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The Wrong Tool for the Wrong Purpose: Why the Credit Scoring Provision in the Immigration Public Charge Proposal Is Illogical and Ill-Advised

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On October 10, 2018, the Department of Homeland Security (DHS) issued a proposed rule that would make it much harder for immigrants to obtain visas (including visas to study or work in the U.S.), to extend their visas, or to become lawful permanent residents ("green card holders"). The proposal greatly expands what will be considered in determining whether an immigrant would be considered a potential "public charge" and thus should be denied the visa or green card. The proposal marks a radically punitive departure from current policy for a number of reasons. For more about this proposal, see the website of the Protecting Immigrant Families campaign.

One of the factors that DHS proposes to use in the expanded public charge analysis is the immigrant's credit report and credit score. This particular element of the proposed rule is ill-advised and illogical.

Credit Reports and Credit Scores Are Not Designed for Immigration Purposes

Neither credit reports nor credit scores are designed to provide information on whether a consumer is likely to rely on public benefits. As the Consumer Financial Protection Bureau has explained, credit scores are specifically designed to measure the likelihood that a borrower will become 90 days late on a credit obligation. They are not designed for other purposes.

Credit scores are only partly based on his/her payment records. While 35% of a score is based on on-time payments, the rest of the 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 a good "mix" of credit, including a mortgage. These are factors that disfavor consumers who are new to credit, such as young people *and immigrants*.

Credit reports and scores do not contain any information about the consumer's earnings or other income. A consumer could have a substantial income and yet have a low credit score or negative marks on a credit report. Contrary to DHS's assertion, credit reports do not include arrests or convictions, and recent changes by the credit bureaus have removed the vast majority of lawsuit records.

Using credit reports and credit scores is also a terrible idea given that more than half of the negative marks for debt collection on credit reports are for medical debts -- one in five consumers with a credit report is impacted by this. Often these debts are not caused by inability to pay -- the median medical debt is $207. Instead, medical bills often end up in collection because of the dysfunctional healthcare system, which lead to delays and confusion. In turn, this dysfunction results in bills being sent to debt collectors who often automatically report the debts to credit bureaus.

Credit Reports and Scores Are Not a Proxy for Character

Credit reports and scores often do not reflect an individual's character or responsibility. A bad credit record is frequently the result of circumstances beyond a consumer's control, such as illness or job loss, from which the consumer may subsequently recover. Once the consumer has recovered from the event, there is no reason to assume on the basis of past delinquencies that they will be a public charge. And as discussed below, a consumer can have a low credit score simply because of not making use of credit.

Immigrants Are Unlikely to Have Credit Histories and Credit Scores, or Their Scores are Artificially Low

DHS's proposal will be unworkable for many immigrants because they may not even have a credit history or score for DHS to consider. The Consumer Financial Protection Bureau estimates that 26 million consumers in this country do not have a credit history, and that credit invisibility impacts recent immigrants.

Even when immigrants within the United States do have credit histories, their credit scores are actually artificially low. A Federal Reserve study found that immigrants' credit scores tend to be lower than what their actual repayment behavior on loans turns out to be, simply because they have not had enough time to build an extensive credit history in the United States.

Credit Reports Suffer from Unacceptable Rates of Inaccuracy, Especially for a Purpose as Important as Determining Immigration Status

The Federal Trade Commission, which conducted the definitive study on credit reporting errors, found that found that about 21% of consumers had verified errors in their credit reports, 13% had errors that affected their credit scores, and 5% had serious errors that would cause them to be denied or pay more for credit. These error levels are way too high for credit reports and scores to be used for a purpose as critical as immigration status. Denying 21% or even 5% of immigrants a visa or green card because of erroneous information is unconscionable.

DHS states it would not consider any error on a credit report, *but only if it has been verified by the credit bureau*. This does not adequately address the issue of excessively high errors in credit reports. Credit bureaus are notorious for obstinately refusing to correct errors after repeated disputes by consumers, even in the face of obvious evidence that information is inaccurate. And many immigrants will face significant barriers in knowledge, language, and resources that will prevent them from even submitting a dispute. They may not even be aware of what a credit report is, the contents of their credit report, or how to access their reports. Credit reports are not available in languages other than English, posing another barrier.

Use of Credit Scores Will Have a Disparate Impact on Immigrants of Color

Credit reports and scores reflect stunning racial disparities. Study after study has found that African American and Latino communities have lower credit scores as a group than whites (and Asians, when the data is available). A list of these studies is available in NCLC's policy brief *Past Imperfect: How Credit Scores and Other Analytics "Bake In" and Perpetuate Past Discrimination, May, 2016*. If DHS uses credit reports and scores, it will be making immigration decisions based on a factor that unequivocally and unfairly disfavor communities of color.