

To: Office of Management and Budget

From: South Carolina Appleseed Legal Justice Center

Date: October 3, 2019

Re: EO 12866 Meeting on U.S. Department of Justice (DOJ) Proposed Public Charge Regulation (RIN 1125-AA84)

Thank you for the opportunity to meet with the Office of Management and Budget (OMB) and other interested federal agencies to discuss why any proposal by the DOJ to align the public charge grounds for deportability with the U.S. Department of Health and Human Service's (DHHS) recently published final rule on public charge grounds for inadmissibility should be treated as a significant regulatory action and major rule change, as defined in Executive Order 12866, September 30, 1993 (EO 12866).

South Carolina Appleseed Legal Justice Center (SC Appleseed) is a non-profit legal advocacy organization that advocates for social, economic, and legal justice for all South Carolinians. We have expertise in South Carolina's public benefits programs and immigrant eligibility for those programs. SC Appleseed has led the outreach and education efforts in South Carolina on DHHS's public charge inadmissibility rule, presenting to hundreds of direct service providers and impacted community members across the State over the last couple of years and we are deeply familiar with social and economic costs to South Carolina of the DHHS public charge rule.

We requested this meeting because our expertise and work on behalf of low-income immigrant communities in South Carolina, and particularly our experience documenting the harm caused by DHHS's public charge inadmissibility rule, suggest that a parallel proposal by DOJ to align the public charge deportability rule, would have similarly devastating social and economic costs in the form of 1) increased hunger, disease, and economic instability amongst immigrant families forgoing public benefits out of fear of being indefinitely separated from their families, and 2) increased administrative burden and cost to South Carolina state agencies and service providers tasked with explaining the new changes to customers and upgrading their electronic eligibility systems to track and report on past receipt of benefits for impacted immigrants.

DOJ has not provided a draft of its proposed changes to the public charge grounds for deportability, but it states that its proposed rule is "intended...to more closely conform" the

Executive Office for Immigration Review (EOIR) definition with the recently finalized DHHS definition of public charge. DHHS itself classified its revisions to the public charge test as a major regulatory action and DOJ is admittedly proposing to do the same thing without the same classification. Below, Appleeed has provided a summary of the estimated economic impact that an alignment of DOJ's public charge deportability definition with DHHS's admissibility definition will cause in South Carolina, supporting why DOJ's public charge rule change should be treated as a significant regulatory action and major rule change.

An alignment of the deportability public charge definition with the DHHS admissibility definition will cause SC significant economic losses from forgone public benefits and uncompensated care.

In the last year, South Carolina has seen significant drops in enrollment in public benefit programs, like Medicaid and the Supplemental Nutrition Assistance Program (SNAP). South Carolina's SNAP program enrollment is down nearly 8% between June 2018 and June 2019. Nearly 50,000 fewer people are receiving SNAP than in June 2018 and as a result, South Carolina now has \$7.3 million dollars less in federal SNAP dollars in our state, for June 2019 alone.¹ Similarly, South Carolina has seen an increase in the number of uninsured children in the state each year since 2016. The Census Bureau recently released data that shows that the nation's child uninsured rate increased for a second year in a row, jumping a whole percentage point nationally from 2017 to 2018.² States in the south, which already have the highest rates of uninsured children in the nation, had the highest rates of increase in uninsured children, and Hispanic children had the highest increase among other racial groups.³ As our insured rates and SNAP participation falls, the cost of uncompensated care and demand for food bank and pantry services will continue to grow.

¹ U.S. Dept. of Agriculture, Food and Nutrition Service, June 2019 State Level Participation and Benefits, SNAP Participants, accessed September 27, 2019 at <https://fns-prod.azureedge.net/sites/default/files/resource-files/29SNAPcurrPP-9.pdf> and U.S. Dept. of Agriculture, Food and Nutrition Service, June 2019 State Level Participation and Benefits, SNAP Benefits, accessed September 27, 2019 at [https://fns-prod.azureedge.net/sites/default/files/resource-files/31SNAPcurrBEN\\$-9.pdf](https://fns-prod.azureedge.net/sites/default/files/resource-files/31SNAPcurrBEN$-9.pdf).

² Joan Alker and Olivia Pham, *Nation's Progress on Children's Health Coverage Reverses Course*, Georgetown University Health Policy Institute, Center for Children and Families, November 2018, accessed September 27, 2019 at https://ccf.georgetown.edu/wp-content/uploads/2018/11/UninsuredKids2018_Final_asof1128743pm.pdf; Joan Alker, *Why are There More Uninsured Kids and What Can We Do About It?* Georgetown University Health Policy Institute, Center for Children and Families, Say Ahhh! Health Policy Blog, September 12, 2019 accessed September 27, <https://ccf.georgetown.edu/2019/09/12/why-are-there-more-uninsured-kids-and-what-can-we-do-about-it/>.

³ *Id.*

There is no available data in South Carolina to show exactly what portion of families exiting benefit programs are doing so because of fear of how the new DHHS public charge rule will impact them. Similarly, we can't predict the chilling impact of the DOJ public charge proposal. But, we do know that there are about 25,000 individuals in South Carolina who obtained lawful permanent resident status and could be subject to DOJ's public charge changes. In addition to the number of people actually impacted, we know, both from our own experience working with families and from stories we hear from direct service providers, that fears about public charge, even for individuals and families who are exempt or otherwise impacted by the rule, have caused families to forgo benefits and medical treatment their family needs. National surveys of immigrant families have shown the same "chilling effect" on benefit enrollment nationwide.⁴

To give an example of the severity of the chilling effect in South Carolina of the DHHS's public charge rule, last week, SC Appleseed trained 40 or so outreach and enrollment workers of the South Carolina Primary Health Care Association on public charge. Several outreach workers stated that they have clients who are pregnant lawful permanent residents who disenrolled from Medicaid or clients who are immigrant parents and disenrolled their U.S. born citizen children from all benefit programs. People refused to continue enrollment in these programs even after the outreach worker provided them with written outreach materials in Spanish explaining that the use of Medicaid by pregnant women and children cannot be considered under the new public charge rule. Despite SC Appleseed's constant community outreach and education efforts on the DHHS public charge rule, the chilling effect has been substantial and immigrant families continue to forgo benefits they need at great cost to themselves and our State.

South Carolina's immigrant families cannot afford to lose access to benefit programs they or their children may be eligible for. South Carolina still has one of the highest rates of poverty in the country and children living in families with a foreign-born parent are even more likely to live in poverty than those in households with no foreign-born members. Over 111,000 children in South Carolina live with at least one foreign-born parent. 95% of those children are

⁴ See Hamutal Bernstein, Dulce Gonzalez, Michael Karpman, and Stephen Zuckerman, *One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018*, Urban Institute, May 2019, accessed on September 27, 2019 at https://www.urban.org/sites/default/files/publication/100270/one_in_seven_adults_in_immigrant_families_reported_avoiding_public_benefit_programs_in_2018.pdf.

themselves U.S. citizens,⁵ and over half of those children live in low-income households.⁶ Given these numbers, we know South Carolina safety net medical providers, food banks/pantries, and affordable housing programs, which are already at capacity, cannot afford to meet the increased need presented by families who will leave benefit programs they are eligible for because of renewed public charge concerns brought on by DOJ's proposed rule change.

An alignment of DOJ's public charge deportability definition with the DHHS admissibility definition will cause South Carolina significant administrative burden and cost, hurting our state's ability to provide services and benefits to both immigrant and nonimmigrant families.

South Carolina will have to comply with any new IT tracking and reporting capabilities required by the DOJ rule. South Carolina already struggles to keep up with technological advancements and will likely struggle to meet the increased administrative burden imposed by the DOJ's rule without further delaying or interrupting benefits to eligible families. For example, South Carolina is processing only 18 percent of its Medicaid applications online – a rate significantly lower than the national average of 50 percent.”⁷ Similarly, South Carolina's SNAP “Application Processing Timeliness Rate” got worse according to the most recently available data.⁸ Budget shortfalls and lack of resources in general are cited as significant barriers to improving South Carolina's SNAP timeliness rates.⁹ South Carolina cannot take on any additional administrative burden or cost due to the DOJ rule, let alone costs estimated to be in the millions, such as estimates submitted by other state and local agencies who submitted comments in response to the DHHS public charge rule.

⁵ Annie E. Casey Foundation, KIDS COUNT Data Center, *Selected KIDS COUNT Indicators for State in South Carolina*, attached and accessed September 27, 2019 at <https://datacenter.kidscount.org/data/customreports/42/115,133,135,46-47,5921>.

⁶ Migration Policy Institute, State Immigration Data Profiles, South Carolina, accessed on September 27, 2019 at <https://www.migrationpolicy.org/data/state-profiles/state/demographics/SC>. The term "low-income families" refers to families with annual incomes below 200 percent of the federal poverty threshold.

⁷ Joan Alker, *South Carolina's Medicaid Proposal Will Harm Children and Families*, Georgetown University Health Policy Institute, Center for Children and Families, Say Ahhh! Health Policy Blog, June 6, 2018, access September 27, 2019 at <https://ccf.georgetown.edu/2018/06/06/south-carolinas-medicaid-proposal-will-harm-children-and-families/>.

⁸ U.S. Dept. of Agriculture, Food and Nutrition Service, *Identifying Program Components and Practices That Influence SNAP Application Processing Timeliness Rates THE SNAP TIMELINESS STUDY Final Report*, February 2019, accessed September 27, 2019 at <https://fns-prod.azureedge.net/sites/default/files/resource-files/SNAP-Timeliness.pdf>, Table 2.3.

⁹ *Id*, see Appendix C, accessed September 27, 2019 at https://fns-prod.azureedge.net/sites/default/files/resource-files/SNAP-Timeliness-AppendixC_0.pdf.

Given all the data and evidence showing the dramatic economic impact of the DHHS public charge rule, there is no reasonable argument to make that a similar rule change to the conditions of deportability would not cause the same, if not greater economic impact. DOJ's rule will potentially apply to thousands more people in South Carolina, and millions nationally, particularly if benefits used by children or humanitarian refugees are not exempted. Any attempt to revise the public charge grounds for deportability is a significant regulatory change and must be subject to the heightened fiscal impact analysis and public comment standards of a major change, as required by EO 12866.

Please contact us if you have any questions.

Sincerely,



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