



December 7, 2018

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, DC 20529–2140

Re: Opposition to DHS Notice of Proposed Rulemaking on Public Charge Determinations (DHS Docket No. USCIS–2010–0012)

Dear Ms. Deshommes:

Demos strongly urges the Department of Homeland Security to withdraw the proposed rule to radically enlarge the list of criteria that will be used to decide whether an immigrant is likely to become a “public charge.”

Demos is a non-partisan public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy. Research on families’ economic stability clearly indicates that this proposed rule amounts to a harsh and unfair penalty on all but the wealthiest immigrant families, and is likely to cause immense financial hardship for households and communities in the United States.¹ Demos’ own research on the nation’s credit reporting system particularly highlights the unsuitability of using credit reports and scores for immigration purposes as the proposed rule intends.²

We already see evidence that merely proposing an expansion of the programs and factors to be considered for the public charge analysis is causing widespread fear and confusion, deterring families from accessing critical resources for basic necessities such as food (Supplemental

¹ *Only Wealthy Immigrants Need Apply*, Fiscal Policy Institute, October 10, 2018, <http://fiscalpolicy.org/wp-content/uploads/2018/10/US-Impact-of-Public-Charge.pdf>.

² Amy Traub and Shawn Fremstad, *Discrediting America: The Urgent Need to Reform the Nation’s Credit Reporting Industry*, Demos, 2011. https://www.demos.org/sites/default/files/publications/Discrediting_America_Demos.pdf



Nutrition Assistance Program), housing (Section 8 subsidies) and health care (Medicaid).³ If implemented, the proposed rule could cause economic suffering on a broad scale, as 1 in 4 American children today have an immigrant parent.

One particularly misguided proposal is the provision at proposed § 212.22(b)(4)(i)(H), which would require USCIS to consider an immigrant's "credit history (i.e., credit report) and credit score" in determining whether the immigrant is a public charge. Credit reports and scores were designed for a single purpose: to enable lenders to assess the likelihood that a borrower will become 90 days late on a credit obligation.⁴ They contain no information about a consumer's income or earnings and have no bearing on whether someone will become a public charge.

We are especially concerned that using credit history to evaluate immigrants will have a disparate impact on immigrants of color, because discrimination in lending, employment, education, and housing have produced significant racial disparities in credit history. Research from the Federal Trade Commission, the Federal Reserve Board, and other investigators concludes that African-American and Latino households tend to have worse credit, on average, than white households.⁵ By using credit reports and scores to make immigration decisions, DHS will be basing its determinations on a factor that clearly and unjustly penalizes communities of color.

Using credit scores to determine likelihood of becoming a public charge is especially illogical because a significant factor in a credit score is the number of years a consumer has had and used credit in the United States—a factor that automatically disadvantages immigrants simply because they *are* immigrants and may not have been in the country long enough to develop an

³ See for example: Stephanie Innes, "Arizona Families are Avoiding Health Care Due to Proposed Public Charge Rule, Group Says," *Arizona Republic*, November 14, 2018, <https://www.azcentral.com/story/news/politics/immigration/2018/11/14/public-charge-rule-affect-200-000-arizonans-donald-trump-immigration/1989952002/>; Dylan Scott, "Study Suggests Trump is Scaring Immigrant Families off Food Stamps," *Vox*, November 15, 2018, <https://www.vox.com/policy-and-politics/2018/11/15/18094901/trump-immigration-policy-food-stamps-snap>; Beth Fertig, "City Immigrants Fear Being a 'Public Charge,'" *WNYC News*, November 1, 2018, <https://www.wnyc.org/story/city-immigrants-fear-being-public-charge/>.

⁴ *Data Point: Credit Invisibles*, Consumer Financial Protection Bureau, May 2015. http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

⁵ For a summary of this research, see: *Past Imperfect: How Credit Scores and Other Analytics "Bake In" and Perpetuate Past Discrimination*, National Consumer Law Center, May, 2016. http://www.nclc.org/images/pdf/credit_discrimination/Past_Imp perfect050616.pdf.



extensive credit history.⁶ As a result, many immigrants are among the estimated 26 million Americans who do not have a credit history or whose credit files are thin.⁷ Immigrant families should not be penalized simply because they have avoided taking on debt.

In addition, credit reports are highly inaccurate, rendering them unreliable for making crucial immigration determinations. A comprehensive 2013 study by the Federal Trade Commission found that 1 in 5 American consumers had a material error (an error that negatively impacted their credit history) on a credit report from one of three major credit reporting companies.⁸ These rampant credit reporting errors are notoriously difficult for consumers to resolve, a difficulty that would be compounded for immigrants who may confront substantial barriers in terms of knowledge, language, and resources that would impede them from accessing their credit reports or disputing any errors.⁹ For example, U.S. credit reports are only available in English.

The proposed public charge rule will damage millions of families working to build a future in the United States. Demos urges DHS to immediately retract the proposal because it undercuts the ability of immigrant communities—which are integral to American communities as a whole—to thrive. The proposition to use credit reports and scores to evaluate the likelihood of becoming a public charge is an especially unsound and inappropriate component of a fundamentally destructive and pernicious proposal.

Sincerely,

Amy Traub
Associate Director, Policy and Research

⁶ *Understanding FICO Scores*, FICO, 2016.

https://www.myfico.com/Downloads/Files/myFICO_UYFS_Booklet.pdf.

⁷ *Consumer Financial Protection Bureau Study Finds Consumers in Lower-Income Areas are More Likely to Become Credit Visible Due to Negative Records*, Consumer Financial Protection Bureau, June 17, 2017.

<https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-study-finds-consumers-lower-income-areas-are-more-likely-become-credit-visible-due-negative-records/>.

⁸ “Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003,” Federal Trade Commission, December 2012. Released to the public February 2013.

⁹ Chi Chi Wu et al., *Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in Their Credit Reports*, National Consumer Law Center, 2009. http://www.nclc.org/images/pdf/pr-reports/report-automated_injustice.pdf.