

November 28, 2018

U.S. Citizenship and Immigration Services  
Department of Homeland Security  
20 Massachusetts Avenue NW  
Washington, DC 20529-2140

***Re: DHS Docket No. USCIS-2010-0012, RIN 1615-AA22, Comments in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds***

Dear Sir/Madam:

Michigan Teachers of English to Speakers of Other Languages (MITESOL) submits the following comments in response to the October 10, 2018 notice by the Department of Homeland Security of its proposed rule setting forth new “public charge” grounds for inadmissibility. MITESOL strongly opposes the proposed rule, believing it will bring harm to the health and well-being of immigrant students, children, parents, and families, as legally present immigrants choose to forego enrollment in programs under the rule for themselves and their families for fear of endangering their future eligibility to stay in U.S. In addition, we believe the proposed rule could create barriers and represent a deterrent to international students and visitors wishing to study and work in the United States. We urge that the proposed rule be withdrawn in its entirety, and that the 1999 guidance remain in effect.

**MITESOL Opposes the Proposed Public Charge Rule**

MITESOL’s membership is comprised of educators who support English learners (ELs) in schools, workplaces, and community centers throughout the state of Michigan. MITESOL is an affiliate of TESOL International, an organization that supports English language educators and learners across the globe. In Michigan, the number of foreign-born residents is growing much more rapidly than native-born residents—7% of the state’s population are immigrants ([MPI Michigan EL Fact Sheet, 2018](#)). Every day, we educators engage face-to-face with those immigrant families who are striving to learn the English language to better themselves academically and economically to participate as residents of our country. The ELs who come to school without adequate food, who miss class because of an untreated illness, or go absent as their families move from place to place—these are our members’ students. The proposed rule, which expands the definition of “public charge” to include basic provisions for nutrition, health

care, and housing benefits, would only worsen these students' chances of academic and workplace success.

Under current policy, a public charge is defined as an immigrant who is “likely to become primarily dependent on the government for subsistence.” The proposed rule radically expands the definition to include any immigrant who simply “receives one or more public benefits.” This change in language drastically increases the scope of who can be considered a public charge to include not just people who receive benefits as the main source of support, but also people who use basic needs programs to supplement their earnings from low-wage work. The proposed rule would create an unhealthy environment for our country’s residents to productively live, learn, and work together. An environment that promotes fear, emotional stress, and both physical and mental afflictions is not conducive to learning – learning fostered in schools for children in our K-12 population, and learning that educates and trains immigrants in our Adult Ed and Higher Ed populations in community centers, colleges, and universities.

### **Effect of Public Charge Designation on English Learners**

The Department of Homeland Security (DHS) proposes to add English proficiency as a weighted factor in the public charge test. Adding English Proficiency as a factor in the public charge test is a fundamental change from our historic commitment to welcoming and integrating immigrants. Regardless of their English skills, all people in this country contribute to the culturally rich landscape that makes up America. The public charge test applies to people when they first enter the U.S. or apply for lawful permanent residence. People from non-English speaking countries who are newly entering the U.S. or applying to adjust status are less likely to have gained proficiency in English so as a result, will experience an across-the-board unfair judgement. As written, the proposed rule is in opposition of current civil rights laws, and it makes it harder for people to improve their language skills.

### *Civil Rights*

The United States does not have a national language; there is no law that allows the government to give preference to those who speak English over those who are limited English proficient (LEP). In contrast to this proposal, there are clear federal civil rights laws protecting LEP persons from discrimination on the basis of English proficiency. Title VI, 42 U.S.C. § 2000d of the Civil Rights Act prohibits discrimination on the basis of race, color and national origin in programs and activities receiving federal financial assistance. Title VII, 42 U.S.C. § 2000e of the Civil Rights Act prohibits discrimination in employment on

the basis of race, color, national origin, sex, or religion. The Supreme Court has held that discrimination on the basis of language or English proficiency is a form of national origin discrimination. Executive Order 13166 provides that all persons who are Limited English Proficient (LEP) should have meaningful access to federally conducted and federally funded programs and activities and directs federal agencies to ensure they are in compliance. The U.S. is a deeply multilingual country, where 63 million people speak a language other than English at home. This fact alone runs contrary to any justifications made for language to be a factor in assessment as a part of this proposed rule.

### *Barrier to Improving Language Skills*

In addition to civil rights violations, by proposing to consider the potential use of housing assistance, Medicaid and SNAP in public charge determinations, DHS is making it more difficult for people who are LEP to improve their skills through English language classes and higher education. For example, the rule would reduce enrollment, retention, and completion rates in adult education and workforce programs. Evidence from prior changes in immigration policy strongly suggests that many immigrants who are *not* subject to the public charge test will nevertheless withdraw from a broad array of public programs and services out of confusion, fear, or an abundance of caution. In addition, the rule would increase college students' financial instability and heighten their risk of dropping out. Many college students are part of larger households – either as adult children or as spouses and parents themselves. Existing barriers to education already make access to these courses difficult, but by deterring people from securing health care, food assistance or stable affordable housing, the proposed rule could leave affected populations with little time or ability to focus on skills development.

### **A Lasting Effect on Immigration**

The public charge designation has a profound effect on immigrant families, for it can bar an individual from entry to the U.S. or disqualify an applicant from legal permanent residency (“LPR”). Attaching immigration penalties to necessary received benefits in the proposed rule would cause families to forego food, health, or housing benefits out of fear that receiving them would endanger the legal presence and family unity provided by a visa or LPR status. This will have a direct and harmful effect on children’s wellbeing. Even families whose immigration status would be unaffected by the proposed rule will be deterred from participating in nutrition, health care, and housing programs for fear of family



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separation. In 2015, almost 6% of Michigan's public school students were English learners compared with 9.5% nationally, and that number is growing. In the U.S., that means there are 4.8 million ELs who could be affected by the proposed rule ([NCES The Condition of Education](#)).

Educational and economic opportunities are the primary reasons immigrants come to our country, and from history, we see the benefits our communities experience when multiple generations of immigrants make homes, raise healthy families, and contribute to the work force. In Michigan, 15 percent of children in low-income families have one or more foreign-born parents ([MPI Michigan EL Fact Sheet, 2018](#)). With the proposed rule, there is no way to hurt immigrant parents without also harming their children. This rule will directly impact children who themselves apply for green cards later. Fear and misinformation prompt families to avoid accessing important programs, regardless of whether participation will actually count within the public charge determination--the proposed rule will also likely impact U.S. citizen children with immigrant parents. Children in households where immigrant parents are limited from accessing critical benefits, including U.S. citizen children, will suffer from a loss of income and resources to the household that support their healthy development.

MITESOL believes that all English learners deserve the fundamental security provided by adequate food, health care, and housing. It is only with such supports in place that immigrant students can meaningfully engage in learning and reach their greatest potential. For all of the above reasons, we urge you to withdraw this harmful proposed rule in its entirety.