

December 7, 2018

The Honorable Kirstjen M. Nielsen  
U.S. Department of Homeland Security  
20 Massachusetts Avenue, NW  
Washington, D.C. 20529

Re: DHS Docket No. USCIS-2010-0012, Comments in Response to Proposed Rulemaking:  
Inadmissibility on Public Charge Grounds

Madam Secretary:

On behalf of NEO Philanthropy, I am writing to express our strong opposition to the Department of Homeland Security's Notice of Proposed Rulemaking ("proposed rule") on "public charge," published in the Federal Register on October 10, 2018.

NEO Philanthropy is a charitable organization committed to building strong social justice movements by bridging the gap that often exists between funders and organizations doing the work, through collaborative funds, fiscal sponsorships, donor services and capacity building. In addition to serving as fiscal sponsor to numerous immigrant-led organizations and groups that serve immigrants and advocate on their behalf, NEO houses two funds that focus on immigrant populations, described below.

NEO Philanthropy opposes the proposed regulation on several grounds.

**The proposed regulation conflicts with NEO's core values.**

At the most basic level, the proposed changes conflict with NEO's core values, including Dignity, Justice and Equality. NEO envisions a fair and equitable society composed of vibrant and inclusive communities in which all its members have equal access to opportunity and justice. By coalescing and strengthening the work of philanthropic institutions, nonprofit organizations and other public interest groups, we aim to create a world in which people are treated with dignity, equality, fairness and respect.

The proposed changes are an affront to the dignity of immigrants – and to others who rely on public benefits. They will push many immigrants to solicit aid from a patchwork of charities in lieu of more secure government services to which they are entitled by law. The proposal is founded on inaccurate stereotypes about why immigrants come to the US; perpetuates the falsehood that immigrants are uniquely dependent on public benefits; and portrays immigrants as burdens while ignoring the essential social, cultural and economic contributions they make to this country. Finally, by shortsightedly framing Medicaid, SNAP, and housing assistance as costs whose use should be discouraged, rather than investments whose use should be promoted, the proposal also undercuts the dignity of tens of millions of US citizens who rely on these services.

The proposed changes are unjust because, over time, they will prevent millions of immigrants from being able to obtain lawful permanent residency based on factors beyond their control, such as their income, age, health, and disability. They also unjustly further serve to exclude immigrants from public benefits supported by their own tax payments.

The proposed changes are unequal because they subject individuals seeking lawful permanent residency to a radical income test that formalizes institutional bias against the working poor and other low-income individuals. If such an income test were applied to all Americans, the Center for American Progress calculates that more than a quarter of all Americans would fail it.<sup>1</sup> The proposed changes to the “totality of circumstances” test also raises serious equality concerns, discriminating against people with disabilities and other health problems, people with limited English proficiency, children, and elderly individuals. After decades of efforts to eradicate discrimination against these populations, we are dismayed to see a federal agency expressly seek to formalize their unequal treatment.

### **The proposed regulation harms immigrant families and Four Freedoms Fund grantees.**

NEO’s Four Freedoms Fund (FFF) is a national donor collaborative working toward full integration of immigrants as active participants in our democracy. FFF believes the nation’s immigration system must recognize the human rights and dignity of all immigrants, be fair and just, and prioritize keeping families together. FFF seeks to ensure this outcome by building and supporting a robust local, state, and national infrastructure of immigrants’ rights organizations and leaders.

The proposed regulation creates a chilling effect that will prevent immigrant families from accessing services for which they are eligible. FFF’s grantees are actively engaged in community education, counselling immigrants regarding the proposed regulation. They have informed us that proposed changes are already sowing confusion and resulting in immigrants dis-enrolling themselves and their children from a wide range of services for which they remain eligible, just as they did following the damaging 1996 welfare reform law.<sup>2</sup> If this rule were enacted, millions more would dis-enroll or chose not to access services to which they are legally entitled. The harms would extend to green card holders and naturalized citizens.<sup>3</sup>

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<sup>1</sup> See Center for American Progress, “[Trump’s Immigration Plan Imposes Radical New Income and Health Tests](#).” See also reports by the [Center for Budget and Policy Priorities](#) and [the Migration Policy Institute](#) examining the even higher percentage of US Citizens and recent Lawful Permanent Residents who would have difficulty meeting one or more factors of the proposed new totality of circumstances test.

<sup>2</sup> Following the 1996 welfare reform law, use of public benefits by individuals who remained eligible under the new restrictions plummeted. Food stamp use fell by 53 percent among US-citizen children in families with a noncitizen parent and by 60 percent among refugees – even though the welfare reform law did not restrict the eligibility of either group for the program. See studies summarized in MPI, “[Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families’ Public Benefit Use](#).” at p 15.

<sup>3</sup> Drawing from American Community Survey (ACS) data, Manatt Health estimates that up to 25.9 million individuals would be chilled from using benefits, based on the number of families with at least one non-citizen and earned income under 250% of the federal poverty line. See: “[Public Charge Rule: Potentially Chilled Population Data Dashboard](#).”

Family reunification is a bedrock of the American immigration system, yet the proposed regulation would make it considerably harder for immigrants to obtain green cards or visas to reunite or remain with their spouse, child, parent or sibling. . This will primarily disadvantage immigrants from Africa, Asia and Latin America, with troubling racial equity implications.<sup>4</sup> Earlier this year, Congress voted against similarly sweeping cuts to family immigration.

The proposed regulation puts many immigrant parents in an impossible position, forcing them to place their children in jeopardy in one way or the other. Although the proposal specifies that use of public benefits by children will not factor into an immigrant parent's public charge determination, it still applies directly in the children's own future public charge determination. The proposal will therefore force parents to choose between risking their child's future denial of lawful permanent residency status, or denying their child access to safe housing, adequate food and health care. No parent should be forced to make such a heartbreaking choice.

### **The proposed regulation harms trafficking victims and Anti-Trafficking Fund grantees.**

NEO's Anti-Trafficking Fund (ATF) addresses the root causes of human trafficking, through a human rights approach. ATF views human trafficking as an extreme expression of economic and political disempowerment. Our experience tells us that ending human trafficking requires interventions at many points along a continuum, from reducing vulnerabilities in key populations, to improving labor rights frameworks, to promoting safer and more informed migration, to identifying and offering support to victims, to protecting victims' rights in law enforcement responses, to enabling survivors' self-determination in their recovery.

The Department of Homeland Security has key responsibilities for protecting immigrant victims of trafficking, yet its proposed rule endangers trafficking victims in a variety of ways:

While federal law exempts applicants and recipients of T-visas (available to certain victims of severe forms of human trafficking) from public charge inadmissibility, they are often members of mixed-status families and may depend on spouses, parents, or other family members who could be found inadmissible under the proposed regulation.

Moreover, the vast majority of trafficking victims never apply for T-visas<sup>5</sup> due to the underground nature of the crime, stigma, law enforcement cooperation requirements, difficulty meeting other eligibility requirements, and the escalating risk of being referred for removal if the T-visa is denied. Most immigrant survivors of trafficking are therefore not exempted from this rule. A disproportionate number are low-income, limited English proficient, and have health problems associated with their trafficking victimization.

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<sup>4</sup> See Migration Policy Institute, "[Through the Back Door: Remaking the Immigration System via the Expected 'Public Charge' Rule.](#)"

<sup>5</sup> For example, in FY 2017, the federal government granted T-visas to only 672 victims and 690 eligible family members, a fraction of the 8,759 trafficking victims identified by Federal grantees in FY2017. See: <https://www.state.gov/documents/organization/282804.pdf> at pp 445-446. The number identified annually by federal grantees is itself a fraction of the total number of individuals in a trafficking situation in the US each year, as estimated by various sources.

The proposal discourages enrollment in Medicaid and creates a broader chilling effect on use of health care. Access to health care is essential for trafficking victims' recovery. It is also key to identifying trafficking victims in the first place. Substantial philanthropic and government investments have gone towards training medical personnel to be able to identify and help victims of human trafficking, since health care often presents a rare interaction between trafficking victims and the outside world. One of ATF's grantees, the Human Trafficking Legal Center, published a summary of lessons learned from federal criminal indictments and civil trafficking complaints where trafficking victims interacted with medical professionals. The report reveals substantial opportunity to identify survivors of trafficking through healthcare, which could lead to more successful prosecutions of traffickers.<sup>6</sup> The Department of Health and Human Services recently held a symposium focused on this topic.<sup>7</sup> By discouraging immigrant victims of trafficking from seeking healthcare, the proposed rule severely undercuts these efforts.

Finally, it is a key tenet of the anti-trafficking movement that access to services and benefits promotes stability and recovery, and prevents re-trafficking. Adequate treatment after escape from trafficking increases personal resilience and decreases the likelihood that they will be trafficked again. This approach undergirds federal policy expressed through The Trafficking Victims Protection Act, which created the T-visa and set up federally funded benefits programs for certified trafficking survivors under the Office for Refugee Resettlement. Scaring immigrants away from medical care, housing, and food makes them more vulnerable to domestic traffickers who prey on people desperate to meet their survival needs.

## **Conclusion**

The proposed regulation adversely affects philanthropy, including a broad range of philanthropic programs and services that would be at risk if our sector were forced to divert support for existing priorities to respond to the humanitarian crisis that would result from the proposed rule. The proposal would roll back decades of investment by philanthropy to increase immigrant families' access to health and social services, facilitate long-term self-sufficiency and upward mobility, and reduce racial and ethnic disparities.

For the aforementioned reasons, NEO Philanthropy strongly opposes the proposed regulation and urges that it be withdrawn.

Sincerely,

Michele Lord  
President  
NEO Philanthropy

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<sup>6</sup> See: ["Human Trafficking and Health Care Providers: lessons learned from federal criminal indictments and civil trafficking cases"](#)

<sup>7</sup> See: [DHSS Agenda: Health and Human Trafficking Symposium](#)