October 22, 2021

Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

Re: Comments on DHS Notice of Proposed Rulemaking on Public Charge Ground of Inadmissibility (DHS Docket No. USCIS–2021–0013)

Dear Ms. Deshommes,

The National Consumer Law Center (on behalf of its low-income clients),[1] Texas RioGrande Legal Aid,[2] Consumer Action,[3] and Americans for Financial Reform Education Fund[4] file this comment in response to the Department of Homeland Security's advanced notice of proposed rulemaking, DHS Docket No. USCIS-2021-0013, Public Charge Ground of Inadmissibility. The advanced notice seeks input as DHS begins the process of formulating a rule regarding the determination of whether an immigrant is likely to become a "public charge." The public charge determination will be relevant to immigrants seeking admission to the United States or an adjustment of status.

Our comments focus on the following questions posed by DHS in the advance notice of proposed rulemaking:

[1] Since 1969, the **National Consumer Center** (NCLC) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law publications; and training and advice for advocates. NCLC publishes treatises on debt collection, credit reporting, credit discrimination, and abusive lending practices, and has issued reports on the policies needed to protect consumers from the improper use of, and inaccuracies contained in, consumer reports.

[2] **Texas RioGrande Legal Aid** ("TRLA") is the nation's third largest legal aid provider and the largest in Texas. TRLA provides free civil legal services to residents in 68 Southwest Texas Counties and serves about 23,000 clients each year. TRLA's Survivor Centered Economic Advocacy Team helps victims of sexual assault, family violence, and human trafficking deal with the economic difficulties that arise because of abuse and crime. Attorneys on the team help victims facing problems related to predatory lending, debt collection, credit reporting, denial of housing or employment because of background checks, federal tax liability, foreclosure, and a general lack of access to credit.

[3] **Consumer Action** has been a champion of underrepresented consumers since 1971. A national, nonprofit 501(c)3 organization, Consumer Action focuses on financial education that empowers low to moderate income and limited-English-speaking consumers to financially prosper. It also advocates for consumers in the media and before lawmakers and regulators to advance consumer rights and promote industry-wide change particularly in the fields of credit, banking, housing, privacy, insurance and telecommunications. www.consumer-action.org.

[4] **Americans for Financial Reform Education Fund** (AFREF) is a nonpartisan, nonprofit coalition of more than 200 civil rights, community-based, consumer, labor, small business, investor, faith-based, civic groups, and individual experts. We fight for a fair and just financial system that contributes to shared prosperity for all families and communities.

3. How should DHS define financial status for the purposes of a public charge inadmissibility determination?

4. How should DHS address the challenges faced by those not served by a bank or similar financial institution in demonstrating their assets, resources, and financial status?

5. Should DHS consider an applicant's financial obligations (such as child or spousal support), debt, or bankruptcy in a public charge inadmissibility determination?

7. What data sources and criteria should DHS use to assess the sufficiency of the applicant's assets, resources, and financial status?

8. Should DHS consider the varied economic opportunities afforded to applicants to avoid unintended disparate impacts? If yes, how should DHS consider these limited opportunities and why?

DHS should not consider financial obligations, debt, credit history, or bankruptcy in a public charge inadmissibility determination. To do so would unfairly impose barriers on noncitizens seeking admission to the United States or adjustments of status, would create an outsized risk of reliance on inaccurate information, and would have a disparate impact on people of color. For purposes of a public charge determination, DHS should define financial status to include **only** income and assets, broadly defined. Moreover, DHS should allow for self-attestation of income and assets in reviewing immigrants' financial status, due to the large portion of immigrants who lack access to traditional banking or financial services.

1. **Debt obligations are not predictive of whether an applicant will become a public charge.**

Many American households who do not rely on public benefits, and in fact have significant incomes, also have various financial obligations: consumer credit obligations (credit cards, auto loans, mortgages, etc.); rental or housing expenses; childcare and educational expenses; medical expenses; business expenses for small business owners; telecommunications and utility accounts; and even child or spousal support. Many Americans rely on income to pay for all of these expenses, with very little in savings to absorb any temporary hardship.[5] Surprisingly, even those with annual incomes of over $100,000 often live paycheck to paycheck.[6] Despite this reality, these same individuals would not qualify for means tested public benefits and could not depend on the government for basic subsistence.

[5] *Reality Check: The Paycheck-to-Paycheck Report*, June 2021, a PYMNTS and LendingClub collaboration available at https://www.pymnts.com/study/paycheck-to-paycheck-consumer-finances-american-households/. The report found that even though living "paycheck to paycheck" has often been seen as synonymous with poverty, 54% of consumers in the United States live paycheck to paycheck, including 53 percent of those who earn $50,000 to $100,000 per year. *Id.*

[6] Nearly 40 percent of those with annual incomes over $100,000 live paycheck-to-paycheck, including 12 percent struggling to pay their bills. *Reality Check: The Paycheck-to-Paycheck Report*, June 2021, a PYMNTS and

There is no evidence that carrying financial obligations and debts predicts a person's likelihood to rely on government assistance. Therefore, considering financial obligations would impose an unfair barrier on noncitizens seeking admission to the United States, because it is not relevant to their likelihood of ever depending on government benefits.

a. Consumer credit and debt are extremely common in the U.S. and do not indicate a likelihood of receiving public benefits.

Most American households hold some type of consumer debt.[7] A recent report by the CFPB indicated that credit cards are central to the financial lives of over 175 million American consumers, making the credit card market the largest U.S. consumer lending market measured by number of users.[8] The total outstanding credit card balances in the U.S. at the end of 2020 reached $825 billion.[9] In a recent bulletin, the Federal Reserve noted that more than 45% of families reported a credit card balance after their last payment.[10] Of those with credit card debt, the median family owed $2,700 in 2019, up 10% from 2016.[11]

In 2019, about 37% of families held vehicle loans; nearly 22% of families had education loans; 10.5% of families held other installment loans; and about 42% of families held debt secured by a primary residence.[12] Median debt payment-to-income ratios among families with debt increased as well; families with payment-to-income ratios greater than 40% increased 0.4 percentage point to 7.4%.[13]

An estimated 208 million Americans are in the credit reporting system, meaning at least this many Americans have some type of credit obligation (debt) that is being reported by a

LendingClub collaboration available at https://www.pymnts.com/study/paycheck-to-paycheck-consumer-finances-american-households/.

[7] According to the Federal Reserve Bank of New York's Center for Microeceonomic Data, "total household debt rose by $313 billion (2.1 percent) to reach $14.96 trillion in the second quarter of 2021. Mortgage balances—the largest component of household debt—rose by $282 billion and auto loans increased by $33 billion. Credit card balances ticked up by $17 billion while student loan debt decreased by $14 billion. Mortgage originations, which include mortgage refinances, reached $1.2 trillion, surpassing the volumes seen in the preceding three quarters. Auto loan originations, which include both loans and leases, reached a record $202 billion." Federal Reserve Bank of New York, *Quarterly Report on Household Debt and Credit 2021: Q2*, (August 2021) available at https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2021Q2.pdf.

[8] *The Consumer Credit Card Market* report by the Consumer Financial Protection Bureau at 6 (September 2021) available at https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2021.pdf

[9] *The Consumer Credit Card Market* report by the Consumer Financial Protection Bureau (September 2021), available at https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2021.pdf

[10] *Changes in U.S. Family Finances from 2016 to 2019: Evidence from the Survey of Consumer Finances,* Federal Reserve Bulletin, Vol. 106, No. 5 (September 2020) available at https://www.federalreserve.gov/publications/files/scf20.pdf.

[11] *Id*.

[12] *Changes in U.S. Family Finances from 2016 to 2019: Evidence from the Survey of Consumer Finances,* Federal Reserve Bulletin, Vol. 106, No. 5 (September 2020), available at https://www.federalreserve.gov/publications/files/scf20.pdf. Other installment loans were described by the survey as those associated with purchases of furniture, appliances, and other durable goods, but also included medical debt.

[13] *Id*.

consumer reporting agency.[14] In 2019, 68 million Americans had one or more debts in collection on their credit reports.[15]

It is extremely common for American citizens to hold consumer debt, and the vast majority of consumers carrying consumer debt do not ever end up relying on public benefits. Therefore, an immigrant applicant should not be penalized for having consumer debt, as there is no evidence it makes them any more likely to become a public charge. Considering consumer debt to be an indicator of financial status relevant to a public charge determination would result in an unfair barrier imposed on noncitizens seeking admission to the United States. DHS should not consider debt in a public charge inadmissibility determination.

b. Medical debt is extremely common in the U.S. and does not indicate a likelihood of relying on public benefits.

Medical debt, in particular, is extremely common and should not be considered relevant to a public charge determination. Medical debt represents an enormous portion of the debt collection entries that appear on credit reports. The CFPB found that medical debt collection entries account for over half (52.1%) of all entries by debt collectors on credit reports.[16] Nearly one in five credit reports contain a medical debt item.[17] What is true for consumer debt generally is even more true of medical debt: many people live with it and never end up relying on public benefits.

Although medical debt is so prevalent among American households, it is also very different from other types of consumer debt. Medical bills result from services that are frequently involuntary, unplanned, and unpredictable, for which price quotes are rarely provided, and which can be a matter of life or death. American citizens should not be penalized for seeking these essential services even if they will likely become indebted, and likewise immigrant applicants should not be penalized for having medical debt.

The fact that an individual carries medical debt is not an indicator of a person's likelihood of becoming a public charge. Rather, it is an indicator of the holes in our health insurance and healthcare system. Two-thirds of consumers with medical debt have health insurance. The Kaiser Family Health/New York Times Medical Bills Survey found that in 2015, 62% of consumers with medical debt had health insurance at the time of their first treatment and an additional 13% of indebted consumers obtained insurance at some point during their treatment.[18] For a significant number of people living in the U.S., owing a medical debt will be

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[14] Kenneth Brevoort, Philipp Grimm & Michelle Kambara, CFPB Office of Research, *CFPB Data Point: Credit Invisibles*, 12 (May 2015), available at http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf

[15] *NCLC Fact Sheet: Debt Collection in the States and D.C.* (consumer complaints and share of population with a debt in collection), May 2020 available at https://www.nclc.org/images/pdf/debt_collection/fact-sheets/fact-sheet-debt-collection-complaints-in-states.pdf

[16] *Consumer Credit Reports: A Study of Medical and Non-Medical Collections*, CONSUMER FIN. PROTECTION BUREAU (2014), available at www.consumerfinance.gov.

[17] *Id.*

[18] https://kaiserfamilyfoundation.files.wordpress.com/2016/01/8806-the-burden-of-medical-debt-results-from-the-kaiser-family-foundation-new-york-times-medical-bills-survey.pdf.

part of their reality at some point, even if they are supported by employment income and employer-provided health insurance.

Because it is common for American citizens to have medical debt, an immigrant applicant should not be penalized for also having medical debt. This would result in an unfair barrier imposed on noncitizens seeking admission to the United States. Therefore, DHS should not consider debt in a public charge inadmissibility determination.

Another significant reason not to consider medical debt as part of a public charge determination is the questionable accuracy of medical debt accounts on consumer reports. Medical debt accounts are often riddled with problems such as billing errors and disputes with insurers over liability for accounts.[19] Over 99% of medical debts are reported by debt collectors, not healthcare providers.[20]

Progress has been slow on attempting to protect consumers from the harms of inaccurate medical debt reported on consumer reports. The big three credit reporting agencies agreed in a 2017 settlement with 31 state Attorneys General not to report medical debts that are less than 180 days old, and to remove medical debts paid by an insurer.[21] Despite this concession, credit reporting agencies continue to report medical debts that are inaccurate or that should have been paid by an insurer, once the 180-day hurdle has been cleared.

c. High-cost lending and financial scams targeted at immigrants and credit invisibles make debt an unfair criteria for public charge determinations.

Consumers without a documented credit history are often referred to as "credit invisibles."[22] Consumers with limited credit histories are referred to as "unscorable," meaning their credit report lacks sufficient information to generate a FICO score because their record has too few accounts or has accounts that are too new to contain sufficient payment history, or their record has become "stale," containing no recently reported activity.[23]

As of 2010, 26 million consumers in the United States were credit invisible, or about 11% of the adult population.[24] An additional 19 million consumers, or 8.3% of the adult

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[19] Mark Rukavina, *Medical Debt and its Relevance When Assessing Creditworthiness*, 46 SUFFOLK U. L. R. 967 (2014).
[20] *Data Point: Medical Debt and Credit Scores*, CONSUMER FIN. PROTECTION BUREAU (2014), www.consumerfinance.gov
[21] Chi Chi Wu, Big Changes for Credit Reports, Improving Accuracy for Millions of Consumers, National Consumer Law Center (July 27, 2017), available at https://library.nclc.org/big-changes-credit-reports-improving-accuracy-millions-consumers.
[22] This refers to consumers without a credit record from one of the 3 nationwide credit reporting agencies, Experian, Trans Union and Equifax.
[23] *See* Consumer Financial Protection Bureau, Data Point: Credit Invisibles, May 2015, *available at* http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.
[24] *Id.*

population, had credit records that were treated as unscorable.[25] Credit invisibility impacts recent immigrants in particular.[26]

Even when immigrants within the United States do have credit histories, their credit scores are artificially low. A Federal Reserve study found immigrants' credit scores tend to be lower than what their actual repayment behavior on loans turns out to be.[27]

If a consumer does not have a credit record with one of the Nationwide Credit Reporting Agencies (NCRAs) or if the record contains insufficient information to assess creditworthiness, traditional lenders are much less likely to extend credit. As a result, consumers with limited credit histories can face substantially reduced access to credit. These consumers are then forced to seek out non-traditional lenders that exploit their vulnerability, such as subprime specialty or "fee harvester" credit cards that come with very low credit limits and are laden with expensive fees from the start.

In other circumstances, immigrants with some credit history but with low incomes, low savings, and low credit scores are driven to payday loans and other high-cost credit when emergencies arise. Payday loans carry a 400% APR or higher, and car title loans cost 300% APR and put car ownership at risk.[28] Many of these high-cost lenders disregard the borrower's ability to repay; refinance a borrower's loans repeatedly over a short period of time without any economic gain for the borrower; or commit outright fraud or deception.[29]

Because many immigrants have limited credit histories and are often driven to higher-cost, predatory credit products, considering debt would impose an unfair barrier on noncitizens seeking admission to the United States. As a result, DHS should not consider debt in a public charge inadmissibility determination.

d. Bankruptcy is not predictive of whether an applicant will become a public charge; on the contrary, it provides an avenue for debt relief.

Bankruptcy exists to provide a "fresh start" for the "honest but unfortunate debtor."[30] Bankruptcy provides an "escape route" for overly burdened debtors, which is particularly

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[25] *Id.* Insufficient credit history accounted for 9.9 million consumers with unscorable records and lack of recent history accounted for 9.6 million unscorable consumers.

[26] *See* Press Release, Consumer Financial Protection Bureau, *Consumer Financial Protection Bureau Study Finds Consumers in Lower-income Areas are More Likely to Become Credit Visible Due to Negative Records*, June 17, 2017, available at https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-study-finds-consumers-lower-income-areas-are-more-likely-become-credit-visible-due-negative-records/.

[27] Bd. of Governors of the Fed. Reserve System, Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit at S-2 (Aug. 2007) ("Evidence also shows that recent immigrants have somewhat lower credit scores than would be implied by their performance".)

[28] *See, e.g.*, Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 72 Fed. Reg. 50,580, 50,581–83 (Aug. 31, 2007) (Department of Defense final rule) (describing characteristics of payday, auto-title, and military installment loans that are abusive).

[29] *Id*.

[30] *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934) (noting that bankruptcy gives "the honest but unfortunate debtor who surrenders for distribution the property which he owns at the time of bankruptcy, a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt"). *See*

important "in the United States where both families and our economy depend heavily on consumer credit."[31] Bankruptcy allows a debtor to discharge debt and eliminate financial insecurity by holding onto earned wages and income. Rather than being siphoned away by aggressive creditors, the money a debtor earns can instead be used to pay for the home or car they need to keep; to pay other priority debt[32] that is not dischargeable in bankruptcy; or to pay for basic necessities for the debtor and their dependents.[33] One in ten adult Americans have turned to the consumer bankruptcy system for help.[34]

If anything, the fact of a bankruptcy filing makes it *less* likely that an individual will end up relying on public assistance.[35] Bankruptcy "partially shifts the burden of the survival of the destitute debtor from the public to the debtor's creditors."[36] Bankruptcy can prevent a consumer from drowning in debt, often incurred due to unforeseen circumstances or when caught in a debt trap by unscrupulous lenders.[37]

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also Margaret Howard, *A Theory of Discharge in Consumer Bankruptcy*, 48 OHIO ST. L.J. 1047 (1987); Thomas H. Jackson, *The Fresh-Start Policy in Bankruptcy Law*, 98 HARV. L. REV. 1393, 1402 (1985).

[31] Chrystin Ondersma, *Undocumented Debtors*, 45 U. MICH. J.L. REFORM 517, 520 (2012) citing Michael D. Sousa, *A Delicate Balancing Act: Satisfying the Fourth Amendment While Protecting the Bankruptcy System From Debtor Fraud*, 28 YALE J. ON REG. 367, 402 (2011) ("Our nation's economic welfare undeniably has come to depend upon ordinary consumers making purchases on credit that are unsecured by collateral.") (citations omitted); Vincent D. Rougeau, *Rediscovering Usury: An Argument for Legal Controls on Credit Card Interest Rates*, 67 U. COLO. L. REV. 1, 1-2, 19 (1996); SUSAN BURHOUSE, FDIC, EVALUATING THE CONSUMER LENDING REVOLUTION (Sep. 17, 2003), available at https://www.fdic.gov/analysis/archived-research/fyi/091703fyi.pdf

[32] Priority debts include child support, alimony, and taxes. 11 U.S.C. § 507(a) (listing priority unsecured debts).

[33] Many individuals in bankruptcy are parents with children. Foohey, Pamela and Lawless, Robert M. and Thorne, Deborah, *Portraits of Bankruptcy Filers* (March 18, 2021). Georgia Law Review, Vol. 56, Forthcoming, University of Illinois College of Law Legal Studies Research Paper 21-08, available at SSRN: https://ssrn.com/abstract=3807592 or http://dx.doi.org/10.2139/ssrn.3807592. *See also* Elizabeth Warren, *Bankrupt Children*, 86 MINN. L. REV. 1003, 1011-13 (2002) (reporting data that families with children are 300 percent more likely to file for bankruptcy, and that one in fifty-one children experienced bankruptcy in 2001).

[34] Foohey, Pamela and Lawless, Robert M. and Thorne, Deborah, Portraits of Bankruptcy Filers (March 18, 2021). Georgia Law Review, Vol. 56, Forthcoming, University of Illinois College of Law Legal Studies Research Paper 21-08, Available at SSRN: https://ssrn.com/abstract=3807592 or http://dx.doi.org/10.2139/ssrn.3807592

[35] *Id*.; Alan M. White & Carolina Reid, *Saving Homes? Bankruptcies and Loan Modifications in the Foreclosure Crisis*, 65 FLORIDA L. REV. 1713 (2013) (analyzing mortgage data to determine whether filing bankruptcy leads to curing a default and avoiding foreclosure); Melissa B. Jacoby, Daniel T. McCue & Eric S. Belsky, *In or Out of Mortgage Trouble? A Study of Bankrupt Homeowners*, 85 AM. BANKR. L.J. 291 (2011) (reviewing 2007 CBP data surrounding missed payments and foreclosures among people who file); Sarah W. Carroll & Wenli Li, *The Homeownership Experience of Households in Bankruptcy*, 13 CITYSCAPE 113 (2011) (analyzing bankruptcy filings in Delaware in 2001 to assess whether debtors retained their homes); John Eggum, Katherine Porter, & Tara Twomey, *Saving Homes in Bankruptcy: Housing Affordability and Loan Modification*, 2008 UTAH L. REV. 1123 (analyzing a sample of chapter 13 filings from 2006 to assess mortgage affordability); Mark R. Lindblad, Roberto Quercia, Melissa B. Jacoby, Ling Wang, & Huifang Zhao, *Bankruptcy During Foreclosure: Home Preservation Through Chapters 7 and 13*, UNC CENTER FOR COMMUNITY CAPITAL (July 2013), https://ssrn.com/abstract=2344444 (finding that among lower-income homeowners behind on payments, filing bankruptcy reduces the incidence of foreclosure); Michelle J. White & Wenli Li, *Saving Your Home in Chapter 13 Bankruptcy*, NBER Working Paper No. w14179 (2008), https://ssrn.com/abstract=1165507 (analyzing mortgage repayment by chapter 13 debtors).

[36] Chrystin Ondersma, *Undocumented Debtors*, 45 U. MICH. J.L. REFORM 517, 520 (2012).

[37] "It is also now well documented that the recent financial crisis stemmed from sub-prime mortgage loans issued to borrowers who could not afford to repay the loans." KATHLEEN C. ENGEL & PATRICIA A. MCCOY, THE SUBPRIME VIRUS (Oxford Univ. Press 2011).

Another reason not to consider a bankruptcy filing in the public charge determination is that medical debt is the leading cause of bankruptcy in the U.S. In a survey of randomly sampled bankruptcy filers from 2013-2016 published in the American Journal of Public Health,[38] 59% of respondents very much agreed or somewhat agreed that medical debt was a contributor to their bankruptcy. In 2013, NerdWallet Health[39] estimated that medical debt was the biggest cause of bankruptcies―ahead of credit card bills and unpaid mortgages.

In addition, because bankruptcy is a powerful tool for those struggling with debt to obtain a fresh start and support themselves moving forward, no policy should be considered that would create a chilling effect on those who seek to utilize it. This potential detrimental impact alone would result in an unfair barrier imposed on noncitizens seeking admission to the United States or an adjustment of status. DHS should not consider bankruptcy in a public charge inadmissibility determination.

2. Credit reports, credit scores, and other consumer reports are too often unreliable.

Although the DHS Notice of Proposed Rulemaking on Public Charge Ground of Inadmissibility (DHS Docket No. USCIS–2021–0013) does not currently indicate whether credit history or credit scores will be considered in determining whether an immigrant is a public charge, NCLC reiterates its opposition to any rule which would utilize the credit reporting system to determine inadmissibility.[40]

Credit reports and scores do not contain information about the most relevant indicator of a consumer's financial status – the consumer's earnings or other income.[41] A consumer could have a substantial income and yet have a low credit score or negative marks on his/her credit report. In addition, credit scores are a very blunt measure. While they can predict the probability that, as a group, low-scoring consumers will have a certain percentage of defaults on credit obligations, they cannot predict if any specific person will default on bills. In fact, often the probability is greater that a particular low-scoring person will not default.[42]

Moreover, consumer reports and credit reports are subject to unacceptable rates of inaccuracy for use in immigrant eligibility reviews. The Federal Trade Commission, which

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[38] David U. Himmelstein, Robert M. Lawless, Deborah Thorne, Pamela Foohey, & Steffie Woolhandler, *Medical Bankruptcy: Still Common Despite Affordable Care Act*, 109 AJPH 431 (2019) (reporting based on data from the current CBP that two-thirds of debtors cite medical expenses or illness-related work loss as reasons for their filings) available at https://ajph.aphapublications.org/doi/10.2105/AJPH.2018.304901; Daniel A. Austin, *Medical Debt as a Cause of Consumer Bankruptcy*, 67 MAINE L. REV. 1 (2014) (reporting data from filings in 2013 to adduce "that medical bills are the single largest causal factor in consumer bankruptcy").

[39] Dan Mangan, "Medical Bills Are the Biggest Cause of U.S. Bankruptcies," CNBC (June 25, 2013), available at https://www.cnbc.com/id/100840148.

[40] *See* comment to DHS Docket No. USCIS–2010–0012 by Chi Chi Wu, National Consumer Law Center (Dec. 10, 2018), available at https://www.regulations.gov/comment/USCIS-2010-0012-50351

[41] FICO, *Understanding FICO Scores*, 24 (2016), available at https://www.myfico.com/Downloads/Files/myFICO_UYFS_Booklet.pdf/

[42] *See generally* Chi Chi Wu, National Consumer Law Center, *Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession,* 9-12 (Dec. 2013), available at www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf.

conducted the definitive study on credit reporting errors, 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.[43] 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 would be unconscionable.

The government has at times relied on other types of consumer reports to obtain data relevant to eligibility for government licenses and benefits. If any such reports are to be used in connection with a public charge determination, DHS should ensure that the report in question utilizes a sufficiently rigorous matching protocol. Reports that purport to collect data about real estate ownership, judgments, evictions, and other kinds of public records usually are not matched through a date of birth or social security number, because such public records do not contain this unique information. Instead, these reports often return a purported public record based solely on a first and last name match.

Name-only matching is extremely unreliable, and is even more unreliable among certain racial and ethnic minorities. A search of a website called howmanyofme.com estimated that 45,878 people in the United States have the name "Robert Smith." Researchers estimated that, for every 325 instances of Robert Smith, five of them will share the same full date of birth.[44] "Fuzzy logic" algorithms, which background screeners often use, would increase the number of matches by including people with similar names to Robert (e.g., Roberto, Roberta, Rob, Bob), or even people whose middle name is Robert.[45] "Clustering" of common surnames is even more common among ethnic minorities than among non-Hispanic white populations. Data from the 2010 Census showed that the Hispanic population had a high degree of name clustering among the measured groups, with just 26 surnames accounting for a quarter of the population and 16.3 percent of people reporting one of the top 10 names.[46] A similar pattern of name clustering was detected among other ethnic minorities, including Asian and Black Americans.[47]

Name-only matching leads to such high error rates that the "Big Three" nationwide credit reporting agencies (Equifax, Experian, and TransUnion) have ceased using the practice. As a result of settlements with attorneys general in 32 states, CFPB supervision, and private class action lawsuits, the Big Three now use stricter criteria— either a Social Security Number or a date of birth—to match public records to a consumer's credit file.[48] Because most civil

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[43] Federal Trade Comm'n Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 (Dec. 2012).

[44] Michael P. McDonald and Justin Levitt, Seeing Double Voting: An Extension of the Birthday Problem, 7 ELECTION L.J. 111, 112, 119 (2008); cf. Sharad Goel et al., One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections at 2 (Jan. 17, 2019) (estimating that, in a study concerning voter fraud and double voting in particular, "[i]n the national voter file, . . . 97% of the votes cast with the same first name, last name, and date of birth were cast by two distinct individuals").

[45] Ariel Nelson, Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing, National Consumer Law Center (Dec. 2019), available at https://www.nclc.org/issues/rpt-broken-records-redux.html.

[46] *See* Joshua Comenetz**,** U. S. Census Bureau, Frequently Occurring Surnames in the 2010 Census, 7 (2016).

[47] *Id*.

[48] See Assurance of Voluntary Compliance, In the Matter of Equifax Info. Serv. L.L.C., Experian Info. Solutions, Inc., and TransUnion L.L.C. (May 20, 2015); Settlement Agreement, In the Matter of the Investigation by the

judgments and many tax liens do not include such data, the nationwide CRAs no longer include these records in credit reports.[49] In contrast, LexisNexis continues to disseminate reports that include non-home real property "matched" with consumers based on the same type of overly loose matching criteria that the nationwide CRAs used to use. NCLC documented this problematic practice in a recent report about the Social Security Administration's use of the Accurint for Government product.[50] DHS should avoid replicating these problematic practices by declining to use any data aggregator that pulls together public records based on a name-only match.

For these reasons and others included in our previous comments, the DHS should not consider credit history or credit scores in a public charge inadmissibility determination. DHS should not rely on any data gathering product that uses name-only matching in connection with immigrant eligibility reviews.

3. Considering debt and credit history will cause a discriminatory impact.

Prior to the pandemic, systemic inequalities and disenfranchisement already existed among various socioeconomic, racial,[51] and gender[52] groups, and COVID-19 exacerbated these

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Attorney General of the State of New York, of Experian Info. Sol., Inc., Equifax Info. Serv. L.L.C., and TransUnion L.L.C. (Mar. 8, 2015); CFPB, SUPERVISORY HIGHLIGHTS CONSUMER REPORTING SPECIAL EDITION 5–6 (2017). For information about the settlements reached as a result of the class action lawsuits, see the following websites: https://www.tupublicrecordsettlement.com/, http://www.experianpublicrecordsettlement.com/, https://www.equifaxpublicrecordsettlement.com/.

[49] Chi Chi Wu, Big Changes for Credit Reports, Improving Accuracy for Millions of Consumers, NATIONAL CONSUMER LAW CENTER (NCLC) DIGITAL LIBRARY (July 2017).

[50] Sarah Mancini, Kate Lang, and Chi Chi Wu, Mismatched and Mistaken: How the Use of an Inaccurate Private Database Results in SSI Recipients Unjustly Losing Benefits, National Consumer Law Center (April 2021), available at https://www.nclc.org/issues/mismatched-and-mistaken-how-the-use-of-an-inaccurate-private-database-results-in-ssi-recipients-unjustly-losing-benefits.html.

[51] Bhutta, Neil, Andrew C. Chang, Lisa J. Dettling, and Joanne W. Hsu (2020). "*Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*," FEDS Notes. Washington: Board of Governors of the Federal Reserve System, September 28, 2020, (documenting that, in 2019, white families, on average, had eight times more wealth than Black families, and five times more wealth than Hispanic families). Available at https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm

[52] According to U.S. Census Bureau data, of the 38.1 million people living in poverty in 2018, 56 percent—or 21.4 million—were women. Robin Bleiweis, Diana Boesh, and Alexandra Cawthore Gaines, *The Basic Facts About Women in Poverty*, (August 3, 2020), available at https://cdn.americanprogress.org/content/uploads/2020/08/07060425/Women-In-Poverty-UPDATE.pdf?_ga=2.8819511.363012631.1615331060-692144665.1615331060 Women are particularly prone to economic hardship as a result of the prevalence of domestic violence. Women remain in or return to abusive relationships because they lack the financial resources to live independently from their abuser. Adrienne Adams, *The Frequency, Nature, and Effects of Coerced Debt Among a National Sample of Women Seeking Help for Intimate Partner Violence*, Violence Against Women 22:1077801219841445 (2019); Ryan Matlow, et. al. *The Impact of Appraisals and Context on Readiness to Leave a Relationship Following Intimate Partner Abuse*, 21 Violence Against Women (2015). Abusers foster victims' economic dependence by interfering with employment, restricting access to or stealing money, hiding financial information, and generating debt in their partner's name, among other strategies. *See* Adrienne Adams et al., *Development of the Scale of Economic Abuse*, 14 Violence Against Women 563, 563-88 (2008); Angela Littwin, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, 100 Calif. Law Rev. 1 (2012). The consequences for victims include less money to meet basic needs, greater material hardship, and reduced financial self-sufficiency. Adrienne Adams, et al., *Evidence of the Construct Validity of the Scale of*

pre-existing inequalities. Communities of color are particularly affected by traumatic life events; they not only have less income than white Americans,[53] but Black and Latino households also see less of a return than white households on the income they earn.[54] Without a safety net or a cushion to fall back on, people of color are far less able to weather financial calamities. With fewer assets to draw on, people of color are more prone to poverty traps.[55]

Minorities are disproportionately affected by discriminatory lending policies, leading to higher levels of consumer debt compared to their white counterparts.[56] Additionally, medical debt disproportionately impacts communities of color. An Urban Institute study found that 21% of consumers living in predominately non-white zip codes had a medical debt in collections compared to just 16% of consumers living in predominately white zip codes.[57]

Economic Abuse, 30(3) Violence Vict. (2015); Judy Postmus, et al. *Measuring Economic Abuse in the Lives of Survivors: Revising the Scale of Economic Abuse*, 22(6) Violence Against Wom. (2015).

[53] "In 2011, the median white household had an income of $50,400 a year compared to just $32,028 for Blacks and $36,840 for Latinos." Amy Traub, et al., Demos and Institute for Assets & Social Policy, Brandeis University, *The Racial Wealth Gap: Why Policy Matters*, Mar. 10, 2015, at 1, https://www.demos.org/research/racial-wealth-gap-why-policy-matters

[54] "For every $1 in wealth that accrues to median Black households associated with a higher income, median white households accrue $4.06. Meanwhile, for every $1 in wealth that accrues to median Latino households associated with higher income, median white households accrue $5.37." Amy Traub, et al., Demos and Institute for Assets & Social Policy, Brandeis University, *The Racial Wealth Gap: Why Policy Matters*, Mar. 10, 2015, at 1, https://www.demos.org/research/racial-wealth-gap-why-policy-matters

[55] "Low-income individuals bear the brunt of the shift toward algorithms. They are the people most vulnerable to temporary economic hardships that get codified into consumer reports, and the ones who need and seek public benefits. Over the years, Gilman has seen more and more cases where clients risk entering a vicious cycle. 'One person walks through so many systems on a day-to-day basis,' she says. 'I mean, we all do. But the consequences of it are much more harsh for poor people and minorities'." Karen Hao, *The Coming War on the Hidden Algorithms that Trap People in Poverty*, MIT Technology Review Dec. 4, 2020, available at https://www.technologyreview.com/2020/12/04/1013068/algorithms-create-a-poverty-trap-lawyers-fight-back/

[56] Breno Braga, et al, *Debt in America: An Interactive Map* (Urban Institute, Dec. 17, 2019) (reporting that in 2018, 42% of individuals with a credit report living in predominantly non-white areas had one or more debts in collection on their credit report, compared to 26% of individuals living in predominantly white areas); Consumer Fin. Protection Bur., *Consumer Experiences with Debt Collection: Findings from the CFPB's Survey of Consumer Views on Debt*, 17 n.17, 18 (Jan. 2017) (44% of non-white respondents were contacted about a debt in collection, compared to 29% of white respondents). *See also FINRA Investor Education Foundation, Financial Capability in the United States 2016*, p. 27 (July 2016) (31% of African American respondents to the 2015 National Financial Capability Study reported being contacted by a debt collection agency in the past year, compared to 18% of all survey respondents), *available at* https://www.usfinancialcapability.org/downloads/NFCS_2015_Report_Natl_Findings.pdf.

[57] https://apps.urban.org/features/debt-interactive-map/?type=medical&variable=perc_debt_collect

Communities of color are also disproportionately subject to judgments in collection lawsuits,[58] and disproportionately subject to wage garnishment.[59] Because Black and Latinx households have been systematically excluded from accumulating wealth, they have less of a safety net to draw on during challenging financial times.[60] A typical white family has $8,000 saved for emergencies, compared to just $1,500 for Black families and $2,000 for Latinx families.[61] Black and Latinx workers also typically earn lower wages[62] to begin with.

Credit reports and credit scores reflect and perpetuate these systemic racial disparities.[63] Because of the racial wealth gap and earnings gap, people of color are more likely to fall behind on debt obligations when they experience a temporary hardship. Such negative credit events are captured and crystallized in credit reports. Therefore, any process that relies on credit scores or credit reports is relying on a system that is skewed by the legacy of structural racism. Many sources of alternative data are subject to the same bias.[64] NCLC explained the racial bias baked into credit scores in detail in our prior public charge comments.[65]

Because of the disparate impact of debt and reliance on credit history on communities of color, the DHS should not consider financial obligations in a public charge inadmissibility determination. DHS should instead rely solely on income and assets, broadly defined, in its assessment of financial status related to a public charge determination.

[58] Annie Waldman & Paul Kiel, ProPublica, *Racial Disparity in Debt Collection Lawsuits: A Study of Three Metro Areas* (Oct. 8, 2015); Peter A. Holland, *Junk Justice: A Statistical Analysis of 4,400 Lawsuits Filed by Debt Buyers*, 26 Loyola Cons. Law Rev. 179, 218 (Mar. 2014) ("Debt buyers sued disproportionately in jurisdictions with larger concentrations of poor people and racial minorities. For example, Prince George's County has only 15% of [Maryland's] population, yet 23% of all debt buyer complaints were filed against Prince George's County residents."); Richard M. Hynes, *Broke but Not Bankrupt: Consumer Debt Collection in State Courts*, 60 Fla. L. Rev. 1, 3 (2008) (concluding that "civil litigation [in Virginia] is disproportionately concentrated in cities and counties with lower median income and homeownership rates; higher incidences of poverty and crime; and higher concentrations of relatively young and minority residents"). *See also* Mary Spector and Ann Baddour, "*Collection Texas-Style: An Analysis of Consumer Collection Practices in and out of the Courts*," 67 Hastings Law Journal 1427, 1458 (June 2016) (Texas study; finding "a somewhat higher likelihood of default judgments in precincts with a higher non-White population"). *See generally* National Consumer Law Center, Fair Debt Collection § 1.3.1.5 (9th ed. 2018), updated at www.nclc.org/library.

[59] Annie Waldman & Paul Kiel, *ProPublica*, *Racial Disparity in Debt Collection Lawsuits: A Study of Three Metro Areas*, (Oct. 8, 2015) (holding income constant, defendants living in majority black census tracts in St. Louis were 20% more likely to be subject to garnishment proceedings after obtaining a judgment).

[60] Bhutta, Neil, Andrew C. Chang, Lisa J. Dettling, and Joanne W. Hsu (2020). "Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances," FEDS Notes. Washington: Board of Governors of the Federal Reserve System, September 28, 2020, (documenting that, in 2019, white families, on average, had eight times more wealth than Black families, and five times more wealth than Hispanic families). Available at https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm

[61] *Id*.

[62] Elise Gould, Economic Policy Institute, *State of Working America Wages 2019* (Feb. 20, 2020), available at https://www.epi.org/publication/swa-wages-2019/#table-3

[63] Past Imperfect: How Credit Scores and Other Analytics "Bake In" and Perpetuate Past Discrimination, National Consumer Law Center (May 2016), available at Past_Imperfect050616.pdf (nclc.org).

[64] Credit Invisibility and Alternative Data: Promises and Perils, National Consumer Law Center (July 2019), available at Issue Brief: Credit Invisibility and Alternative Data - National Consumer Law Center (nclc.org).

[65] Comment to DHS Docket No. USCIS–2010–0012 by Chi Chi Wu, National Consumer Law Center (Dec. 10, 2018), available at https://www.regulations.gov/comment/USCIS-2010-0012-50351

4. **Because immigrants are so often unbanked, DHS should allow income and assets to be documented through self-attestation in addition to other means.**

Income and assets should be the sole focus of a financial status inquiry for purposes of a public charge determination. Relevant income and assets should be broadly defined. In addition, DHS should allow self-attestation to be used to establish income and assets. Documenting income and assets through traditional means can be difficult for immigrants, because this population is so often unbanked.

Self-attestation of income and assets has become more widely recognized in the recent, pandemic-era assistance programs. Both the Emergency Rental Assistance Program and the Homeowner Assistance Fund allow states and localities to rely on self-attestation as proof of applicants' income.[66] Research indicates that prior fears about moral hazard have been overstated, finding little evidence of moral hazard in recent mortgage forbearance programs that did not require documentation of income.[67]

Thank you for the opportunity to comment on this extremely important rulemaking. If you have any questions about these comments, please contact Carla Sanchez-Adams at csanchez@trla.org or Sarah Mancini at smancini@nclc.org.

Respectfully submitted,

National Consumer Law Center (on behalf of its low-income clients)

Texas RioGrande Legal Aid

Consumer Action

Americans for Financial Reform Education Fund

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[66] U.S. Dep't of Treasury, Emergency Rental Assistance Program Frequently Asked Questions at 5 (Aug. 25, 2021), available at https://home.treasury.gov/system/files/136/ERA-FAQ-8-25-2021.pdf; U.S. Dep't of Treasury, Homeowner Assistance Fund Guidance at 5 (Aug. 2, 2021), available at https://home.treasury.gov/system/files/136/HAF-Guidance.pdf.

[67] JP Morgan Chase & Co. Institute, Policy Brief: Is Mortgage Forbearance Reaching the Right Homeowners during the COVID-19 Pandemic (Dec. 2020), available at https://www.jpmorganchase.com/institute/research/household-debt/report-did-mortgage-forbearance-reach-the-right-homeowners.