



OREGON  
STATE  
TREASURY

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December 7, 2018

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Department of Homeland Security  
20 Massachusetts Avenue NW  
Washington, D.C. 20529-2140

Re: DHS Docket No. USCIS-2010-0012 – “Inadmissibility on Public Charge Grounds”

I write to register my concerns with the content of the Proposed Rule issued by the U.S. Citizenship and Immigration Services (USCIS) regarding determinations of inadmissibility under section 212(a)(4) of the Immigration and Nationality Act (INA). The Proposed Rules will alter the evidence USCIS uses to review an applicant’s financial situation to determine his or her likelihood of becoming a public charge.

My first concern is the Proposed Rule’s radical departure from previous interpretations of “public charge.” The Proposed Rule expands the term to include whether applicants or their family members have ever participated in a wide range of public benefit programs. The plain text of section 212(a)(4) requires “primary” (50 percent or more) dependence on the government to be considered a public charge. The Proposed Rule states that “DHS believes that receipt of such benefits<sup>1</sup> even in a relatively small amount and for a relatively short duration would in many cases be sufficient to render a person a public charge.” Although still in draft form, the Proposed Rule is already having a chilling effect on participation in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the Children’s Health Insurance Program (CHIP) and the Supplemental Nutrition Assistance Program (SNAP).<sup>2</sup> Immigrant-headed households, some with American citizen children, will be forced to choose between using programs designed to supplement their children’s access to nutritious foods or health care and their ability to adjust status and permanently remain in the United States. This proposal does not consider the ramifications of this choice on the long-term outcomes for infants and children.

My second concern is the addition of “credit histories and credit scores” to the items subject to scrutiny. Credit scores *do not* predict financial self-sufficiency; they are a

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<sup>1</sup> “cash for income maintenance and for basic living needs such as food, medical care, and housing”

<sup>2</sup> <https://www.nytimes.com/2018/03/06/us/politics/trump-immigrants-public-nutrition-services.html>



snapshot in time and a metric to assist lenders when determining to whom they will offer credit and at what rate. As with all metrics, credit scores and histories are only as accurate as the underlying data. Their addition to an applicant's "totality of circumstances" when making an inadmissibility determination will unfairly and disproportionately disadvantage those who are credit invisible, credit unscorable, or who have material errors on their credit reports.

The Bureau of Consumer Financial Protection's Office of Research recently published a series of studies describing "credit invisible" and "credit unscorable" consumers in the United States. Credit invisible consumers are those who do not have a credit record maintained by one of the three nationwide consumer reporting agencies, while credit unscorable consumers either have credit records that contain too little information ("insufficient unscorable") or information deemed too old to be reliable ("stale unscorable"). On the surface, the statistics are disquieting. In 2010, 26 million consumers, or 11 percent of the adult population, were credit invisible. An additional 19 million consumers, or 8.3 percent of the adult population, had credit records treated as unscorable.<sup>3</sup> Adding in factors like race and income, it becomes clear that the problems that accompany having a limited credit history are disproportionately borne by Black (15 percent invisible/13 percent unscored), Latino (15 percent invisible/12 percent unscored), and lower-income (30 percent invisible/16 percent unscored) consumers.<sup>4</sup>

The problems do not end with the credit invisible or credit unscorable. A report by the Federal Trade Commission found that one in five American consumers has an error on his or her credit report. In fact, five percent of consumers have an error so serious it is affecting their ability to borrow.<sup>5</sup> At the same time, errors can be difficult and time-intensive to correct and resolve. Credit reporting is the second most frequent source of consumer complaints handled by the Bureau of Consumer Financial Protection, trailing only debt collection. 74 percent of those complaints were due to incorrect information on a credit report.<sup>6</sup> Unfortunately, the law only requires the credit reporting agency to check with the provider of the information to see if the provider continues to stand by their claim. Assuming the provider stands by their claim, the consumer has little recourse to fix their credit report and remove the error.

Although the Proposed Rule notes that DHS recognizes "not everyone has a credit report in the United States," the proposal goes on to state that the absence of an established U.S. credit history "*would not necessarily* be a negative factor" and that USCIS "*may give positive weight*" to applicants who can show a lack of debt or history of paying their bills on time. This lack of specificity regarding how a credit invisible or credit unscorable individual would be treated is disconcerting. The proposal goes on to state that "USCIS would not consider any error on a credit score *that has been verified* by the credit agency"

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<sup>3</sup> Brevoort, Kenneth P., Philipp Grimm, and Michelle Kambara (2015). *Data Point: Credit Invisibles*. Tech. rep. Available online at [file:///C:/Users/olsonk/Downloads/201505\\_cfpb\\_data-point-credit-invisibles.cleaned.pdf](file:///C:/Users/olsonk/Downloads/201505_cfpb_data-point-credit-invisibles.cleaned.pdf).

<sup>4</sup> *Ibid.*

<sup>5</sup> <https://www.ftc.gov/reports/section-319-fair-accurate-credit-transactions-act-2003-fifth-interim-federal-trade>

<sup>6</sup> <https://www.cnbc.com/2017/09/27/the-real-problem-with-credit-reports-is-the-astounding-number-of-errors-equifax-commentary.html>

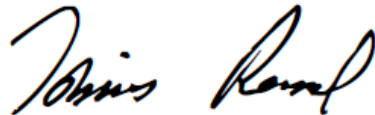
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in making the determination. If 74 percent of complaints to the Bureau of Consumer Financial Protection are due to incorrect information on a credit report, and the law provides little recourse for an individual to fix the error, USCIS will almost certainly make determinations affecting admissibility based on faulty evidence.

As State Treasurer, I am keenly aware of the limitations of the credit scoring system in the United States. The system is backward-looking and was never intended to serve as a predictor of future financial self-sufficiency. Using credit scores and histories in this manner will disproportionately disadvantage lower-income applicants and applicants of color; will force the applicant to bear the costs of obtaining a report or score; and will place the burden of proof regarding credit report errors on the applicant. The proposal would not only be inefficient and ineffective, it would be inconsistent with our honorable history of welcoming immigrants who are sincere in their desire to build a life in the United States. USCIS should reverse course and remove both the expanded interpretation of “public charge” and “credit histories and credit scores” from the Proposed Rules.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Tobias Read". The signature is written in a cursive style with a large initial 'T' and 'R'.

Tobias Read