuals in Immigration and Customs Enforcement (“ICE”) detention. Some of these cases are brief advice and service; others include full representation for detained respondents. Our attorneys have decades of collective experience representing non-citizens before USCIS for all forms of relief, in addition to removal proceedings on the detained and non-detained dockets seeking relief in the immigration courts, in appeals and motions to the Board of Immigration Appeals (“BIA”), and in petitions for review in the U.S. Court of Appeals for the Sixth Circuit.

We strongly oppose the proposed changes to the Affidavit of Support policy, which, as attorneys and advocates steeped in community (immigration) lawyering, we know will increase costs; cause confusion, delays and roadblocks; generate unnecessary fear; and ultimately, deter sponsors from supporting family members’ paths to permanent residency. This proposed policy clashes with our country’s commitment to supporting family reunification and supporting a realistic path to lawful permanent residency and citizenship.

¹ 85 Fed. Reg. 62,432 (Oct. 2, 2020)

If finalized, the proposed policy would deter immigrants and U.S. citizens alike from accessing critical health care and nutrition benefits for which they are eligible; increase USCIS's backlog; and disproportionately affect people who are Latinx. The additional documentary requirements included in the proposed rule—requiring three years of tax return information, bank account details, and credit history—create a(n unnecessary,) substantial administrative burden and deterrent, and even open sponsors to risk of financial fraud, without even being relevant to determining sponsor's income. Moreover, DHS fails to adequately evaluate the impacts of the proposed rule.

While DHS describes the purpose of the rule as better ensuring that sponsors and household members can meet their obligations, its true motive for the rule is to substantially reduce family-based immigration. In attempt to justify this rule, the DHS, on several occasions, states a variation on the following explanation to demonstrate its beneficence and commitment to family-based immigration:

DHS considered permanently barring an individual who had ever received means-tested public benefits from becoming a sponsor. However, DHS concluded such a policy would unreasonably restrict an individual from petitioning for eligible family members as is permitted by section 204 of the Act, 8 U.S.C. 1154.²

DHS is attempting to show its kindness/openness by not preventing a group of potential sponsors from petitioning for their family members. Don't be fooled by this argument. Rather, DHS does not have the power to limit sponsorship beyond what the INA provides and nowhere does it permit the creation of a non-sponsorship class of U.S. citizens or permanent residents. It could easily have said that we considered preventing Mexican nationals from becoming sponsors, but doing so "would unreasonably restrict an individual from petitioning for family members as permitted by Section 204 of the Act." Throughout this rulemaking, the DHS uses a similar argument to pare down what are extreme ideas into slightly-less extreme ideas: from "permanently barring an individual who had previously defaulted on a support obligation from becoming a sponsor" to finding a joint sponsor in that scenario situation; from not excepting military service members from the joint sponsorship requirement if the petitioning sponsor had received means-tested public benefits within the previous 36 months to permitting this exception (which means permitting the current law to remain in place) because of DHS' "policy of supporting military personnel;"³ and from considering just the sponsor's income to counting income from all household members (which, again, means permitting the current law to remain in place).⁴ All of these proposed definitions and regulations are extreme, arbitrary, and capricious attempts by DHS to rulemake beyond the bounds of the Immigration and Nationality Act. Such an approach cannot be sustained. We urge DHS to withdraw this rulemaking in its entirety.

I. MIRC objects to EOIR's 30-day comment period to respond to their comment for this Notice of Proposed Rulemaking (NPRM).

² Id., at 62,442.

³ Id. at 62,443.

⁴ Id. at 62,444. Of course, this regulation attempts to re-define who is a member of the household and how that income is counted at proposed 8 C.F.R. §§ 213a.1(f), (g)

The DHS has given the public a mere thirty (30) days to submit comments, without providing any explanation for this deviation from the customary sixty-day comment period. The change is difficult to understand, given the generally slow pace of the immigration court system and considerably slower pace dictated by the current public health crisis. Even presuming that these rule changes were necessary (which we do not concede), they are not particularly time-sensitive. It is hard to see justification for cutting short the process of review and comment, especially given the significant risk that these changes will wrongly consign our immigration system's most vulnerable participants to persecution or death in their home countries. Stakeholders should be given adequate time to comment on dramatic revisions to asylum procedures that will reduce access to life-saving asylum protections in the name of efficiency.

The shortened comment period is all the more egregious given that the U.S. remains in the midst of the COVID-19 pandemic. All MIRC staff continue to work from home to the greatest extent possible, often while caring for children and/or for sick family members. None of the MIRC staff members (and we suspect, attorneys across the country) are able to work at their pre-pandemic capacity. Many of our clients are facing even greater difficulties, as they experience layoffs, lost income, evictions, food insecurity, and of course, infection with COVID-19. As low-income immigrants and, in many cases, as people of color, our clients have felt the disparities of COVID-19 and have suffered disproportionately from infections and complications. The work of providing our clients with effective representation has therefore become exponentially harder. We also must expend additional energy to keep up with daily operational changes during the pandemic at DHS, along with the Executive Office for Immigration Review (EOIR).

Thirty days to comment on such a transformative proposal, under these conditions, is not a fair opportunity. Although we object to DOJ's unreasonable thirty-day timeframe, we submit this comment nonetheless, because we feel compelled to object to the proposed regulations.

II. The proposed policy will deter immigrants and U.S. citizens alike from relying on health care and nutrition benefits.

Proposed regulation, 8 C.F.R. § 213a.2(c)(2)(ii)(C)(4), would disregard a sponsor's income and require them to have a joint sponsor if the sponsor, or even a member of their household, had used public benefits—including Medicaid, CHIP, SNAP, SSI and TANF—anytime within 36 months of executing the Affidavit of Support.⁵ Under the previous policy, sponsors were not required to find a joint sponsor if they or a member of their household used benefits. There were no questions about prior use of public benefits.

This new public benefits provision will have a chilling effect for both immigrants and U.S. citizens from utilizing benefits for which they are legally eligible for if they hope to sponsor or be a joint sponsor for a family member in the future. The vast majority, 91 percent, of family-based immigrants are sponsored by U.S. citizens (see Table 1 below). U.S. citizens, whether native born or naturalized, do not face public benefits eligibility restrictions on the

⁵ 85 Fed. Reg. 62,432, at 62,479 (Oct. 2, 2020)

basis of immigration status. A recent study revealed that in just a single year, three in ten U.S.-born citizens received Medicaid, SNAP, SSI, TANF or housing assistance. It also showed that approximately 43 to 52 percent of U.S.-born people participated in at least one of these programs in a 20-year period from 1997-2017.

DHS asserts that receipt of these benefits is evidence that a sponsor may be unable to maintain income equal to at least 125 percent of the FPL or to maintain their support obligations, but provides no evidence to support this assertion.⁶ The Children's Health Program (CHIP), one of the public benefits that would make a U.S. citizen ineligible to become a sponsor under the proposed rule, is by no means a program restricted to low-income individuals. Pregnant women and children can be eligible for CHIP with incomes as high as 405% of Federal Poverty Level (FPL).⁷ In 19 states, the upper income limit of CHIP is greater than 300% of the FPL and in 10 states it is greater than 250% of the FPL, which is enough income to be considered as a heavily weighted positive factor in the public charge test.

Sponsored by U.S. Citizens (Immediate Relatives)			Sponsored by U.S. Citizens (Family-Sponsored Preferences)			Sponsored by LPRs
Spouses	Children	Parents	Unmarried Sons and Daughters	Married Sons and daughters	Brothers/sisters of U.S. citizens (at least 21 years of age) and their spouses and children	Spouses, Children, unmarried sons and daughters
268,149	66,794	144,018	27,251	19,531	59,940	109,841
478,961			156,623			109,841
635,584 total sponsored by U.S. citizens						109,841
695,524 total family-based immigrants						
91 percent of total family-based immigrants are sponsored by U.S. citizens (635,584 / 695,524)						9 percent are sponsored by legal permanent residents
Source: Department of Homeland Security, Yearbook of Immigration Statistics, 2018, Table 6: https://www.dhs.gov/immigration-statistics/yearbook/2018/table6						

The rule would have a negative impact by dissuading primarily unaffected individuals from accessing benefits they are legally entitled to. This creates a subclass of U.S. citizens who are

⁶ 85 Fed. Reg. 62,432, at 62,433 (Oct. 2, 2020)

⁷ Income eligibility limits for Children's Health Coverage as a Percent of the Federal Poverty Level, <https://ccf.georgetown.edu/wp-content/uploads/2017/01/EligibilityRelated.pdf>

subject to disparate treatment based on familial status, which violates the constitutional jurisprudence.⁸ Substantial data supports this chilling effect:

- Under the current ground of inadmissibility, only an infinitesimally small percentage of non-citizens are inadmissible for permanent residency based on current benefit usage;⁹ nonetheless, due to the chilling effect of the current rule; eligible non-citizens and their U.S. citizen family members continue to forego benefits at alarming rates.¹⁰
- In a recent national survey, nearly one in three low-income immigrants and their U.S. citizen family members shared that fear of being designated a public charge as the reason for foregoing access to health care and economic support.¹¹
- An interview with 16 health center leaders in September 2019, found that nearly half (47%) reported a decline in Medicaid enrollment by immigrant patients starting in 2018.¹²
- A recent study published in the Journal of the American Medical Association found that nearly 500,00 people in Texas avoided public programs or medical care in the past year because of perceptions of the public charge rule and other immigration-related concerns.¹³
- A New York University study found that the vast majority of immigrant-serving organizations (97 percent) surveyed reported elevated client fear of seeking human or health-related services.¹⁴

⁸ This proposed rule violates the Equal Protection clauses of the Fifth and Fourteenth Amendments by failing to justify discriminatory treatment, without rational basis, between U.S. citizens with non-citizen family members and U.S. citizens without non-citizen family members.

⁹ R. Capps et al, Public Charge Rule: Broad Impacts, But Few Will Be Denied Green Cards Based on Actual Benefit Use, Migration Policy Institute (March 2020). <https://www.migrationpolicy.org/news/mpi-estimates-non-citizens-ineligible-green-cards-based-current-benefit-use>

¹⁰ See comment.

¹¹ Note that one in three *low income* immigrant families reported foregoing access to public benefits -- such as SNAP, Medicaid, CHIP or housing subsidies -- out of fear, and one in five of *all* immigrant families - regardless of income - reported foregoing access to programs. Low income families are more likely to meet the income-eligibility rules for public benefit programs. M. Haley, et al, "One in Five Adults in Immigrant Families with Children Reported Chilling Effects on Public Benefit Receipt in 2019," Urban Institute (June 18, 2020) available at: <https://www.urban.org/research/publication/one-five-adults-immigrant-families-children-reported-chilling-effects-public-benefit-receipt-2019>

¹² Tolbert J, et al. "Impact of Shifting Immigration Policy on Medicaid Enrollment and Utilization of Care Among Health Center Patients," The Henry J. Kaiser Family Foundation (Oct 15, 2019) available at: <https://www.kff.org/medicaid/issue-brief/impact-of-shifting-immigration-policy-on-medicaid-enrollment-and-utilization-of-care-among-health-center-patients>

¹³ B.D. Sommers, et al, "Assessment of Perceptions of the Public Charge Rule Among Low-Income Adults in Texas, JAMA available at <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2768245>

¹⁴ H. Yoshikawa, et al "Approaches to Protect Children's Access to Health and Human Services in an Era of Harsh Immigration Policy," NYU Institute of Human Development and Social Change, available at: https://steinhardt.nyu.edu/sites/default/files/2019-10/Approaches_percent20to_percent20Protect_percent20Children's_percent20Access_percent20in_percent20an_percent20Era_percent20of_percent20Harsh_percent20Immigration_percent20Policy_0.pdf

- Uninsured rates among Latino children widened for the first time in a decade in 2018, rising to 8.1 percent compared to 5.2 percent for all children and 4.2 percent for non-Latino children.¹⁵
- The chilling effects of the rule change are widespread, with more than 10 million immigrants and 12 million of their U.S. family members potentially affected.¹⁶

In addition, the proposed rule will add to the existing confusion and fear caused last year (and throughout the 2020, as courts enjoined, lifted injunctions, and otherwise reviewed the previous iterations) of the public charge rule. This will make it more difficult and costly for agencies and community based organizations to communicate accurate information about the policies because the list of programs that could disqualify an individual from serving as a sponsor is different from the programs taken into account for the public charge determination. Organizationally, we have led these types of trainings and outreach on the current iteration of the public charge changes for practitioners, community-based organizations, and the community at-large. We have done more than a dozen of these types of sessions and still, practitioners, community-based advocates, and community members call us confused.¹⁷

Furthermore, ambiguity about the meaning of “household member” in this section of the rule will only increase the chilling effect and add to the confusion of having separate public benefits considerations for a sponsor than for an intending immigrant applicant. Does USCIS intend that the use of benefits by any member of the sponsor’s household trigger the restriction? Or does it apply only to a household member who executes a “Contract Between Sponsor and Household Member”? This ambiguity

In addition, a public health emergency/ health care pandemic is a terrible time to introduce a policy that makes U.S. citizens and immigrants afraid to enroll in programs that provide critical, life-saving care, nutrition, or other needed assistance. Instead of penalizing sponsors for accessing health care, nutrition or other public benefits, our national policy should be to encourage U.S. citizens and permanent residents to make sure their families are healthy, fed

¹⁵ K. Whitener et al, "Decade of Success for Latino Children's Health Now in Jeopardy," Georgetown University Center for Children and Families, (March 2020) available at: <https://ccf.georgetown.edu/wp-content/uploads/2020/03/Latino-Childrens-Health-Care-Coverage.pdf>

¹⁶ Based on analysis of U.S Census Bureau data, the population that could feel the rule’s “chilling effects” and disenroll includes 10 million noncitizens—47 percent of the noncitizen population in the United States. These noncitizens live in families with 12 million U.S.-citizen family members—nearly two-thirds of them children, and chilling effects will extend to their citizen family members. And it will fall particularly hard on the two largest racial/ethnic immigrant groups: Latinos and Asian American/Pacific Islanders (AAPI). Approximately 16.4 million people live in benefit-receiving families with at least one Latino noncitizen and 3 million live in such families with at least one AAPI noncitizen. J. Batalova et al, “Millions Will Feel Chilling Effects of U.S. Public Charge Rule That is Also Likely to Reshape Legal Immigration,” Migration Policy Institute (August 2019) available at: <https://www.migrationpolicy.org/news/chilling-effects-us-public-charge-rule-commentary>

¹⁷ The rule, as designed, is counter-intuitive in the sense that while it focuses on public benefit usage among non-citizen intending immigrants, the reality is that almost all non-citizens subject to this ground of inadmissibility would be ineligible for public benefits until or unless they become LPRs for five years.

and safe. We strongly urge that DHS remove this policy of penalizing sponsors for use of benefits.

II. The proposed policy's additional administrative load will lead to higher administrative costs and will add to USCIS' backlog

The additional documentary requirements for all sponsors will require USCIS to review and potentially verify three years of tax returns, in-depth bank account information, and credit history for at a minimum one sponsor, and in many cases at a maximum for the sponsor's spouse, a joint sponsor, and his or her spouse as well.

In 2018, USCIS received 451,163 Form I-864, Affidavit of Support Under Section 213A of the INA forms, and the Department of State's National Visa Center (NVC) received 659,823, for a total of 1,110,986.¹⁸ If we estimate that USCIS officers or NVC staff required an extra hour of additional time per application, it would result in more than 1 million additional hours of paperwork for USCIS to review per year (1,110,986). If we use the \$37.55 per hour wage rate used in the proposed rule, this amounts to **\$41,717,524 or nearly \$42 million in additional annual costs**. If instead it takes two extra hours of additional time to review the paperwork, the cost will double. It will take more than 2 million additional hours of USCIS to review and cost \$83,435,048 million or nearly \$84 million in paperwork processing time per year.

DHS itself estimates that the total new quantified net costs to sponsors of completing the proposed paperwork -- Form G-1563, Form I-864, and Form I-864 EZ, obtaining credit reports, obtaining 3 IRS tax returns and opportunity costs to file at **\$2.4 billion**.¹⁹ So it should be no surprise that reviewing and verifying the paperwork information provided is also time-consuming and costly.

Before the public health emergency struck, USCIS's processing delays had already surged by about 25 percent from the end of Fiscal Year 2017 and 5 percent since the end of Fiscal Year 2018.²⁰ And this was despite a ten percent drop in cases received from the end of FY 17 through FY 19.²¹ With USCIS and DOS's consular offices closed or operating with limited staff for months due to the COVID-19 pandemic, these delays are not expected to improve anytime soon. It is not an opportune time to add more paperwork and red tape to the adjustment of status process in two very backlogged agencies and offices.

We oppose DHS's proposal to add additional paperwork requirements for applications to already-overtaxed federal agencies and offices. Instead, DHS should find ways to make the process of applying for immigration benefits easier, so that it can catch up on its backlog of cases. Therefore, we respectfully request that this proposal be withdrawn in its entirety.

¹⁸ Affidavit of Support on Behalf of Immigrants, 85 Fed. Reg. 62,432 at 62,457 (October 2, 2020).

¹⁹ *Id.*

²⁰ AILA Policy Brief: Crisis Level USCIS Processing Delays and Inefficiencies Continue to Grow (February 26, 2020) <https://www.aila.org/advo-media/aila-policy-briefs/crisis-level-uscis-processing-delays-grow>

²¹ *Id.*

IV. A sponsor's income for three years is not an accurate reflection on their current or future income.

The proposed rule would require all sponsors to provide their last three years of federal income tax returns rather than only their past year's return. Sponsors currently have the option of providing up to their past three years of returns. This option can help sponsors who have recently seen lower earnings or hours or gaps in their work—as millions of Americans are experiencing now during the current pandemic-related recession. But requiring *all* sponsors to provide their past three years of returns will in many cases harm sponsors by slighting their current financial situation and painting an inaccurate portrait of their ability to support the immigrants they are sponsoring.

One can easily think of numerous circumstances in which a potential sponsor is financially able to meet the affidavit of support standards now but had significantly lower income before. The sponsor could have experienced a short-term layoff at work. The sponsor could have been a student, working and earning less and often taking on debt but seeking a degree or credential to gain a promotion or improve their earning prospects. The sponsor could have been on parental leave or could have needed to otherwise take time away from work to care for a child, parent, or other relative. The sponsor could have been seriously ill and unable to work but now fully recovered. Or the sponsor could have been starting a business that started slowly but is now making a profit. In each of these cases, the income that the sponsors would have reported on their tax returns would be significantly lower than their current income. Under the proposed rule, USCIS could use that lower income to determine that the sponsors cannot adequately support the sponsored immigrant even if the sponsors' current and prospective income would be adequate.²²

For many of these sponsors, waiting another year or two to complete the petitioning/sponsoring for their relative to show a consistent period of higher income is not an option. And, in addition, the timing of immigrant visas available for family preference immigrants is highly variable and cannot be adjusted midway through. For example, unmarried sons and daughters of U.S. citizens from Mexico who applied for immigrant visas in January 1998 (known as their “priority date”) are currently being processed for immigrant visas 22 years later; and at the same time, unmarried sons and daughters of Chinese nationals who filed in or before September 2014 are eligible for such visas. Filing fees and the affidavit(s) of support then need to be filed within one year after their “priority date.” Children risk aging out of eligibility as either immediate relatives or derivative beneficiaries. Aging parents go without the care and comfort of a sponsoring son or daughter. Sponsors who are building family-run businesses do so without the trusted labor and skill that siblings and other relatives could provide. And spouses who have committed to sharing their lives together remain separated. Sponsors in these cases would have worked and waited long enough to regain financial stability. They should not be required to wait even longer to satisfy an unnecessary and arbitrary timeframe set by USCIS. Moreover,

²² Proposed 8 C.F.R. § 213a.2(c)(2)(i)(A)

inaction on a pending immigrant visa application with the NVC or USCIS can result in the case being dismissed and having to start over!

Instead of requiring all sponsors to provide their past three years of tax returns, USCIS should instead maintain the current rule requiring only the most recent return but allowing sponsors to present up to the three most recent years of returns. For these reasons, we urge DHS to revoke this rule in its entirety.

V. Requiring in-depth bank account information from all sponsors is neither relevant or necessary, and is an invitation for financial fraud by anyone able to obtain a copy of the I-864, including sponsored former spouses and the staff of benefits agencies who would no longer need to get a subpoena.

USCIS is proposing to add a new requirement to Form I-864, Affidavit of Support Under Section 213A of the INA and related Forms I-864A and I-864EZ which would require U.S. citizens and lawful permanent residents sponsoring their foreign spouse or relatives for a green card to provide in-depth bank account information. Specifically, sponsors (and household members whose income and/or assets are being used by a sponsor to qualify) would be required to provide the name of the banking institution, the number of the bank account, the routing number of the account, and the account holder's name.²³ Co-sponsors will be required to provide the same information, which, combined with the proposed I-864's ominous warnings about sponsor reimbursement and sweeping release of information will make it extremely difficult for petitioning family members to obtain co-sponsors,

DHS provides no reasonable justification for the massive documentary burdens and invasion of privacy that will result from requiring all sponsors and household members to provide information about their bank accounts. There is no legal authority for USCIS to require this data collection from all U.S. citizens and lawful permanent residents sponsoring their foreign spouse or relatives for a green card.²⁴ Bank account information is not necessary or even relevant in order to verify the sponsor or household member's income, which is done through the submission of Federal income tax returns, W-2 wage and tax statements, and letters of employment. In some limited circumstances where the sponsor is using assets, specifically money in a bank account, to satisfy the 125 percent of the federal poverty guidelines, sponsors are already required to provide evidence of those assets by submitting copies of bank statements.

Moreover, this new requirement raises significant privacy concerns. In today's environment where cybercrime and identity theft are becoming more rampant, requiring all sponsors to disclose detailed bank account information, particularly when it is not even relevant or necessary, exposes them to heightened risk of becoming an identity crime victim.). A fundamental principle of data privacy is that data should not be collected or stored unless it

²³ Proposed 8 C.F.R. § 213a.2

²⁴ Of course, this unwarranted and unnecessary financial intrusion compounds the biometric concerns we, along with other civil rights- and civil liberties-minded individuals and organizations, decried with the proposed rulemaking for additional biometric modalities in 85 Fed. Reg. 56,338 (Sept. 11, 2020)

is needed for a specific purpose. Here, there is no specific purpose for the automatic collection of this substantial amount of financial data from all sponsors at the outset.

Further, the inclusion of full bank account information is an invitation for financial fraud by anyone able to obtain a copy of the I-864, including sponsored former spouses and the staff of benefits agencies. Moreover, as this information would be subject to Freedom of Information Act / Privacy Act releases, the possibility that it could be erroneously disclosed to a third-party is heightened. And if that were not enough of a cause for concern, the automatic disclosure of immigration status, name, Social Security number, and last known address of a sponsor and/or household member by USCIS to any party or entity enforcing an Affidavit of Support—without a subpoena!—pursuant to proposed regulation 8 C.F.R. § 213a.4(a)(3) is beyond chilling.²⁵

Here, the DHS states that its goal is to “assist benefit-granting agencies and sponsored immigrants in holding sponsors and household members accountable for their support obligations” by removing the requirement that a subpoena be issued to get copies of the Affidavit of Support.²⁶ This proposed change is unnecessary and harmful for several reasons. First, having a court review a subpoena serves as critical oversight over the release of sensitive financial information. Imagine if police officers were able to sign their own arrest or search warrants. The same mayhem could develop here for aggrieved/abusive litigants seeking this sensitive information. Having the court serve as a gatekeeper role is critical. Second, the DHS provides no statistics or data about why, internally, this switch to no subpoenas is needed. Assuming, *arguendo*, that the request goes to the same office/officer to comply, there is no justification for removing the subpoena element. Third—and this is based on the ineligibility for public benefits generally for vast majority of non-citizens, including those subject to this ground of inadmissibility—they would be statutorily ineligible for public assistance anyway for the first five years of residency.²⁷ Since it is unlawful for permanent residents subject to this ground of inadmissibility to receive public assistance (Medicaid, food stamps) for five years, the expediency in sharing sponsor’s financial information is not moot from the outset. Fourth, and as an attorney who represents non-citizen survivors of domestic violence who file spousal support/alimony actions in family courts in Michigan, I am not aware of any situation in which a judge fails to find the primary (and/or joint) sponsor liable because a copy of the Affidavit of Support was not provided to the court in time. Federal law, as well as state case law, is clear about a sponsor’s financial obligations. Whether the court has a copy of the actual Affidavit is of almost no importance. To protect survivors of domestic violence, this proposed section should be removed entirely so that sponsors (primary and joint) have a further incentive to complete the paperwork in the first place as opposed to feeling the chilling effect we describe above.

²⁵ 85 Fed. Reg. 62,432 at 62,480-62,481 (Oct. 2, 2020)

²⁶ *Id.* at 62,447.

²⁷ See Appendix: Eligibility for Public Benefits, available at <https://www.uscis.gov/sites/default/files/document/policy-manual-resources/Appendix-EligibilityforPublicBenefits.pdf> which clearly shows that non-citizens subject to this ground of inadmissibility do not become statutorily eligible for public assistance as “qualified aliens” until five years of residency. Thus, no state or local benefits office could legally approve such assistance. Therefore,

Again and as with much of this rule, it appears that this overbroad collection of financial information serves no legitimate purpose beyond creating a chilling effect for sponsors, now in regard to their finances instead of their health. For these reasons, we urge the DHS to withdraw this rule in its entirety.

VI. Relying on credit history as a factor has a disproportionate impact on immigrants and naturalized U.S. citizens.

Relying on credit history as a factor has a disproportionate impact on communities of color, including immigrants and naturalized citizens. Today's credit scoring system was built upon a credit market that discriminates against people of color and penalizes borrowers for using the type of credit disproportionately used by people of color. Our nation has a history of explicitly excluding communities of color from low-cost and mainstream loans. Banks, appraisers, real estate agents, and others perpetuated redlining and predatory lending practices, disproportionately steering communities of color to high-cost products.

Further, neither credit reports nor credit scores were designed to provide information on whether a consumer is more or less likely to maintain his or her income in the future. Nor are credit reports and scores any indication of whether the sponsor will be able to maintain the sponsored immigrant at the required federal poverty income level for the household size. Credit reports and credit scores are designed to have a very narrow and specific purpose: whether a borrower will become 90 days late on a credit obligation. A bad credit report or low score—or even the lack of one—is not a reliable predictor of the likelihood that an adjustment of status applicant will obtain public benefits or that a sponsor will fail to provide necessary financial support to that applicant. A bad credit record is often the result of circumstances beyond a consumer's control, such as illness or job loss, from which the consumer may subsequently recover.

Moreover, credit scores do not take into consideration many of the day-to-day expenses that sponsors and household members incur and meet, including paying bills and rent, typically a family's largest recurring expense. Savings and checking accounts are not listed on credit reports from the big three credit bureaus because no borrowing or debt is involved. Credit reports and credit scores do not take these transactions into account and thus do not provide an accurate view of a sponsor's financial history. Only sponsors and household members who have had a credit card, bank loan, unpaid bills in collection, mortgage, or bankruptcy are likely to have a credit report from one of the three major credit bureaus. As of 2015, approximately 15% of Black and Hispanic consumers, compared to an estimated 9% of their White counterparts, are "credit invisible," meaning these consumers are without credit records.²⁸ Even when consumers have credit scores, reports may have errors, which are difficult to correct, and lower consumers' score. According to a study conducted by the Federal Trade Commission, one in four people have a potentially material error on at least

²⁸ "Data Point: Credit Invisibles," CFPB, May 2015, available at https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf

one of their credit reports.²⁹ Given the inherent unreliability of credit reports, their historic unavailability in communities of color, and overall, that a credit report fails to shed light on a sponsor's income level (or ability to maintain that income), we urge the DHS to withdraw this rule in its entirety.

VII. The DHS fails to adequately evaluate the impacts of the proposed regulation

The DHS does not provide a rigorous qualitative discussion or reliable quantitative estimates of the proposed rule's overall impact, making it impossible for the public to understand and comment on the justification of the regulation or its effects. The DHS fails to adequately evaluate the impacts of the proposed regulation, including in its discussion of costs and benefits in the preamble, leaving out considerable impacts in their analysis. In fact, the only costs that are actually reported are the direct and opportunity costs of the time spent filing the required forms: Form I-864, Form I-864A, Form I-864EZ, Form I-864W, I-865, and Form G-153.³⁰

The Office of Management and Budget has published a primer that summarizes what is involved in a cost-benefit analysis as required under Executive Order 13563, Executive Order 12866, and OMB Circular A-4.³¹ This primer states that agencies must produce:

an estimate of the benefits and costs —both quantitative and qualitative—of the proposed regulatory action and its alternatives: After identifying a set of potential regulatory approaches, the agency should conduct a benefit-cost analysis that estimates the benefits and costs associated with each alternative approach. The benefits and costs should be quantified and monetized to the extent possible, and presented in both physical units (e.g., number of illnesses avoided) and monetary terms. When quantification of a particular benefit or cost is not possible, it should be described qualitatively. The analysis of these alternatives may also consider, where relevant and appropriate, values such as equity, human dignity, fairness, potential distributive impacts, privacy, and personal freedom. The agency's analysis should be based on the best available scientific, technical, and economic information. To achieve this goal, the agency should generally rely on peer-reviewed literature, where available, and provide the source for all original information. In cases of particular complexity or novelty, the agency should consider subjecting its analytic models to peer review. In cases in which there is no reliable data or research on relevant issues, the agency should consider developing the necessary data and research.

²⁹ "Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003," Federal Trade Commission, December 2012, at i, available at

<https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf>

³⁰ 85 Fed. Reg. 62,432 at 62,453 (Oct. 2, 2020)

³¹ Office of Information and Regulatory Affairs, *Regulatory Impact Analysis: A Primer*, N-d, https://reginfo.gov/public/jsp/Utilities/circular-a-4_regulatory-impact-analysis-a-primer.pdf

DHS has completely failed to meet this regulatory standard. Among the Department's most glaring omissions is an adequate analysis of the regulation's chilling effect on program participation and immigration benefits.

In one of its table related to costs, the Department recognizes that the proposed regulation: could result in some sponsors and joint sponsors who may intend to sponsor a family member in the future forgoing enrollment or disenrolling from a means-tested public benefits programs to avoid triggering the proposed additional requirements. This could result in additional indirect impacts incurred from the change of the behavior due to this proposed rule.³²

Despite acknowledging this chilling effect, the Department does not provide estimates of the number of individuals and their family members who may forego or disenroll from public benefits or analyze the downstream economic implications of these chilling effects on health care providers, state and local governments, or small business. Yet, DHS has recognized the harmful consequences / chilling effects in its recent rulemaking activity on the same topic. Specifically, disenrollment or foregoing enrollment in public benefits programs could lead to:

- worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence;
- Increased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment;
- Increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated;
- Increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient;
- Increased rates of poverty and housing instability; and
- Reduced productivity and educational attainment.³³

This time around, not only does the DHS fail to quantify the extent of these harmful outcomes and its cost to society, but also fails to even recognize these harmful at all. It uses brief, ambiguous, hedging language all in the conditional tense to avoid stating what it knows about these effects.

Additionally, the DHS does not adequately assess immigration impacts of the proposed regulation. Again, in the same section, the DHS acknowledges that "there could be a reduction in the number of immigrants granted an immigration benefit in cases where the intending immigrant is unable to obtain a sponsor who can meet the new requirements under this proposed rule."³⁴ Not surprisingly, the DHS fails to provide any estimate of the reduction of people granted an immigration benefit, or any analysis on this immigration impact on the individuals, their families and communities, their employers, or society as a whole. Nor does it account for the reduction in the number of I-864s to be filed, which would be an analog to

³² 85 Fed. Reg. 62,432 at 62,454 (Oct. 2, 2020)

³³ 83 Fed. Reg. 51,114, at 51,270 (Oct. 10, 2018)

³⁴ 85 Fed. Reg. 62,432 at 62,454 (Oct. 2, 2020)

the reduction in people applying for permanent residency and ergo, a reduction to DHS's budget.

Extensive research shows that parental detention and deportation harms a child's mental and physical health, economic security, and educational outcomes.³⁵ A parent's deportation can drastically undercut the economic security of families already struggling to make ends meet, especially when that parent is the primary or sole breadwinner. One study estimates that the sudden loss of a deported parent's income can reduce a family's household income by 73 percent.³⁶ Thus, in situations where it is not possible for a family to reunite, the economic (individual and macro-level fiscal), social, health, and educational effects will be drastic, long-lasting, and overall, detrimental to all parties involved, including the local, state, and national governments.

Ultimately, the failure of the DHS to adequately evaluate the regulation makes it impossible to justify the regulation and for the public to assess the regulation's effect on our nation. For these reasons, we urge the DHS to withdraw this rule in its entirety.

VIII. The proposed rule is the Administration's latest attempt to unlawfully limit family-based immigration

The proposed rule would create a perfect storm of red tape and fear that will deter family members and others from serving as sponsors, and ultimately limit family-based immigration. By increasing burdensome paperwork; allowing sponsors' and co-sponsors' sensitive, personal information to be shared; making sponsors fear enrollment in health care programs and other public benefits; and giving ominous warnings about fines and liability; the proposed rule will deter family members and others from serving as sponsors and joint sponsors.

In the proposed rule, DHS itself acknowledges multiple times that the new policy could cause a reduction in the number of immigrants granted an immigration benefit in cases where the intending immigrant is unable to submit a sufficient Affidavit. DHS also indicates that provisions of the proposed rule would likely reduce the number of individuals who would be eligible to qualify as a sponsor who may execute an Affidavit and, as a result, may reduce the number of Affidavits executed using Form I-864.

³⁵ Ajay Chaudry, Randy Capps, Juan Manuel Pedroza, et al., *Facing our Future: Children in the Aftermath of Immigration Enforcement*, The Urban Institute, 2010, <http://www.urban.org/sites/default/files/publication/28331/412020-Facing-OurFuture.PDF>; Brian Allen, Erica M. Cisneros, Alexandra Tellez, "The Children Left Behind: The Impact of Parental Deportation on Mental Health," *Journal of Child and Family Studies* 24 (2015), <https://link.springer.com/article/10.1007/s10826-013-9848-5>; Luis H. Zayas, Segio Aguilar-Gaxiola, Hyunwoo Yoon, et al., "The Distress of Citizen-Children with Detained and Deported Parents," *Journal of Child and Family Studies* 24 (2015), <https://link.springer.com/article/10.1007%2Fs10826-015-0124-8>.

³⁶ Randy Capps, Heather Koball, James D. Bachmeier, et al., *Deferred Action for Unauthorized Immigrant Parents: Analysis of DAPA's Potential Effects on Families and Children*, MPI, 2016, <http://www.migrationpolicy.org/research/deferred-action-unauthorized-immigrant-parents-analysis-dapas-potential-effectsfamilies>.

This Administration has repeatedly attempted to restrict lawful family-based immigration. When Congress rejected its proposal to implement a points-based system to limit family-based immigration,³⁷ it pivoted to a series of efforts to achieve this goal through other means. For example, advisor Stephen Miller acknowledged to supporters that the temporary limits on family-based immigration imposed this spring, supposedly imposed to control COVID-19, were in reality the first step of an overall plan to restrict family-based immigration.³⁸

As mentioned above, the proposed rule would require sponsors to complete more burdensome paperwork, open up sensitive personal information to be shared with without a subpoena and potentially subject them to financial fraud. In addition, the DHS proposes to impose a continuing legal obligation for all household members of the sponsor to update their address within 30 days of moving at proposed 8 C.F.R. § 213a.3(a). Failure to do so could result in a civil penalty for the sponsor and/or household members ranging from \$250 to \$5,000. Again, the purpose here is to create a chilling effect on the likelihood that a sponsor (and members of that sponsor's family) would agree to sign an Affidavit.

In addition, the Northern District of Illinois today released its decision finding the most recent final rule regarding public charge grounds of inadmissibility, 84 Fed. Reg. 41,292 (Aug. 14, 2019), a violation of the Administration's powers under the Administrative Procedures Act, against the law, and overall, arbitrary and capricious.³⁹ This decision vacated that final rule in its entirety.⁴⁰ This rulemaking's attempt to re-write the regulations for sponsors, accordingly, must also fail as being beyond the scope of this Administration's powers under the Administrative Procedures Act. Also, because they are punitive in nature and overall, arbitrary and capricious attempts to punish non-citizens.

Instead of creating unnecessary, expensive, and chilling processes to improve family-based immigration, we encourage the DHS to withdraw this rule in its entirety so that it can focus on realistic, data-driven, equitable approaches to support families seeking to reunify. For these reasons, we cannot support this rulemaking.

IX. Conclusion

In conclusion the Michigan Immigrant Rights Center opposes this proposed rule. Our comments include citations to supporting research and documents for the benefit of DHS in reviewing our comments. We direct the DHS to each of the items cited and made available to the agency through active hyperlinks, and we request that these, along with the full text of our comments, be considered part of the formal administrative record on this proposed

³⁷ See, e.g. H.R. 4760, 115th Congress (2018)

³⁸ Michael Shear and Maggie Haberman, "Trump's Temporary Halt to Immigration Is Part of Broader Plan, Stephen Miller Says," New York Times, April 24, 2020, available at <https://www.nytimes.com/2020/04/24/us/politics/coronavirus-trump-immigration-stephen-miller.html> ; See also Jessica Guerrero, *Hatemonger: Stephen Miller, Donald Trump, and the White Nationalist Agenda*, HarperCollins (2020)

³⁹ *Cook County IL v. Wolf*, 1:19-cv-06334 (N.D. Ill. Nov. 1, 2020), ECF 222, Memorandum Opinion and Order,

⁴⁰ *Id.*

rulemaking. If implemented, the rule would deter sponsors from accepting their responsibilities and by doing so, ultimately reduce the number of permanent residents. That is the implicit goal with this rulemaking. Do not be fooled by the solutions to non-existent problems proposed throughout the rulemaking as alleged justifications for these unnecessary, harmful processes that give DHS more power and leverage to deny and limit family-based immigration. We decry this approach to sponsorship and demand that this rulemaking be declared unlawful and/or be withdrawn in its entirety.

Sincerely,

Ruby R
Ruby Robinson
Managing attorney