CENTER FOR IMMIGRATION STUDIES

December 19, 2025

Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, MD 20746

Re: Public Charge Ground of Inadmissibility, DHS Docket No. USCIS-2025-0304

Dear Mr. Good,

The Center for Immigration Studies (CIS) respectfully submits the following public comment to the U.S. Department of Homeland Security (DHS) in response to the Department's notice of proposed rulemaking (NPRM), "Public Charge Ground of Inadmissibility," DHS Docket No. USCIS-2025-0304**,** as published in the Federal Register on November 19, 2025.

CIS is a national, nonprofit, public-interest organization comprised of concerned citizens who share a common belief that our nation's immigration laws must be enforced, and that policies must be reformed to better serve the national interest. CIS examines trends and effects, educates the public on the impacts of sustained high-volume immigration, and advocates for sensible solutions that enhance America's environmental, societal, and economic interests today, and into the future.

I. Background

The Immigration and Nationality Act (INA) makes any alien who is "likely at anytime to become a public charge" inadmissible to the United States.[1] The term "public charge," however, is not defined in statute. The statute also provides little guidance to immigration officers regarding what evidence they must consider when deciding that an alien is inadmissible on this ground, aside from requiring "at minimum" considering five specific factors: age; health; family status; assets, resources, and financial status; and education and skills.[2] But, again here, the statute does not define or provide further guidance with regard to how an immigration officer should assess these factors as it relates to an alien's likelihood to become a public charge.

Moreover, in 1996, Congress expressed a "national policy concerning welfare and immigration" by enacting the *Personal Responsibility and Work Opportunity Reconciliation Act of 1996* (PRWORA). With PRWORA, Congress restricted alien's federal and state public benefits

[1] INA § 212(a)(4)(A).
[2] INA § 212(a)(4)(B).

eligibility and reminded the Executive Branch that "self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes"[3] and that "It continues to be the immigration policy of the United States that (A) aliens within the Naiton's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations, and (B) the availability of public benefits not constitute an incentive for immigration to the United States."[4]

To further ensure that this language was not misinterpreted, Congress added, "Despite the principle of self-sufficiency, aliens have been applying for and receiving public benefits from Federal, State, and local governments at increasing rates,"[5] and "Current eligibility rules for public assistance and unenforceable financial support agreements have proved wholly incapable of assuring that individuals aliens not burden the public benefits system."[6] Therefore, Congress plainly declared that, "It is a compelling government interest to enact new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant in accordance with national immigration policy,"[7] and, "It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits."[8] This language removes any doubt that Congress directed the Executive Branch to interpret immigration statutes in a manner that discourages public benefits use by aliens.

Despite this clear language, policy issued by the legacy Immigration and Naturalization Service (INS) and its successor agency, DHS, has plainly not effectively discouraged welfare use by aliens in the United States.[9] In large part, this is because the public charge ground of inadmissibility, at INA § 212(a)(4), has never been effectively enforced.

In May 1999, INS issued the Interim Field Guidance on Deportability and Inadmissibility on Public Charge Grounds and a parallel Proposed Rule.[10] The Interim Field Guidance defined "public charge" incredibly narrowly as "primary reliance" on cash assistance for subsistence or long-term institutionalization at government expense. One of the most significant problems with this formulation is that it categorically prohibits immigration officers from considering an alien's receipt of non-cash benefits (aside from long-term institutionalization), including receipt of Medicaid, CHIP, SNAP, housing benefits, WIC, energy assistance, transportation vouchers, any

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[3] 8 U.S.C. §§ 1601(1), 1611, 1621, 1641.
[4] 8 U.S.C. § 1601(2).
[5] 8 U.S.C. § 1601(3).
[6] 8 U.S.C. § 1601(4).
[7] 8 U.S.C. § 1601(5).
[8] 8 U.S.C. § 1601(6).
[9] *See* Camarota, Steven, Zeigler, Karen, Center for Immigration Studies, Report: *Welfare Use By Immigrants and the U.S.-Born*, (forthcoming Jan. 2026) (finding high rates of welfare use by immigrant led households).
[10] *See* 64 Fed. Reg. 28689 (May 26, 1999); 64 Fed. Reg. 28676 (May 26, 1999).

public benefits (including cash) received by an alien's dependents, and other forms of medical assistance.[11]

Importantly, this guidance did not go through notice and comment rulemaking procedures that are required by the Administrative Procedure Act (APA), and the parallel rule that was proposed according to these legal requirements were never finalized. Nevertheless, adjudicators treated it as official, controlling policy for twenty years.[12]

Since 1999, few aliens have been denied admission to the United States on the basis of the public charge ground of inadmissibility, despite significant levels of public benefits use in the United States by foreign-born individuals. This is in part because the 1999 Interim Field Guidance suggested that public benefit use was generally irrelevant unless it involved substance-level cash benefits or long-term institutionalization at government expense.[13]

The submission of an Affidavit of Support under INA § 213A also lacked meaning. There are no reports of agencies seeking reimbursement of public benefits paid to a sponsored alien by the sponsor that the Center can find.

CIS research shows that the 1999 Interim Field Guidance ultimately failed at fulfilling Congress's goal to deny admission to aliens who were likely to become public charges and to otherwise discourage public benefits usage by aliens in the United States. In 2018, the year DHS issued a NPRM to replace the policy created by the 1999 Interim Field Guidance, CIS's analysis of U.S. Census Bureau data showed that not only did non-native households receive public benefits at high rates, but that these households were more likely to receive public benefits than households headed by native-born individuals.[14]

In 2019, under the first Trump administration, DHS promulgated its first-ever regulation to define the term "public charge" and provide guidance to immigration officers regarding how to apply the statute.[15] Compared to the 1999 interim field guidance, this standard expanded the definition of the term "public charge" by requiring immigration officers to consider an alien's receipt of a wider range of non-cash benefits. The regulation also gave guidance on how officers should weigh consideration of the mandatory factors required by statute.[16] This rule was challenged in court and was ultimately withdrawn by the Biden administration in 2021.[17]

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[11] *Id*.
[12] *See* 83 Fed. Reg. 51114, 51133 (Oct. 10, 2018).
[13] *See* 64 Fed. Reg. 28689 (May 26, 1999).
[14] Camarota, Steve, Zeigler, Karen, Center for Immigration Studies, Report: *63% of Noncitizen Households Access Welfare Programs, Compared to 35% of Households* (Dec. 2018).
[15] *See* 84 Fed. Reg. 41292 (Aug. 14, 2019).
[16] *Id*.
[17] *See* 86 Fed. Reg. 14221 (Mar. 15, 2021).

In 2022, the Biden administration issued its own public charge rule. This rule largely codified the policy created by 1999 Interim Field Guidance into regulation and revived the "primarily dependent" standard that permitted some public benefits use by aliens subject to the ground. Notably, this rule prohibited officers from considering public benefits used by an alien's dependents or receipt of any non-cash benefits when making a public charge determination.[18]

On September 4, 2025, U.S. Citizenship and Immigration Services issued a memorandum, titled *Reaffirming Guidance on Public Charge Inadmissibility Determinations*, that directed USICS officers to strictly adhere to the INA when making inadmissibility determinations, including under the public charge ground. Specifically, the memorandum directed officers to apply a "totality of the circumstances" standard when considering whether an alien is likely to become a public charge.[19] The memorandum clarified that, "No one factor, other than the lack of a sufficient Affidavit of Support Under Section 213A of the INA, if required, can be the sole criterion for determining if an alien is likely at any time to become a public charge."[20] This guidance will likely remain in effect if DHS finalizes this rule as it was proposed.

CIS research shows that households led by foreign-born individuals not only receive public benefits at high rates, but that they are even more likely than U.S.-born households to rely on public assistance to meet their needs. CIS's analysis of the U.S. Census Bureau's 2022 Survey of Income and Program Participation (SIPP) data indicates that 54 percent of households headed by immigrants (naturalized citizens, legal residents, and illegal immigrants[21]) used one or more major welfare program.[22] The rate rises to 59 percent if you consider only non-citizen households (e.g. green card holders and illegal immigrants). This compares to 39 percent for U.S.-born households.[23]

This policy failure has come at great expense to U.S. taxpayers.[24] Compared to households headed by the U.S.-born, immigrant-headed households have especially high use of food

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[18] *See* 87 Fed. Reg. 55472 (Sept. 9, 2022).
[19] U.S. Citizenship and Immigr. Servs., PM-602-0190, *Reaffirming Guidance on Public Charge Inadmissibility Determinations* (Sept. 4. 2025).
[20] *Id*. at 4.
[21] Illegal immigrants can receive welfare on behalf of U.S.-born children, and illegal immigrant children can receive school lunch/breakfast and WIC directly. A number of states provide Medicaid to some illegal adults and children, and a few provide SNAP. Several million illegal immigrants also have work authorization (e.g. DACA, TPS, and some asylum applicants) allowing receipt of the EITC.
[22] No one program explains the higher overall use of welfare by immigrants. For example, excluding the extensively used but less budgetary costly school lunch/breakfast program, along with the WIC nutrition program, still shows 46 percent of all immigrant households and 33 percent of U.S.-born households use at least one of the remaining programs.
[23] Camarota, Steven, Zeigler, Karen, Center for Immigration Studies, Report: *Welfare Use By Immigrants and the U.S.-Born, Comparing program use by the foreign- and U.S.-born-headed households* (Dec. 2023).
[24] The Congressional Research Service reported that the federal government spent more than $817 billion in 2020 on the major welfare programs examined in CIS's report. *See* "Federal Spending on Benefits and Services for People

programs (36 percent vs. 25 percent for the U.S.-born), Medicaid (37 percent vs. 25 percent for the U.S.-born), and the Earned Income Tax Credit (16 percent vs. 12 percent for the U.S.-born).[25]

DHS issued this NPRM to remove the regulatory provisions in the 2022 final rule apart from certain public charge bond provisions. DHS says repeal of these provisions is necessary to "pave the way for DHS to, in the future, formulate appropriate policy and interpretive tools that will guide DHS officers in making individualized, fact-specific public charge inadmissibility determinations, based on a totality of the alien's circumstances, that are consistent with the statute and congressional intent, and comply with past precent."[26] Moreover, with this rule, DHS proposes to "move away from a bright line primary dependence standard."[27]

This proposed rule does not revise U.S. Department of State or U.S. Department of Justice standards or processes related to public charge inadmissibility determinations. Further, this rule does not propose to interpret or change DHS's application of the public charge ground of deportability at INA § 237(a)(5).

DHS stated that it "welcomes feedback and recommendations on what to include in future policy and interpretive tools on public charge inadmissibility."[28] While CIS generally agrees with DHS approach to "move away from a bright line primary dependence standard"[29] and implement a totality of the circumstances approach that allows officers to consider all relevant information, CIS disagrees with the Department's decision to omit language clarifying this standard and minimum adjudicatory requirements in regulation. Accordingly, CIS strongly recommends that DHS:

1) Codify its "totality of the circumstances" standard into regulation;
2) Add regulatory language that requires immigration officers to weigh education level and income factors more heavily in their "totality of the circumstances" determination, as these factors are the most predictive of an alien's likelihood to become a public charge;
3) Add regulatory language that requires immigration officers to consider receipt of public benefits when making a public charge determination, including receipt of public benefits by the alien's dependents;

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with Low Income: FY2008-FY2020", Congressional Research Service, December, 2021. In addition, state governments spend more than $200 billion annually on Medicaid alone.

[25] Camarota, Steven, Ziegler, Karen, Center for Immigration Studies, Report: *Welfare Use By Immigrants and the U.S.-Born, Comparing program use by the foreign- and U.S.-born-headed households* (Dec. 2023).

[26] 90 Fed. Reg. 52168 (Nov. 19, 2025).

[27] *Id*.

[28] *Id*.

[29] *Id*.

4) Define "public benefits" for the purposes of public charge inadmissibility determinations to include all means-tested, anti-poverty programs administered by federal, state, or local governments;
5) Repeal 8 C.F.R.§ 212.22(a)(2), which requires immigration officers to consider receipt of an Affidavit of Support under INA § 213A favorably in a public charge determination;
6) Repeal 8 C.F.R. § 212.22(d), which prohibits immigration officers from considering receipt of public benefits by an alien when that alien was in an immigration category that is exempt from the public charge ground of inadmissibility; and
7) Amend its National Environmental Policy Act (NEPA) procedures to add an appropriate categorical exclusion to cover rules, like this NPRM, that are not expected to increase immigration to the United States.

CIS believes these changes will provide clarity for the public and immigration officers with respect to how DHS would fulfill its statutory duty to assess public charge admissibility, consistently with congressional intent.

II. DHS Should Maintain the "Totality of the Circumstances" Standard in Regulation.

CIS supports DHS's decision to repeal the portions of 8 C.F.R. § 212.22 that restrict consideration of public benefits to only cash assistance for income maintenance or long-term institutionalization at government expense and to, in its place to implement a forward-looking totality of the circumstances standard. CIS, however, strongly recommends that DHS maintain regulatory language that expressly authorizing immigration officers to consider all relevant information when determining whether an applicant is "likely to become a public charge." Doing so strengthens legal defensibility, improves program integrity, ensures uniformity, and satisfies core administrative-law principles.

The totality of the circumstances approach is consistent with case law on the public charge inadmissibility ground. No one factor alone is determinative of whether an alien is "likely to become a public charge," and immigration officers should be authorized to consider weigh any relevant information when making such determination.[30] As the BIA articulated in *Matter of Perez*, "The determination of whether an alien is likely to become a public charge … is a prediction based upon the totality of the alien's circumstances at the time he or she applies for an immigrant visa or admission to the United States."[31]

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[30] *See Matter of Martinez-Lopez,* 10 I&N Dec. 409 (Att'y Gen. 1964), *Matter of Harutunian* 14 I&N Dec. 583 (Reg'l Comm'r 1974), *Matter of Perez,* 15 I&N Dec. 136 (BIA 1974), *Matter of Vindman* 16 I&N Dec. 131 (Reg'l Comm'r 1977), and *Matter of A—,* 19 I&N Dec. 867 (Comm'r 1988).
[31] *Matter of Perez* at 137 (BIA 1974).

CIS strongly suggests replacing 8 C.F.R. § 212.22 with language that authorizes immigration officers, explicitly, to consider all relevant information when applying the totality of the circumstances standard. This kind of determination involves weighing all the positive and negative considerations related to the mandatory factors (an alien's age; health; family status; assets, resources, and financial status; education and skills) as well as any other factor or circumstance that the immigration officer determines may warrant consideration in the public charge inadmissibility determination. If the negative factors outweigh the positive factors, then the alien would be found to be inadmissible as likely to become a public charge; if the positive factors outweigh the negative factors, then the alien would not be found inadmissible as likely to become a public charge.[32]

A regulation requiring adjudicators to consider all relevant information when making a totality of the circumstances determination more strongly guards against arbitrary or inconsistent adjudications by eliminating ad hoc evidentiary practices across field offices or individual officers. Inclusion of express authority in regulation will also strengthen program integrity by reducing the risk that decisions are made by false limitations inferred from silence in the statute. It also will provide more predictable standards and manage expectations for applicants, which as a result, may reduce the need for adjudicators to issue requests for evidence (RFEs) or notices of intent to deny (NOIDs), ultimately reducing administrative burdens.

III. DHS Should Amend This NPRM to Add Language that Requires Immigration Officers to Consider and Weigh Education Level and Income Factors Most Heavily in a Totality of the Circumstances Determination Because They Are Among the Most Predictive Factors of an Alien's "Likelihood to Become a Public Charge."

CIS strongly recommends that DHS add regulatory language that requires immigration officers, while engaging in a totality of the circumstances analysis, to give the most weight to an alien's education and income levels when making a public charge inadmissibility determination. As explained above, both education and financial status (which encompasses income) are factors that statute requires adjudicators, "at minimum," to analyze when making a public charge inadmissibility determination.[33] CIS research shows that these two factors are most predictive of whether an alien will become a public charge.

An alien's education level and income must be central components to a totality of the circumstances analysis under INA § 212(a)(4) because they are both empirically and statistically tied to economic self-sufficiency. Income is the most immediate indicator of whether an

[32] *Id.*
[33] INA § 212(a)(4)(B)

individual can meet subsistence requirements through private means. Public benefits systems use income thresholds and means tests precisely because income reliably signals an individual's ability to pay for food, housing, medical care, and other essentials. Moreover, nothing in case precedent suggests that immigration officers must give all factors equal weight.

The table below shows the rate of welfare use by nativity and citizenship status, broken down by poverty ratio. CIS analysis of the 2024 SIPP shows that the higher a household's income, the less likely that they will be enrolled in a welfare program. This is true for households of headed by all individuals of all nativity and citizenship categories (data for native, immigrant, and non-citizen headed households are shown below). These trends also remain when considering welfare use by households generally or welfare use by nuclear family households.[34]

Welfare Use by Nativity and Citizenship by Poverty Ratios

All Households

	Native Headed Households				All Immigrant Headed Households				Non-citizen Headed Households Only			
	<100 of Poverty Threshold	<250% of Poverty Threshold	≥250% of Poverty Threshold	≥400% of Poverty Threshold	<100 of Poverty Threshold	<250% of Poverty Threshold	≥250% of Poverty Threshold	≥400% of Poverty Threshold	<100 of Poverty Threshold	<250% of Poverty Threshold	≥250% of Poverty Threshold	≥400% of Poverty Threshold
Any Welfare	72.5%	60.5%	26.1%	20.1%	76.5%	75.2%**	38.0%**	29.5%**	77.6%	81.2%**	39.2%**	26.4%**
Any Welfare (excluding EITC)	70.4%	57.4%	23.6%	18.1%	71.4%	71.0%**	34.9%**	26.8%**	70.0%	75.4%**	35.6%**	22.9%*
Cash	35.6%	29.3%	8.6%	5.7%	34.3%	32.6%*	13.0%**	9.5%**	33.6%	31.3%	10.7%	8.2%
Cash (excluding EITC)	22.4%	13.8%	2.8%	1.7%	16.5%**	12.6%	4.1%**	2.7%*	8.9%**	6.2%**	2.5%	1.9%
EITC	15.3%	18.0%	6.3%	4.2%	20.9%**	23.1%**	9.8%**	7.5%**	27.9%**	26.8%**	8.8%*	7.0%*
SSI	18.6%	11.9%	2.4%	1.5%	13.8%**	10.9%	3.6%**	2.3%	4.2%**	3.9%**	2.0%	1.1%
Tanf	3.3%	1.5%	.2%	.1%	1.4%**	1.0%	.3%	0.4%	2.6%	1.4%	0.5%	0.8%
Food	53.9%	40.3%	12.8%	9.7%	57.3%	54.9%**	21.5%**	15.9%**	59.3%	62.7%**	23.6%**	15.7%**
School Lunch and/or Breakfast	16.8%	16.5%	8.2%	7.0%	30.4%**	34.3%**	16.2%**	11.8%**	47.2%**	50.7%**	19.0%**	12.3%**
WIC	6.2%	4.2%	1.3%	.4%	14.2%**	12.1%**	3.6%**	1.9%**	19.9%**	17.7%**	5.1%**	4.3%**
SNAP	48.0%	30.7%	4.9%	3.0%	43.9%	33.1%	6.6%**	3.7%	37.6%**	29.5%	5.5%	1.7%
Medicaid	61.6%	48.1%	16.1%	11.3%	62.4%	60.5%**	25.6%**	17.2%**	60.5%	66.0%**	27.7%**	14.2%
Housing	19.1%	11.0%	.8%	.3%	15.2%**	10.7%	1.9%**	1.2%**	6.5%**	6.5%**	2.0%*	1.6%*
Avg. Number of Programs (b)	2.6	2.4	1.5	1.4	2.7	2.5	1.8	1.6	2.7	2.5	1.8	1.6
Share Using 3 or More Programs (b)	52.7%	42.9%	13.7%	8.8%	53.6%	46.6%	19.9%**	11.1%	52.8%	47.7%	20.8%**	12.0%
Weighted N	12,273,595	37,208,175	77,662,116	50,986,498	2,999,166	7,875,416	12,004,739	7,562,887	1,381,644	3,723,363	4,371,582	2,607,689

Nuclear Family Households Onlya

	Native Headed Households				All Immigrant Headed Households				Non-citizen Headed Households Only			
	<100 of poverty threshold	<250% of poverty threshold	≥250% of poverty threshold	≥400% of poverty threshold	<100 of poverty threshold	<250% of poverty threshold	≥250% of poverty threshold	≥400% of poverty threshold	<100 of poverty threshold	<250% of poverty threshold	≥250% of poverty threshold	≥400% of poverty threshold
Any Welfare	70.9%	57.0%	21.9%	16.5%	76.1%**	73.1%**	31.4%**	24.4%**	77.3%**	80.0%**	32.8%**	22.9%**
Any Welfare (excluding EITC)	68.5%	53.7%	19.6%	14.8%	72.0%	69.4%**	28.4%**	21.9%**	72.1%	75.8%**	29.1%**	19.5%**
Cash	34.4%	26.7%	6.6%	4.1%	34.3%	31.5%**	9.3%**	6.4%**	31.5%	30.2%	7.4%	5.6%
Cash (excluding EITC)	21.6%	11.9%	1.9%	1.1%	17.3%*	12.2%	2.2%	0.6%**	9.2%**	6.2%**	1.3%	0.4%**
EITC	14.2%	16.1%	5.0%	3.1%	19.6%**	21.7%**	7.3%**	5.9%**	24.7%**	25.2%**	6.3%	5.3%**
SSI	18.5%	10.5%	1.6%	1.0%	14.6%*	10.9%	2.0%	0.4%**	4.4%**	4.1%**	1.3%	0.4%**
Tanf	2.9%	1.0%	.1%	.0%	1.3%**	0.6%	0.1%	0.2%	3.1%	1.4%		
Food	52.2%	36.8%	10.5%	7.9%	57.6%*	52.9%**	17.2%**	13.5%**	61.8%**	63.2%**	17.6%**	13.2%**
School Lunch and/or Breakfast	13.8%	13.4%	7.5%	6.5%	30.8%**	32.2%**	13.4%**	10.9%**	51.8%**	52.1%**	13.5%**	9.6%**
WIC	5.4%	3.7%	1.0%	.2%	14.6%**	11.9%**	2.6%**	1.9%**	22.3%**	19.0%**	4.3%**	4.6%**
SNAP	46.9%	28.1%	3.2%	1.5%	44.7%	32.5%**	3.1%	1.1%	38.8%**	30.7%	1.8%**	
Medicaid	59.3%	44.3%	12.6%	8.4%	64.4%*	59.9%**	19.2%**	12.7%**	62.7%	67.6%**	21.1%**	11.8%**
Housing	19.8%	11.4%	.8%	.3%	16.1%*	11.6%	1.8%**	1.3%**	6.6%**	6.8%**	1.9%**	1.8%**
Avg. Number of Programs (b)	2.6	2.3	1.5	1.3	2.7	2.5	1.6	1.4	2.8	2.6	1.5	1.5
Share Using 3 or More Programs (b)	51.2%	40.4%	10.4%	5.4%	57.2%	48%**	13.9%**	6.7%	57.8%	51.7%**	11.6%	7.1%
Weighted N	10,907,188	32,442,878	69,056,637	45,965,938	2,656,495	6,697,098	9,904,068	6,592,508	1,159,534	3,090,678	3,634,889	2,354,926

Source: 2024 Survey of Income and Program Participation.
Statistical tests compare immigrant households to U.S.-born households with the same income level and structure.

Similarly, an alien's education level affects their likelihood to become a public charge because it impacts the individual's labor market opportunities, wage trajectories, and likelihood of

[34] Camarota, Steven, Zeigler, Karen, Center for Immigration Studies, Report: *Welfare Use By Immigrants and the U.S.-Born*, (forthcoming Jan. 2026).

sustained employment. Higher educational attainment is consistently associated with higher income, higher employment rates, and lower reliance on public benefits.[35]

According to CIS's analysis of the 2024 SIPP data, 77.6 percent of immigration households headed by individuals with less than a high school diploma receive some sort of means-tested antipoverty program (welfare). Data here shows that 33.4 percent of these households received cash assistance, 56.9 percent received food assistance, 66.3 percent were enrolled in Medicaid, and 9.3 percent received housing assistance at taxpayer expense. The average number of programs used by immigrant households headed by individuals without high school diplomas was 2.5, with 44.8 percent receiving benefits from three or more programs.[36]

These rates decreased as educational attainment increased. For example, 68.8 percent of immigrant households with high school diplomas received some sort of welfare, 55.6 percent of households headed by individuals who had obtained some college education received some sort of welfare. The rate of welfare usage dropped to 34.3 percent of immigrant households when headed by an individual with at least a bachelor's degree.[37]

These trends are not limited to immigrant-led households and remain true for households led by U.S.-born individuals, households led by non-citizen households, and naturalized citizen households. The table, below, shows the rate of welfare use by nativity and educational attainment.[38]

[35] *See, e.g.,* U.S. Bureau of Labor Statistics, *Career Outlook*, Education pays (May 2025); Dancy, Kim, Institute for Higher education Policy, *Higher Education's Economic Benefits to Communities* (Oct. 2025); National Center for Education Statistics, *Annual Earnings by Educational Attainment* (May 2024).
[36] Camarota, Steven, Zeigler, Karen, Center for Immigration Studies, Report: *Welfare Use By Immigrants and the U.S.-Born*, (forthcoming Jan. 2026).
[37] *Id*.
[38] *Id*.

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Welfare Use by Nativity and Education								
	Less than High School				High School Only			
	Native Households	All Immigrant Households	Non-citizen Households	Naturalized Citizen Households	Native Households	All Immigrant Households	Non-citizen Households	Naturalized Citizen Households
Any Welfare	67.1%	77.6%**	81.2%**	71.6%	47.9%	68.8%**	83.1%**	60.9%**
Any Welfare (excluding EITC)	65.8%	74.7%**	79.0%**	67.7%	45.0%	65.0%**	77.8%**	58.1%**
Cash	33.0%	33.4%	30.8%	37.8%	21.6%	25.5%*	23.3%	26.7%*
Cash (excluding EITC)	22.4%	14.7%**	7.9%**	25.9%	9.7%	8.2%	2.9%**	11.2%
EITC	12.9%	21.3%**	24.8%**	15.6%	13.8%	19.2%**	21.4%**	17.9%*
SSI	20.3%	12.4%**	5.5%**	23.6%	8.3%	7.7%	2.9%**	10.4%
Tanf	2.4%	1.7%	1.7%	1.7%	0.9%			
Food	47.0%	56.9%**	62.8%**	47.1%	29.2%	48.3%**	62.7%**	40.4%**
School Lunch and/or Breakfast	15.5%	40.1%**	53.0%**	18.9%	13.0%	34.1%**	53.6%**	23.4%**
WIC	4.9%	11.2%**	16.5%**	2.5%*	3.3%	10.7%**	16.2%**	7.7%**
SNAP	38.1%	30.7%**	29.8%**	32.2%	20.3%	24.0%*	20.4%	26.0%**
Medicaid	57.4%	66.3%**	70.2%**	59.7%	36.8%	52.2%**	67.7%**	43.8%**
Housing	12.1%	9.3%	5.2%**	16.1%	6.9%	6.1%	4.0%*	7.2%
Avg. Number of Programs (a)	2.5	2.5	2.6	2.4	2.2	2.2	2.2	2.3
Share Using 3 or More Programs (a)	46.9%	45.8%	48.3%	41.1%	34.7%	39.7%	37.5%	41.4%*
Weighted N	6,252,949	3,792,277	2,361,735	1,430,542	29,027,567	3,739,215	1,323,318	2,415,897
	Some College				Bachelor's or More			
	Native Households	All Immigrant Households	Non-citizen Households	Naturalized Citizen Households	Native Households	All Immigrant Households	Non-citizen Households	Naturalized Citizen Households
Any Welfare	41.6%	55.6%**	59.0%**	54.0%**	23.3%	34.3%**	32.3%**	35.4%**
Any Welfare (excluding EITC)	38.3%	49.9%**	52.1%**	48.8%**	21.0%	31.4%**	27.0%**	34.0%**
Cash	18.1%	23.9%**	23.1%	24.3%**	7.0%	12.1%**	10.4%**	13.1%**
Cash (excluding EITC)	6.3%	5.6%	4.3%	6.2%	2.2%	4.7%**	2.1%	6.3%**
EITC	13.1%	20.2%**	19.2%*	20.6%**	5.2%	8.7%**	9.2%**	8.4%**
SSI	5.0%	4.5%	2.4%*	5.6%	1.9%	4.3%**	1.2%	6.2%**
Tanf	.8%	0.4%	0.4%	0.5%	0.1%	0.4%	0.9%*	0.1%
Food	24.3%	34.7%**	39.7%**	32.3%**	11.5%	19.7%**	18.5%**	20.3%**
School Lunch and/or Breakfast	12.6%	21.6%**	29.2%**	17.9%**	7.6%	12.4%**	13.2%**	12.0%**
WIC	2.9%	8.8%**	9.6%**	8.4%**	0.7%	2.8%**	5.2%**	1.5%
SNAP	15.0%	17.2%	16.5%	17.6%	4.2%	8.3%**	5.4%	10.0%**
Medicaid	29.2%	39.4%**	40.6%**	38.8%**	13.7%	22.6%**	20.0%**	24.1%**
Housing	4.5%	5.2%	7.3%	4.2%	0.9%	3.5%**	2.3%*	4.2%**
Avg. Number of Programs (a)	2.0	2.1	2.2	2.1	1.5	1.8	1.8	1.9
Share Using 3 or More Programs (a)	30.2%	34.5%	40.2%*	31.5%	13.2%	20.9%**	18.5%	22.3%**
Weighted N	33,633,517	3,438,880	1,115,422	2,323,458	45,956,258	8,909,784	3,294,470	5,615,313

Source: 2024 Survey of Income and Program Participation.
* 90% significance level difference with U.S.-born.
** 95% significance level difference with U.S.-born.
(a) Only for those households using at least one welfare program.
Immigrant rate significantly higher than U.S.-born.
Immigrant rate significantly lower than U.S.-born.

Given the probative value of an alien's income and education level, CIS believes that immigration officers must give these factors the most weight when evaluating whether they are likely at any time to become a public charge. Assigning more weight to certain factors is also consistent with a totality of the circumstances approach, which allows immigration officers to weigh all relevant information.

IV. DHS Should Add Regulatory Language Requiring Immigration Officers to Consider Receipt of Public Benefits, Including Benefits Received by an Individual's Dependents, When Making a Public Charger Determination.

DHS should add regulatory language requiring immigration officers to consider an alien's receipt of public benefits, include public benefits received by the alien's dependents, when making a public charge determination. While CIS agrees that INA § 212(a)(4)(B) does not expressly require immigration officers to consider receipt of public benefits as part of the public charge inadmissibility determination, CIS believes that any public charge inadmissibility determination that excludes weighing current or past receipt of public benefits in a "totality of the circumstances" determination would be inadequate. Failure to consider receipt of public benefits by the alien or their dependents would lead to an incomplete and inaccurate assessment of whether an alien is "likely to become a public charge" because past or current receipt is predictive of likelihood of future receipt of public benefits.[39]

A. DHS regulations should require immigration officers to consider an alien's receipt of public benefits when making a public charge inadmissibility determination.

Public benefit programs are the principal mechanism through which the U.S. government provide economic support to individuals who cannot meet their own needs. The primary reason people seek public benefits is the inability to be self-sufficient. Consequently, there is a direct evidentiary and conceptual nexus, that is supported by legislative history, between an individual's past or present use of public benefits and the predictive judgment required in a public charge determination.[40] Predictive judgments in administrative law routinely rely on past and present behavior as the best available evidence of future likelihood.[41]

Actual public benefits usage (past or present usage) is among the most predictive indicators of future dependency on public resources.[42] When an applicant has relied on means-tested benefits or cash assistance to meet basic needs, that fact is highly relevant to evaluating their long-term financial stability and capacity to support themselves without public assistance. However, the

[39] INA § 212(a)(4).

[40] *See, e.g.,* 142 Cong. Rec. S4495 (May 1, 1996) (statement of Sen. Simon); 142 Cong. Rec. S4609 (May 2, 1996) (statement of Sen. Byrd) ("[S]elf-sufficiency will be the watchword for those coming to the United States. By making noncitizens ineligible for Federal means-tested programs, and by `deeming' a sponsor's income attributable to an immigrant, the American taxpayer will no longer be financially responsible for new arrivals.").

[41] For example, past compliance of environmental regulations inform assessments of future compliance risk in environmental permitting. Analysis of past and present behavior is also heavily considered in credit underwriting, insurance rating, and federal contracting.

[42] *See* 64 Fed. Reg. 28689, 28690 (May 26, 1999) ("The longer an alien has received cash income-maintenance benefits in the past and the greater the amount of benefits, the stronger the implication that the alien is likely to become a public charge.").

length of time that has elapsed since the alien has received benefits is also relevant. The longer the time since an alien received such benefits, the less the past receipt would be a predictor of future receipt.[43]

Additionally, requiring immigration officers to consider an alien's receipt of public benefits when making a public charge determination is consistent with case precedent's totality of the circumstance approach.[44] As DHS acknowledged in 2018, courts and administrative authorities have "tied public charge to the receipt of public benefits," without quantifying the level of public support or the type of support required.[45] For example, in *Matter of Martinez-Lopez*, the Attorney General indicated that facts showing that the "burden of supporting the alien likely to be cast on the public" would render an alien inadmissible under this ground. Moreover, in *Matter of Harutunian* and *Matter of Vindman*, the Board considered the respondents' capacities to overcome their dependence on public benefits when considering their admissibility.[46]

Finally, CIS believes that requiring immigration officers to consider an alien's past or current reliance on public benefits is consistent with Congress's intent in having aliens be self-sufficient and not reliant on the government for assistance to meet their needs.[47] Public benefits receipt is the primary way an individual is supported at public expense, and accordingly, such information should be weighed by an immigration officer when making a public charge determination.

B. DHS regulations should require immigration officers to consider public benefits received by an alien's dependents when making a public charge inadmissibility determination.

DHS should add regulatory language requiring immigration officers to consider all public benefits received by the alien's household, including by their dependents, regardless of their dependents' citizenship status. Public benefits received by an alien's children or qualifying relatives represent actual, ongoing economic need within the alien's household and directly impact the alien's finances. Even if the benefits are not formally issued to the principal applicant directly affect the alien's financial circumstances and demonstrate financial strain, a lack of disposable income, or resource insufficiency that requires public assistance.

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[43] *See Matter of Perez*, 15 I&N Dec. 136 (BIA 1974) ("The fact that an alien has been on welfare does not, by itself, establish that he or she is likely to become a public charge.").
[44] See *Matter of Perez* at 137 (BIA 1974) ("The determination of whether an alien is likely to become a public charge under section 212(a)(15) is a prediction based upon the totality of the alien's circumstances at the time he or she applies for an immigrant visa or admission to the United States.").
[45] *See* 83 Fed. Reg. 51114, 51157 (Oct. 10, 2018).
[46] *See Matter of Harutunian,* 14 I&N Dec. 583, 590 (Reg'l Comm'r 1974); *Matter of Vindman,* 16 I&N Dec. 131, 132 (Reg'l Comm'r 1977).
[47] *See* 8 U.S.C. § 1601.

It is ultimately an individual's responsibility to provide for their dependents. In addition to meeting other eligibility criteria, for an individual to claim a child or relative as a dependent, the child or relative must get more than half of their financial support from the individual.[48] As a result, an individual cannot claim to be self-sufficient if their dependents rely on public benefits. In a totality of the circumstances framework, this evidence is probative of the applicant's current dependence on public benefits as well as their future likelihood of needing similar public support.

Considering an alien's dependents' receipt of public benefits is also consistent with the statutory framework governing the public charge ground of inadmissibility. The INA requires immigration officers to consider an alien's "family status" as one of the mandatory public charge factors.[49] "Family status" traditionally encompasses the household size, whether the household has multiple sources of income, and the number of dependents supported by the alien.[50] Significant public benefits use by an alien's dependents strongly suggests that the alien cannot adequately support themselves without public assistance because providing financial support for dependents is primarily the responsibility of the principal applicant.

C. For purposes of the public charge ground of inadmissibility, DHS regulations should define "public benefits" to include only means-tested anti-poverty benefits administered by federal, state, or local governments.

To give this requirement meaning that is consistent with congressional intent, DHS should also define "public benefits" in regulation to only include any means-tested anti-poverty benefits administered by federal, state, or local governments. Means-tested anti-poverty programs provide aid (like food, housing, cash) only to people who have low income or assets and aim to reduce poverty. This would include programs like SNAP, Medicaid, and TANF, but exclude public benefits like social security benefits, most post-secondary education benefits like Pell grants, professional licenses and other forms of benefits that are not intended to alleviate poverty.

Limiting the definition to means-tested anti-poverty benefits will further Congress' express intent to ensure that aliens who are admitted "do not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations."[51] This definition, however, will not impede access to benefits that are earned, like social security, or are otherwise offered to promote the general public welfare, such as taxpayer-funded immunizations or tests during a pandemic.

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[48] 26 U.S.C. § 152(c)-(d).
[49] INA § 212(a)(4)(B)(i)(III).
[50] *See* 83 Fed. Reg. 51114, 51184-85 (Oct. 2018).
[51] 8 U.S.C. § 1601(2)(A).

CIS strongly believes the definition of public benefits (for the purpose of administering INA § 212(a)(4)) should also include tax credits, such as the earned income tax credit (EITC) or the cash payment portion of the additional child tax credit (ACTC). These are not trivial programs and provide similar benefits to other types of cash assistance, which are public benefits that adjudicators must consider under current public charge regulations. The federal government paid about $95 billion combined in cash payments from the EITC and the ACTC in fiscal year (FY) 2022.[52] A family receiving thousands of dollars annually from the federal government in the form of ACTC and EITC payments, while paying no federal income tax (which is the case with these two programs) should not be considered self-reliant for the purposes of the public charge ground of inadmissibility, given Congress' clear statement of national policy concerning welfare and immigration.[53]

ACTC and EITC payments are similar to other forms of cash assistance programs which have been included in public charge inadmissibility assessments for decades. Both the 1999 Interim Field Guidance, issued by the Clinton Administration, and the 2022 Public Charge final rule, issued by the Biden administration, required immigration officers to consider receipt of cash payments when evaluating whether an alien is likely to become a public charge.[54]

Moreover, CIS disagrees with commenters who argue that the availability of public benefits to some aliens as set forth in PRWORA prohibits DHS from considering their receipt when implementing the public charge statute. While PRWORA allows both qualified aliens and non-qualified aliens to receive certain federal and state public benefits, this does not impact immigration officers' ability to consider receipt of these benefits for purposes denying visa issuance, admission, or adjustment of status to aliens who are likely to become a public charge under INA § 212(a)(4).[55]

Congress did not exempt the receipt of such benefits for inadmissibility purposes.[56] As DHS explained in 2018:

> "Congress must have understood, however, that certain aliens who were unlikely to become public charges when seeking a visa, admission, or adjustment of status might thereafter reasonably find themselves in need of public benefits that, if obtained, would render them a public charge. Consequently, in PRWORA, Congress made limited allowances for that possibility. But Congress also did not correspondingly limit the

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[52] U.S. Internal Rev. Serv., *SOI Tax Stats- Individual Statistical Tables by size of adjusted gross income, All Returns: Selected Income and Tax Items. Published as: Individual Complete Report (Publication 1304)*, Table 1.1 (last updated Nov. 9, 2025).
[53] *See* 8 U.S.C. § 1601.
[54] *See* 64 Fed. Reg. 28689 (May 26, 1999); 87 Fed. Reg. 55472 (Sept. 9, 2022).
[55] *See* 8 U.S.C. §§ 1611, 1621, 1641.
[56] *See* INA § 212(a)(4).

> applicability of the public charge statute; if an alien subsequent to receiving public benefits wished to adjust status in order to remain in the United States permanently or left the United States and later wished to return, the public charge inadmissibility consideration (naturally including consideration of receipt of public benefits) would again come into play. In other words, although an alien may obtain public benefits for which he or she is eligible, the receipt of those benefits may be considered for future public charge inadmissibility determination purposes."[57]

If Congress wished to exempt certain forms of means-tested anti-poverty programs from impacting a public charge determination, it could have easily done so expressly in statute.

Finally, CIS disagrees with commenters that argue that DHS should not allow immigration officers to consider an alien's receipt of public benefits because it will have a "chilling effect" on aliens' willingness to enroll in benefit programs that they are otherwise eligible. Not only does this restriction conflict with the totality of circumstances approach that is supported by case precedent, but it undermines Congress' clear intent to discourage public benefits use by aliens, articulated in 8 U.S.C. § 1601(1)-(5), which call on the executive branch to "enact new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant."[58] Accordingly, no projected "chilling effect" should prevent DHS from promulgating regulations that require immigration officers to consider receipt of public benefits when making a public charge inadmissibility determination.

V. DHS Should Repeal 8 C.F.R. § 212.22(a)(2), Which Requires Immigration Officers to Favorably Consider a Sufficient Affidavit of Support Under INA § 213A.

CIS strongly agrees with DHS's proposal to repeal 8 C.F.R. § 212.22(a)(2), which requires immigration officers to favorably consider a sufficient affidavit of support under INA § 213A when making a public charge determination. Submission of an affidavit of support provides little probative evidence on whether an alien is likely to become a public charge, especially without adequate enforcement of affidavits of support. In its place, however, CIS recommends that DHS insert language that guides officer discretion in how to assign appropriate weight to the submission of an affidavit of support under INA § 213A.

An affidavit of support is a contract between the sponsor and the U.S. Government that imposes on the sponsor a legally enforceable obligation to support the alien. The sponsor must generally demonstrate that he or she is able to maintain the sponsored alien at an annual income of not less

[57] 83 Fed. Reg. 51114, 51133 (Oct. 2018).
[58] 8 U.S.C. § 1601(5).

than 125 percent of the FPG.[59] While sponsored aliens have successful sued sponsors for support under I-864 obligations, there appears to be no reported cases of U.S. Government agencies suing sponsors for reimbursement of benefits paid to sponsored aliens.

A sufficient affidavit of support does not guarantee that an alien will not receive public benefits. CIS agrees that adjudicators should consider the submission of an affidavit of support in a totality of the circumstances analysis. The weight assigned to the submission of an affidavit, however, should be adjusted according to the strength of the agreement. Adjudicators should consider the sponsor's annual income, assets, resources, financial status, relationship to the applicant, and the likelihood that the sponsor would actually provide financial support to the alien when determining how much weight, if any, the adjudicator should assign to the submission of the affidavit. Close family members would be most likely to financially support the alien, if necessary.

Moreover, CIS strongly recommends that DHS insert language limiting applicants from submitting affidavits of support from sponsors who have already submitted an affidavit of support for another alien if the sponsor would not have the financial resources to assist all applicants simultaneously. This may be indicative of the sponsor's willingness or ability to financially support the applicant.

Finally, DHS regulations should include language that clarifies that the presence of a sufficient affidavit of support does not eliminate the need to consider all other relevant factors, including but not limited to the factors required by statute, in the totality of the circumstances analysis. A sufficient affidavit support is sometimes a necessary requirement,[60] but never a sufficient requirement with respect to a determination that an applicant is not likely to become a public charge.[61]

VI. DHS Should Repeal 8 C.F.R. § 212.22(d), Which Prohibits Immigration Officers from Considering Public Benefits Received by An Alien While That Alien Was in An Immigration Status that is Exempt from the Public Charge Ground of Inadmissibility.

CIS supports DHS's proposal to repeal 8 C.F.R. § 212.22(d), which prohibits immigration officers from considering public benefits received by an alien while that alien was in an immigration status that is exempt from the public charge ground of inadmissibility. The restriction is inconsistent with the statutory framework, undermines the predictive purpose of the

[59] *See* INA § 213A.
[60] INA § 212(a)(4)(C)-(D).
[61] INA § 212(a)(4).

public-charge test, and removes from adjudicators probative evidence Congress intended them to weigh.

The INA directs immigration officers to make a holistic, forward-looking determination based on the "totality of the circumstances,"[62] not a subset artificially constrained factors created by regulatory carveouts. By categorically excluding evidence of public-benefit use during exempt statuses, DHS prevents adjudicators from assessing an applicant's demonstrated ability to maintain self-sufficiency when permitted to reside in the United States. Nothing in the INA suggests that Congress intended prior receipt of public benefits to become irrelevant merely because it occurred while the alien was exempt from public charge ground of inadmissibility at that time they received the benefits.

Moreover, as discussed above, simply because an alien may be eligible to receive public benefits does not make their receipt of public benefits irrelevant for purposes of the public charge ground of inadmissibility. Congress established a forward-looking, probability-based standard requiring adjudicators to assess whether an individual is "likely at any time to become a public charge," a determination that inherently relies on evidence of past and present behavior.[63] While federal and state programs may make certain classes of noncitizens legally eligible for benefits, that policy choice does not negate the predictive value of the individual's demonstrated reliance on public assistance. Receipt of public benefits is a concrete behavioral indicator of financial dependency and thus remains a highly probative factor in the totality of the circumstances assessment, regardless of whether the applicant was lawfully permitted to access those programs.

VII. DHS Should Add an Appropriate Categorical Exclusion to its NEPA Procedures to Strengthen Its Position that This Proposed Rule Does Not Require Environmental Analysis.

CIS strongly recommends that DHS add an appropriate categorial exclusion to its NEPA procedures specifically to cover rules that DHS does not expect to increase immigration to the United States. Doing so will strengthen DHS's position that this rule does not require an environmental analysis under NEPA.

NEPA requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions. Title I of NEPA contains a Declaration of National Environmental Policy. This policy requires the federal government to use all practicable means to create and maintain conditions under which man and nature can exist in productive harmony. Section 102 in Title I of the Act requires federal agencies to incorporate environmental considerations in their

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[62] *See Matter of Perez*, 15 I&N Dec. 136, 137 (BIA 1974).
[63] *See Matter of A-*, 19 I&N Dec. 867, 869 (Comm'r 1988) ("Even though the test is prospective," INS "considered evidence of receipt of prior public assistance as a factor in making public charge determinations.").

planning and decision-making through a systematic interdisciplinary approach. Specifically, all federal agencies are to prepare detailed statements assessing the environmental impact of and alternatives to major federal actions significantly affecting the environment.[64]

These statements are commonly referred to as Environmental Impact Statements (EIS) and Environmental Assessments (EA). The EA is conducted to determine whether an EIS is needed, if the agency determines that the proposed action will not have a significant impact on the environment, it may issue a Finding of No Significant Impact ("FONSI").[65]

Agencies do not have to conduct an EA or EIS for types of actions that they have found, through prior experience, are of a category that can be expected not to cause significant impacts. In such cases, agencies may cite a "categorical exclusion" instead.[66]

To invoke such a categorical exclusion, agencies adopt NEPA procedures which direct them how to implement NEPA, using the guidance of the Council for Environmental Quality, and these procedures include categorical exclusions.[67] The invocation of a categorical exclusion prior to adopting an action, such as a new regulation, is the agency's NEPA compliance.

DHS should note that, according to NEPA's framework, when DHS invokes a categorical exclusion, it is not doing an environmental analysis, rather it is recognizing a category of action that it has established already does not have environmental impacts. That is, the proper invocation of categorical exclusion is not a matter of deciding *ab initio*, without conducting an EA, that a given action does not have an environmental impact, and, therefore, using the reasoning that, because this action does not have an environmental impact, it must be categorically excluded, and then citing a categorical exclusion from its list of available options that must fit the bill.

In this NPRM, DHS's NEPA implementation process was lacking (though CIS agrees that this rule does not have a significant environmental impact). DHS stated that:

> This proposed rule is limited to removing existing regulatory criteria pertaining to public charge inadmissibility determinations. This proposed rule is strictly administrative and procedural and if finalized, would amend DHS's existing regulations to remove most of the provisions put into place by the 2022 Final Rule, however DHS officers would continue to make public charge inadmissibility determinations governed by existing law. DHS has reviewed this proposed rule and finds, if DHS were to issue a final rule

[64] 42 U.S.C. § 4332(C).
[65] *See* 40 C.F.R. §§ 1501.5, 1501.6.
[66] 40 C.F.R. §§ 1501.4(a)(2), 1508.1(d).
[67] *See* 40 C.F.R. §§ 1507.3, 1508.1(d).

> resulting from this NPRM, no significant impact on the environment, or any change in environmental effect would result from the amendments being proposed in this NPRM.
>
> Accordingly, DHS finds that this proposed rule's amendments to current regulations clearly fit within categorical exclusion A3 established in DHS's NEPA implementing procedures as an administrative change with no change in environmental effect, is not part of a larger Federal action, and does not present extraordinary circumstances that create the potential for a significant environmental effect.[68]

By stating that DHS has "reviewed this proposed rule" and determined that it has "no significant impact," DHS is, to some extent, implying it has conducted an EA, though, it has clearly not conducted an EA.[69] DHS's reasoning here is that it analyzed the rule, found it had no impacts, and therefore, it fits within categorical exclusion A3. This sequence has the proper process backwards. DHS stands on firmer ground by stating its conclusion first that the rule is "strictly administrative and procedural" before concluding that it fits within categorical exclusion A3, which covers "strictly administrative and procedural" rules.

The problem, however, is that DHS never defines in its NEPA procedures, what "strictly administrative and procedural" means. Furthermore, DHS has repeatedly cited this precise categorical exclusion and claimed rules were "strictly administrative and procedural" when those rules greatly increased immigration (which this rule does not).[70]

Immigration policies that increase population clearly have a significant impact that must be analyzed under NEPA. In fact, NEPA itself was explicitly concerned with population growth, the first concern mentioned in NEPA's "Congressional declaration of national environmental policy":

> The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive

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[68] 90 Fed. Reg. 52168, 52222 (Nov. 19, 2025).
[69] *Id*.
[70] *See, e.g.,* 89 Fed. Reg. 103054, 103193 (Dec. 18, 2024).

> harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.[71]

Therefore, DHS should never bypass all NEPA analysis by claiming that rules which greatly expand immigration are "strictly administrative and procedural." However, DHS has invoked this particular categorical exclusion for proposed rulemakings that expand immigration without any analysis, inappropriately in those cases. DHS's inability to use any reasoning that could not be applied to any rule adopted by an agency, including those that greatly expand the U.S. population, demonstrates its need to adopt an appropriate categorical exclusion.

Currently, in accordance with President Trump's Executive Order 14154, *Unleashing American Energy*, all agencies including DHS are adopting new NEPA procedures.[72] DHS, however, does not currently have any categorical exclusions that relate to immigration specifically nor has it ever analyzed the effects of immigration policy beyond the effects of infrastructure built to further its immigration enforcement efforts. DHS should use the opportunity of adopting new NEPA procedures to correct this error.

Rules which do not increase the population of the United States, like this rule, would clearly fit within a category of actions that actually do not have environmental impacts. Categorical exclusion A3, however, has repeatedly been invoked for actions that have had very significant effects on the environment, because it is so broad as to be meaningless, and therefore, would be vulnerable to a meaningful legal challenge. CIS therefore recommends that DHS strengthen the final version of this rule by adopting NEPA procedures that draw a distinction between rules that increase immigration (and therefore do have environmental impacts) and rules that do not (and where the invocation of such categorical exclusions are appropriate).[73]

VIII. Conclusion

While CIS agrees with DHS's proposal to move away from a "primary dependence" threshold and toward a more holistic totality of the circumstances framework, CIS strongly recommends that DHS formally articulate this standard and establish minimum adjudicatory requirements in regulation. The absence of clear regulatory criteria risks inconsistent adjudications, diminished transparency for the public, and uncertainty for immigration officers charged with implementing the statute. Accordingly, CIS strongly recommends that DHS:

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[71] 42 U.S. § 4331(a).

[72] *See* Memorandum for Heads of Federal Departments and Agencies, *Implementation of the National Environmental Policy Act*, from Katherine Scarlett, Feb. 19, 2025.

[73] *See, e.g.,* 90 Fed. Reg. 42070, 42014 (Aug. 28, 2025).

1. Codify its "totality of the circumstances" standard into regulation and affirmatively authorize immigration officers to consider all relevant information when making a public charge inadmissibility determination;
2. Add regulatory language requiring immigration officers to weigh education level and income factors heavily, given that these factors are among the strongest predictors of an alien's likelihood of becoming a public charge;
3. Add regulatory language requiring immigration officers to consider receipt of public benefits, including benefits received by an alien's dependents;
4. Define "public benefits" for purposes of public charge inadmissibility determinations to include all means-tested, anti-poverty programs administered by federal, state, or local governments;
5. Repeal 8 C.F.R. § 212.22(a)(2), which mandates favorable consideration of an Affidavit of Support under INA § 213A;
6. Repeal 8 C.F.R. § 212.22(d), which bars officers from considering receipt of public benefits during periods in which an alien held a status exempt from the public charge statute; and
7. Amend DHS's NEPA procedures to include an appropriate categorical exclusion for rules, such as this proposed rule, that are not expected to increase immigration to the United States.

CIS believes that adopting these recommendations would provide needed clarity for both the public and adjudicators, reinforce consistency across public charge determinations, and ensure that DHS fulfills its statutory duty in a manner that aligns with longstanding congressional intent.