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

Dear Ms. Deshommes:

Self-Help¹ and the Center for Responsible Lending strongly oppose the Department of Homeland Security’s proposed rule to drastically expand the criteria that will be considered to determine whether an immigrant is likely to become a public charge. Being deemed a public charge is of tremendous consequence for individuals and families, as it permits the government to deny someone admission to the United States or a change in status, including lawful permanent residence.

Self-Help is one of the nation’s largest nonprofit community development financial institutions. Since 1980, Self-Help has sought to create wealth-building opportunities for underserved communities to facilitate economic mobility. It has provided over \$7 billion in financing to 131,000 families, individuals and businesses underserved by traditional financial institutions. Through its credit union network, Self-Help’s two credit unions serve over 130,000 people in North Carolina, California, Chicago, Florida and Wisconsin and offers a full range of financial products and services. In addition, through its secondary market program, Self-Help backs home mortgages in 48 states and the District of Columbia. The Center for Responsible Lending (CRL) is a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help. Self-Help’s credit union members include thousands of immigrants who have both saved and borrowed hundreds of millions of dollars.

Self-Help and CRL particularly oppose the proposal to consider an immigrant’s credit score and credit history in determining public charge status. Self-Help and CRL are well-situated to attest

¹ “Self-Help” includes Self-Help Credit Union, a North Carolina-chartered, federally-insured credit union with 73,000 members served out of 29 branches in North Carolina, South Carolina and Florida with \$1 billion in assets; Self-Help Federal Credit Union, a federally-chartered and insured credit union with 74,000 members served out of 26 branches in California, Illinois and Wisconsin with \$1.1 billion in assets; and the charitable non-profit Center for Community Self-Help and affiliates with over \$650 million in assets.

to why an individual's credit score is an irrelevant and unfair metric to determine the likelihood that the individual would become a public charge. In addition, we oppose the proposed rule more broadly, as it significantly broadens the existing standards for evaluating whether someone would become a public charge. It also ignores the temporary effects of using some programs and the way immigrant families often build financial stability over time. Of most concern, this proposal would cause significant harm to immigrants and their families, particularly families that include both noncitizens and citizen children, causing more and deeper poverty, with profound consequences for families' wellbeing and long-term success. Additionally, we are alarmed by the public charge bond proposal; it is unworkable and would cause long-term financial hardship on immigrant families.

A. It is Illogical to Consider Credit Score and Credit History in Determining Whether an Immigrant Will Become a Public Charge

The proposed rule would analyze an immigrant's credit score as evidence of a strong or weak financial status, stating that a "good credit score" is a "positive factor that indicates a person is likely to be self-sufficient and support the household" and that a lower credit score or negative credit history "may indicate that a person's financial status is weak and that he or she may not be self-sufficient." Yet, the proposal makes conclusory statements without any supporting data. In fact, there is no evidence that credit scores and credit reports would have any bearing on whether someone will become a public charge. Credit scores are specifically designed to measure the likelihood that a borrower will become 90 days late on a credit obligation. A measure intended to look at a person's propensity to repay a specific loan product is irrelevant to a person's likelihood of becoming dependent on public assistance.

Beyond the lack of correlation between credit score and likelihood of becoming a public charge, the standard is too broad and ambiguous as proposed. DHS fails to provide the definition of what is a "good credit score." The agency also fails to identify the different types of credit scores currently in use and address how it would navigate this highly technical area. Credit scores serve different credit purposes and draw information from different sources—many financial institutions use raw credit history data to build their own scoring models for specific loan products. Further, credit scores are a composite that reflects much more detailed credit history. However, even this credit history can be incomplete. For example, many credit reporting companies and utilities only do negative reporting. Thus, consumers in general get the negative consequences of late payment when facing financial challenges but do not get a benefit of a history of on-time payment recorded in their credit history.

Furthermore, credit scores are biased against people who are new to credit and fail to reflect their likelihood of paying a debt. Credit scores are only partially based on a person's payment records. Sixty-five percent of a score is based on factors such as having low balances on credit cards compared to the credit limit; how many years a consumer has had credit; and having diverse credit types, including a mortgage. These factors disfavor *any consumer* who is new to credit, including immigrants and millennials. Even a segment of the senior population, who

already have assets and may have low levels of credit utilization, may have stale credit profiles and low credit scores.

The United States credit scoring system is unique; there is not comparable system or transferable way of evaluating likelihood of 90-day delinquency in credit of foreigners coming into the United States. Moreover, a Federal Reserve study found that immigrants' credit scores tend to be lower than what their actual repayment performance on loans turns out to be.² This is principally because immigrants often have not had enough time to build an extensive credit history in the United States.

Additionally, over half of the delinquencies on credit reports are for medical debt. These debts often end up in collections due to dysfunctions with insurance companies and the healthcare system, not because of an inability to pay. Medical debt impacts more than one in five consumers with a credit report.

Credit reports are also rife with errors. Although DHS claims it would not consider errors that have been verified by a credit agency, this is insufficient. Credit reports suffer from a huge rate of inaccuracy and credit bureaus are slow to process disputes and often do not satisfactorily address errors.³ It is not at all clear how a credit history dispute process, which can take months, would fit into the timeline of an evaluation of someone's immigration status.

B. Using Credit History and Credit Scores to Evaluate Immigrants Will Have a Disparate Impact on Immigrants of Color

Credit reports and scores reflect racial disparities resulting from centuries of discrimination in lending, employment, education, and housing.⁴ This discrimination has created a racial wealth gap that leaves communities of color more vulnerable to financial shocks. In 2016, white family wealth was seven times greater than African-American family wealth and five times greater than Latino family wealth.⁵ If current trends continue, it could take as long as 228 years for the

² Board of Governors of the Federal Reserve System, Report to Congress on Credit Scoring and its Effects on the Availability and Affordability of Credit (Aug. 2007), <https://www.federalreserve.gov/boarddocs/rptcongress/creditscore/creditscore.pdf>.

³ Chi Chi Wu, *Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in Their Credit Reports*, National Consumer Law Center (Jan. 2009), https://www.nclc.org/images/pdf/pr-reports/report-automated_injustice.pdf.

⁴ National Consumer Law Center, *Past Imperfect: How Credit Scores and Other Analytics "Bake In" and Perpetuate Past Discrimination* (May 2016), https://www.nclc.org/images/pdf/credit_discrimination/Past_Imperfect050616.pdf.

⁵ Nine Charts About Wealth Inequality in America, Urban Institute (Oct. 5, 2017), <http://apps.urban.org/features/wealth-inequality-charts/>.

average African-American family to reach the level of wealth white families own today.⁶ For the average Latino family, matching the wealth of white families could take 84 years.⁷

Research demonstrates that African-American and Latino households tend to have worse credit, on average, than white households. For example, a 2012 study by the Consumer Financial Protection Bureau examining credit scores for about 200,000 consumers found that the median FICO score for consumers in zip codes with a majority of people of color was in the 34th percentile, while it was in the 52nd percentile for zip codes that were predominantly white.⁸ By using credit reports and scores to determine an immigrant's likelihood of becoming a public charge, DHS would be using a factor that unfairly penalizes communities of color.

C. Self-Help's Lending Experience and Expertise Demonstrates that Borrowers with No Credit Score or a Lower Credit Score Can Succeed in Homeownership

Self-Help takes a broad array of factors into account in the underwriting process, including income and assets, but does not rely on credit score alone. In Self-Help's experience, based on over 35 years of making loans to borrowers with lower credit scores, including hundreds of immigrant families, a below average credit score is not a significant factor in an individual's ability to repay a loan and therefore succeed in homeownership. For example, a review of Self-Help's 2008 originations – loans originated just as the Great Recession hit communities – shows that charge-offs by FICO credit score category were fairly evenly distributed across credit profiles.⁹ The percentage of defaulting borrowers without a credit score and borrowers with a 720-759 credit score was the same.¹⁰ The charge-off percentages for borrowers in the 580-619 and 620-679 ranges was also very close to the percentage in the 720-759 range.

Additionally, over one-third of Self-Help's mortgage loans between 2008-2018 were to borrowers with thin credit profiles. In other words, the borrowers did not have enough trade lines to produce a credit score. This primarily includes immigrants, who may not utilize mainstream credit sources as frequently, as well as other borrowers with thin files. For Self-Help's seasoned loans between 2008-2012, the percentage of loans going to borrowers without a credit score that had losses associated with them was identical to loans with a 680-719 FICO score. The median FICO score in the United States is 660-720, depending on the scoring model used. These figures demonstrate that individuals with no credit score or a below average credit score can achieve homeownership in a sustainable and responsible manner. It also

⁶ Dedrick Asante-Muhammed, Chuck Collins, Josh Hoxie, and Emmanuel Nieves, *The Ever-Growing Gap: Without Change, African American and Latino Families Won't Match White Wealth for Centuries*, Institute for Policy Studies and Corporation for Enterprise Development (Aug. 2016), <http://www.ips-dc.org/report-ever-growing-gap/>.

⁷ *Id.*

⁸ Consumer Financial Protection Bureau, *Analysis of Differences Between Consumer- and Creditor-Purchased Credit Scores*, at 18 (Sept. 2012).

⁹ A "charge-off" is a debt that is deemed unlikely to be collected by the creditor. However, a charge-off does not necessarily mean that the entire debt is written off.

¹⁰ Loan delinquency is the failure to make loan payments when they are due; extended delinquency may result in a loan default.

demonstrates that it is illogical to equate credit score with likelihood of a person becoming a public charge. Indeed, the proposed rule acknowledges that non-cash assets which can be turned into cash, such as a home, may be viewed as a *favorable factor* in the public charge determination.

D. The Proposed Rule Places an Undue Hardship on Immigrant Families

Furthermore, Self-Help and CRL oppose the proposed rule more broadly, as it adds to a multitude of actions that are inappropriately creating a hostile environment for immigrants, including households that include noncitizens and citizen children. If the proposed rule is finalized, immigration officials could consider a much wider range of government programs in the public charge determination, including:

- Medicaid (with limited exceptions including Medicaid coverage of an "emergency medical condition," and certain disability services related to education);
- Supplemental Nutrition Assistance Program (SNAP);
- Medicare Part D Low Income Subsidy (assistance in purchasing medicine); and
- Federal Public Housing, Section 8 housing vouchers and Section 8 Project Based rental assistance.

The proposal places an undue hardship on families experiencing temporary setbacks and seeking to improve their circumstances. For instance, a family may be fearful to obtain food assistance, as this would be a negative factor in the families' ability to change their immigration status. The proposed rule ignores the historic pattern of immigrants starting out with low earnings and moving up substantially over time. It also ignores the role that benefits such as SNAP, Medicaid and housing assistance play in allowing people to work and in improving children's health, development, and earnings when they reach adulthood.

Additionally, one in four children in the United States – nearly 18 million children – has at least one immigrant parent.¹¹ The vast majority of these children – about 88% or 16 million – are United States citizens¹² and are therefore eligible for public benefits under the same eligibility standards as all other United States citizens.¹³ Despite citizen children's eligibility for benefits, widespread fear in the immigrant community has already resulted in parents removing children from programs. The rampant "chilling effect" that causes families to withdraw from benefits due to fear is explicitly acknowledged in the cost-benefit analysis of the proposal.

¹¹ Migration Policy Institute, Children in U.S. Immigrant Families 2016, <https://www.migrationpolicy.org/programs/data-hub/charts/children-immigrant-families>.

¹² Migration Policy Institute, Children in U.S. Immigrant Families 2016, <https://www.migrationpolicy.org/programs/data-hub/charts/children-immigrant-families>.

¹³ Michael Fix and Ron Haskins, Welfare Benefits for Non-citizens, Brookings Institute, (Feb. 2, 2002), <https://www.brookings.edu/research/welfare-benefits-for-non-citizens>.

E. Public Charge Bonds are Ill-Conceived and Damaging

Self-Help and CRL urge DHS to reject the use of public charge bonds as a means of preventing the use of government assistance. The use of public charge bonds is impractical and would place an impossible burden on immigrant families and potentially exacerbate financial instability for families trying to earn a living. First, there is no evidence demonstrating that public charge bonds will prevent people from becoming dependent on government assistance. Furthermore, monetary bonds in the criminal pretrial context have been exposed to be inefficient and unfair, lacking evidence that money motivates people to appear for court.¹⁴ Moreover, public charge bonds would necessarily have a disparate impact on communities of color, including United States citizens, similar to financially-based pretrial detention systems.¹⁵

Additionally, studies show that bonds cause long-term hardship and increase the likelihood of financial instability.¹⁶ Public charge bonds are even more likely to cause long-term hardship, given the indefinite life of the bond.¹⁷ Families will face years of annual fees, non-refundable premiums, and liens on the homes and cars put up as collateral charged by for-profit surety companies and their agents.¹⁸ Moreover, the indefinite term and extremely broad and vague conditions governing breach only heightens the risk of exploitation by for-profit companies managing public charge bonds. Impoverishing immigrants and their families will make them more, not less, likely to need assistance.

¹⁴ See Denise L. Gilman, *To Loose the Bonds: The Deceptive Promise of Freedom from Pretrial Immigration Detention*, 92 Ind. L.J. 157, 198-205 (2016).

¹⁵ See *Selling Off Our Freedom: How insurance companies have taken over our bail system* (May 2017), https://d11gn0ip9m46ig.cloudfront.net/images/059_Bail_Report.pdf; *The High Cost of Bail: How Maryland's Reliance on Money Bail Jails the Poor and Costs the Community Millions* (Nov. 2016) at 12-13, <http://www.opd.state.md.us/Portals/0/Downloads/High%20Cost%20of%20Bail.pdf>, and Vera Institute of Justice; *Past Due: Examining the costs and consequences of charging for justice in New Orleans* (Jan. 2017), <https://www.vera.org/publications/past-due-costs-consequences-charging-for-justice-new-orleans>.

¹⁶ See, e.g., Color of Change and ACLU, *Selling Off Our Freedom: How insurance companies have taken over our bail system* (May 2017), https://d11gn0ip9m46ig.cloudfront.net/images/059_Bail_Report.pdf; see also Pretrial Justice Institute, *Pretrial Justice: What Does It Cost?* (Jan. 2017), <https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=4c666992-0b1b-632a-13cb-b4ddc66fadcd&forceDialog=0>.

¹⁷ Both leaked drafts of the proposed regulation revise the current regulations to eliminate the automatic cancellation of the public charge bond upon naturalization, death, or permanent departure. See 8 C.F.R. § 103.6(c)(1). DHS seeks to impose an affirmative obligation on the immigrant or obligor to request the cancellation of the bond upon naturalization, death, or permanent departure. Most legal permanent residents are not eligible to naturalize until at least five years after becoming a legal permanent resident, and many more are unable to naturalize for longer than that for a variety of reasons.

¹⁸ See, e.g., *Selling Off Our Freedom*, *supra* n.15; *High Cost of Bail*, *supra* n.15; *Past Due*, *supra* n.15; UCLA School of Law Criminal Justice Reform Clinic, *The Devil in the Details: Bail Bond Contracts in California* (May 2017), https://static.prisonpolicy.org/scans/UCLA_Devil%20in%20the%20Details.pdf; see also Brooklyn Community Bail Fund, *License & Registration, Please...An examination of the practices and operations of the commercial bail bond industry in New York City*, (Jun. 2017), at 2, https://static1.squarespace.com/static/5824a5aa579fb35e65295211/t/594c39758419c243fdb27cad/1498167672801/NYCBailBondReport_ExecSummary.pdf.

F. Conclusion

The proposed rule is wrong to use credit scores and reports as a factor in judging the possibility of public charge status. Furthermore, the overall proposed rule is punitive to immigrant families and will cause increased poverty and hardship. We urge DHS to withdraw its proposed public charge rule because it broadly undermines the financial and physical health of our communities.

Respectfully submitted,

Self-Help Credit Union
Self-Help Federal Credit Union
Center for Responsible Lending