E.O. 12866 meeting
in advance of the final rule entitled
“Inadmissibility on Public Charge Grounds”
from the Department of Homeland Security (DHS)

Presented by:

Boundless Immigration Inc.

July 25, 2019

Final rule pending review:
OMB Control Number 1615-AA22

Full public comments and data available here:
https://www.boundless.com/blog/unlawful-public-charge-immigration-rule/
https://www.boundless.com/blog/over-120-business-leaders-oppose-public-charge-immigration-rule/
https://www.boundless.com/blog/looming-immigration-directive-separate-nearly-200000-married-couples/

The rule is disastrous for U.S. companies

- Over 120 business leaders submitted a public comment stating that the public charge rule would **"close the door on global talent."**
- Any of the 15 or more "negative factors" could make it **impossible for U.S. companies to hire and retain talented individuals** who would otherwise be clearly eligible for an employer-sponsored green card or work visa and would productively contribute to the U.S. economy.
- By effectively requiring these workers to have a household income above 250% of the Federal Poverty Guidelines, for example, the rule would exclude a childless couple earning less than $41,150, or the breadwinner for a family of four earning less than $62,750—which is **higher than the median income in the United States.**
- These are **middle-class salaries**, and certainly do not justify DHS's suspicion that anyone below this arbitrary threshold could some day become a drain on public resources.
- DHS does not consider that many of the most skilled workers are compensated with stock options on top of their regular annual income. It is not uncommon for such workers to take 20-50% of their **compensation in stock options rather than salary**.
- It makes no sense to shut out talented workers because they have children, mortgages, or student loans—all **traditional elements of achieving the American Dream**.

The rule separates married couples

- In previous years, the government has granted around 350,000 green cards annually to spouses of U.S. citizens and permanent residents, allowing these couples to build their lives together in the United States.
- By raising the household income threshold to 250% of the federal poverty level, the rule would reduce the number of marriage-based green cards by 50% or more—thus **nearly 200,000 couples would be denied a spousal green card *each and every year*.**
- Boundless has estimated the likely impact of the public charge rule by analyzing the immigration status, current employment, and household income of foreign national spouses in its secure customer database.
- ~31% of foreign-born spouses are unemployed when they apply for a marriage-based green card. Because student visas, visitor visas, and other common visas generally do not authorize employment in the United States, these spouses would be in an impossible situation—**prevented from legally working yet required to earn a relatively high income**.
- ~22% of foreign-born spouses are employed in jobs that likely would not meet the new annual household income threshold.
- The Migration Policy Institute (MPI) similarly concluded that 58% of recently arrived, legally present immigrants have annual family incomes below 250% of the federal poverty level. **The rule would block 71% of applicants from Mexico and Central America, 69% from Africa, and 52% from Asia—but only 36% from Europe, Canada, and Oceania.**
- DHS has made no effort to quantify these impacts.

The rule is unlawful

The rule violates:

- The plain meaning of the statutory term “public charge” as that concept has been defined in immigration law for more than 125 years.
- The Immigration and Nationality Act, which gives DHS no authority to apply a public charge test to nonimmigrants applying for an extension of stay or change of status.
- The Administrative Procedure Act, given DHS fails to offer analysis regarding obvious and substantial negative consequences of the rule, rendering its decision-making unlawfully arbitrary and capricious.
- Executive Orders 12866 and 13563, as DHS both fails to undertake the requisite cost-benefit analysis and ignores the reality that even its deficient cost-benefit analysis shows that the proposed rule would impose a substantial net cost on the United States.
- The Regulatory Flexibility Act, because DHS fails to consider—let alone quantify and examine—the most important effects of its proposed rule on small entities.
- Executive Order 13132, since DHS ignores the evident federalism concerns in its proposed rule and does not prepare a federalism summary impact statement.

The rule is unlawful

The rule also violates:

- The Treasury General Appropriations Act of 1999, by failing to provide an adequate rationale for the rule, which DHS acknowledges would negatively affect family well-being.
- The Paperwork Reduction Act of 1995, since DHS would impose substantial new paperwork and compliance burdens without adequate justification.
- Federal disability law, by discriminating against individuals based on the presence or absence of a disability in administering this federal rule.
- The U.S. Constitution, which precludes the government from discriminating on the basis of national origin.

"Benefits" of the rule are illusory

- *Reduction of government expenditures on public benefits* (the alleged "primary benefit" of the rule): DHS admits that it cannot "determine whether immigrants are net contributors or net users" of the programs it seeks to regulate in the name of "self-sufficiency." In fact, the academic literature is clear that immigrants are net fiscal contributors—yet DHS cites none of this literature directly.

  For just one short summary of this literature, see: https://econofact.org/do-immigrants-cost-native-born-taxpayers-money

- *Elimination of Form I-864W*: The 4-page Form I-864W would simply be incorporated into the required Form I-485, yielding no benefit whatsoever.

- *Establishing a public charge bond*: DHS admits that "The same factors that weighed positively when making the public charge inadmissibility determinations will generally indicate that offering the option of a public charge bond to an alien is warranted." Therefore the bond would benefit nobody who actually needs it.

Direct costs of the rule are grossly underestimated

- DHS admits that "it is likely that DOS will amend its guidance to prevent the issuance of visas to inadmissible aliens" seeking admission to the United States. DHS must estimate these costs—including the number of people who would be affected by this change in the Department of State's policy—before proceeding.

- DHS admits that "CBP could find that an alien arriving at a port of entry seeking admission, either pursuant to a previously issued visa or as a traveler for whom visa requirements have been waived, is likely to become a public charge if he or she is admitted." DHS must estimate these costs, as well.

- DHS represents that "Department of Justice precedent decisions would continue to govern the standards regarding public charge deportability determinations." This is completely contrary to reports about the DOJ public charge rule currently under review by OMB. DHS and DOJ must estimate the full costs of (a) applying a new public charge inadmissibility standard to the immigration courts, and (b) applying a new public charge deportability standard across the entire executive branch.

Direct costs of the rule are grossly underestimated

Estimated Figures	DHS Estimate	Boundless Estimate
Hours to complete	4.5	18
Minimum hourly wage (U.S.)	$10.66	N/A
Average hourly wage (U.S.)	$35.78	$40.20
Average hourly wage (global)	N/A	$9.55
Average hourly wage (blended)	N/A	$24.88
Credit report cost	$19.95	$19.95
Legal fees (U.S.)	N/A	$1,667
Legal fees (global, inferred)	N/A	$396
Legal fees (blended, inferred)	N/A	$1,031

DHS predicted the annual direct costs of the public charge rule to be up to $130 million per year, but dramatically underestimated the likely size of the affected population, along with the lost wages, legal fees, and time commitment required for individuals and businesses to complete complex new filing requirements.

Based on its extensive experience with immigration paperwork, Boundless re-did the DHS cost estimate with realistic assumptions, and found that the **actual likely annual cost would be up to $13 billion—100 times greater than the government's estimate.**

Cost Type	DHS Estimate	Boundless Estimate (DHS filers only)	DHS Underestimates by a Factor of	Boundless Estimate (including DHS and State filers)	DHS Underestimates by a Factor of
One-year cost	$129,596,485	$2,260,448,302	17.44	$12,973,350,644	100.11
Ten-year cost	$1,295,968,450	$22,604,483,016	17.44	$129,733,506,441	100.11

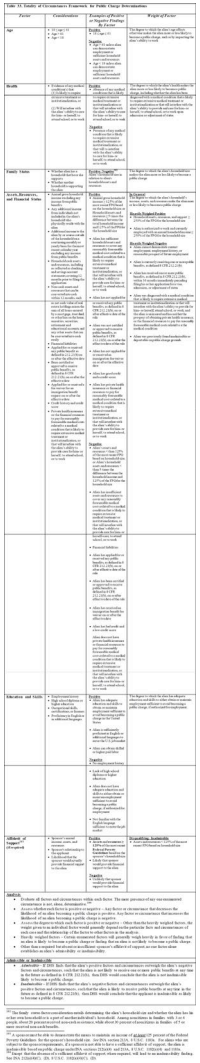
Direct costs of the rule are grossly underestimated

Form I-944 Cost Estimates	Annual Population	Opportunity Cost per Hour	Total Opportunity Cost	Additional to Baseline Cost	Credit Report Cost	Percent with Counsel	Legal Fees	Total Legal Fees	Total Annual Cost	Total Ten-Year Cost
DHS filers:										
Form I-485 filers	436,029	$40.20	$315,510,874	$2,921,397	$8,698,787	48.50%	$1,667	$352,527,590	$679,658,647	$6,796,586,471
Form I-129 filers	471,444	$40.20	$341,137,023	$9,476,028	$9,405,312	95%	$1,667	$746,602,607	$1,106,620,971	$11,066,209,707
Form I-129CW filers	6,307	$40.20	$4,563,745	$126,771	$125,825	95%	$1,667	$9,988,081	$14,804,421	$148,044,211
Form I-539 filers	195,699	$40.20	$141,607,796	$3,933,550	$3,904,195	95%	$1,667	$309,918,721	$459,364,263	$4,593,642,627
Subtotal	*1,109,480*		*$802,819,439*	*$16,457,746*	*$22,134,118*			*$1,419,036,999*	*$2,260,448,302*	*$22,604,483,016*
State Department immigrant visas:										
Diversity visas (DV)	55,222	$9.55	$9,490,394		$1,101,679	30%	$396	$6,559,074	$17,151,147	$171,511,467
Immediate relatives	267,608	$24.88	$119,845,766		$5,338,788	30%	$1,031	$82,808,284	$207,992,838	$2,079,928,384
Family-sponsored preferences	228,588	$24.88	$102,371,049		$4,560,339	30%	$1,031	$70,734,004	$177,665,393	$1,776,653,927
Employment-based preferences	25,311	$24.88	$11,335,228		$504,952	95%	$1,667	$40,083,589	$51,923,770	$519,237,699
Subtotal	*576,730*		*$243,042,437*		*$11,505,759*			*$200,184,952*	*$454,733,148*	*$4,547,331,476*

Direct costs of the rule are grossly underestimated

Form I-944 Cost Estimates	Annual Population	Opportunity Cost per Hour	Total Opportunity Cost	Additional to Baseline Cost	Credit Report Cost	Percent with Counsel	Legal Fees	Total Legal Fees	Total Annual Cost	Total Ten-Year Cost
State Department nonimmigrant visas:										
Temporary Visitors (B-1/B-2)	10,322,437	$24.88	$4,622,800,097		$205,932,614	30%	$1,031	$3,194,156,601	$8,022,889,312	$80,228,893,120
Treaty Traders and Investors (E-1/E-2)	60,960	$24.88	$27,300,326		$1,216,152	95%	$1,031	$59,733,956	$88,250,435	$882,504,349
Australian specialty workers (E-3/E-3D/E-3R)	11,317	$24.88	$5,068,116		$225,770	95%	$1,031	$11,089,194	$16,383,079	$163,830,794
Students (F-1)	729,269	$24.88	$326,595,650		$14,548,909	30%	$1,031	$225,663,587	$566,808,145	$5,668,081,452
Spouses and children of students (F-2)	42,993	$24.88	$19,253,806		$857,702	30%	$1,031	$13,303,554	$33,415,063	$334,150,625
Temporary workers (H-1B)	193,383	$24.88	$86,604,732		$3,857,995	95%	$1,031	$189,493,826	$279,956,553	$2,799,565,534
Temporary workers (H-2A)	125,131	$24.88	$56,038,757		$2,496,367	95%	$1,031	$122,614,528	$181,149,652	$1,811,496,525
Temporary workers (H-2B)	82,921	$24.88	$37,135,341		$1,654,274	95%	$1,031	$81,253,271	$120,042,886	$1,200,428,856
Spouses and children of H workers (H-4)	131,583	$24.88	$58,928,131		$2,625,081	95%	$1,031	$128,936,568	$190,489,780	$1,904,897,797
Exchange Visitors (J-1)	381,006	$24.88	$170,629,906		$7,601,078	30%	$1,031	$117,897,947	$296,128,931	$2,961,289,309
Spouse or child of exchange visitors (J-2)	49,406	$24.88	$22,125,893		$985,646	30%	$1,031	$15,288,043	$38,399,583	$383,995,826
Intracompany transferees (L-1)	90,086	$24.88	$40,344,025		$1,797,212	95%	$1,031	$88,273,971	$130,415,207	$1,304,152,071
Spouses and children of intracompany transferees (L-2)	93,066	$24.88	$41,678,588		$1,856,663	95%	$1,031	$91,194,036	$134,729,287	$1,347,292,867
Vocational students (M-1)	14,483	$24.88	$6,486,156		$288,940	30%	$1,031	$4,481,656	$11,256,752	$112,567,519
Spouses or children of vocational students (M-2)	614	$24.88	$274,974		$12,249	30%	$1,031	$189,995	$477,218	$4,772,181
Aliens of extraordinary ability (O-1)	17,388	$24.88	$7,787,221		$346,899	95%	$1,031	$17,038,680	$25,172,800	$251,727,996
Support workers for O-1s (O-2)	7,783	$24.88	$3,485,360		$155,263	95%	$1,031	$7,626,074	$11,266,697	$112,666,968
Spouses and children of Os (O-3)	4,855	$24.88	$2,174,442		$96,865	95%	$1,031	$4,757,747	$7,029,054	$70,290,545
Athletes, artists, entertainers, and support workers (P-1/P-2/P-3)	40,440	$24.88	$18,110,560		$806,774	95%	$1,031	$39,626,464	$58,543,798	$585,437,982
Spouses and children of Ps (P-4)	1,466	$24.88	$656,623		$29,251	95%	$1,031	$1,436,711	$2,122,585	$21,225,851
Cultural exchange participants (Q-1)	2,161	$24.88	$967,603		$43,104	30%	$1,031	$668,572	$1,679,279	$16,792,793
Religious workers (R-1)	5,989	$24.88	$2,681,935		$119,473	30%	$1,031	$1,853,102	$4,654,509	$46,545,090
Spouses and children of religious workers (R-2)	2,382	$24.88	$1,066,576		$47,513	30%	$1,031	$736,958	$1,851,047	$18,510,468
NAFTA professionals (TN)	14,940	$24.88	$6,690,550		$298,045	95%	$1,031	$14,639,131	$21,627,726	$216,277,263
Spouses and children of TNs (TD)	9,277	$24.88	$4,154,522		$185,072	95%	$1,031	$9,090,223	$13,429,817	$134,298,168
Subtotal	*12,435,334*		*$5,569,039,889*		*$248,084,909*			*$4,441,044,397*	*$10,258,169,195*	*$102,581,691,949*

The rule cannot be implemented in 60 days



The rule text requires *a full four pages* merely to present a stripped-down flowchart of the new public charge test. This will no doubt require significant changes to both the Policy Manual and adjudicator training within USCIS.

There is no way that USCIS would be able to adequately train its adjudicators on this complicated new 15-factor decision tree and related evidentiary requirements within just 60 days of the final rule being published.

"The rule change will add complexity as we train people and try to roll it out..."

—Michael Valverde, Deputy Associate Director, USCIS Field Operations Directorate, July 16, 2019 House Judiciary hearing

The rule cannot be implemented in 60 days

Form I-944 would require applicants to retrieve a wide range of new records, including:

- evidence of your relationship to each individual in your household such as a birth certificate, marriage certificate, or affidavit about your relationship;
- copies of IRS receipts of all tax returns filed in the last three years, or the tax returns of any individual who claimed you as a dependent;
- evidence of any additional income;
- documentary evidence showing the amount you have in your checking account, savings account, any annuities, any stocks, any bonds, any certificates of deposit, any retirement or educational account, and any real estate holdings;
- documentary evidence of any mortgages, car loans, credit card debt, education-related loans, tax debts, liens, and personal loans;
- a credit report, or a credit agency report of "no record found";
- if applicable, documentary evidence of the resolution of any previous bankruptcy;
- if applicable, documentary evidence of health insurance;
- if applicable, documentary evidence showing the receipt of unemployment benefits; and
- letters establishing a five-year employment history.

For simple revisions to an *existing* form, USCIS typically provides 3 months for applicants and attorneys to make the transition to the new version.

See:
https://www.uscis.gov/forms-updates

The I-944 would be an entirely new form (15 pages long), with entirely new instructions (16 pages long).

Given the complete novelty and significant complexity of this form, **USCIS must provide at least 6 months of transition time** before requiring the form to be submitted.

Conclusion

- Because this rule is bad policy, it should not be published.
- Because this rule is unlawful, it should not be published.
- If this rule is nevertheless published, the effective date must occur no less than 6 months later.