Seattle
Office of Immigrant and
Refugee Affairs
Cuc Vu, Director

Submitted via www.regulations.gov

November 2, 2020

Mark Phillips
Residence and Naturalization Chief
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Ave NW
Washington, DC 20529-2140

**RE: Document Number 2020-21504; RIN 1615-AC39; CIS No. 2655-20,
DHS Docket No. USCIS-2019-0023; Public Comment Opposing the Entirety of the Proposed Rule "Affidavit of Support for Immigrants"**

Dear Chief Phillips:

The Seattle Office of Immigrant Refugee Affairs (OIRA) submits this comment in opposition to the Department of Homeland Security's (DHS) rule, DHS Docket No. USCIS-2019-0023 (the "Proposed Rule") that was published on October 2, 2020. The Proposed Rule creates an onerous standard for sponsors wanting to assist individuals who are seeking permanent residence in the U.S. The Proposed Rule would make it harder for middle-income individuals to be acceptable sponsors, and accordingly, makes it harder for intending immigrants to find an acceptable sponsor and satisfy the requirements of the Form I-864. Like many other rules proposed in the last three years, the Proposed Rule imposes a *de facto* wealth test for those seeking to immigrate to the U.S. and creates new obstacles for any sponsor (or household member) who has obtained public benefits in the preceding three-year period.

The City of Seattle is a Welcoming City with a commitment to protect the rights of immigrants and refugees, who are integral parts of our families and communities. Seattle has made great efforts to protect our immigrant and refugee workers and residents. Such efforts include

executive orders[1], resolutions[2], and ordinances[3] to ensure immigrants feel welcome and safe in the city. The City has also funded social programs to help income-eligible residents with what we consider to be basic needs. In 2012, the City created the Office of Immigrant and Refugee Affairs (OIRA) to improve the lives of Seattle's immigrant and refugee families. The City of Seattle, through OIRA, funds and coordinates the Expanded Legal Defense Network (ELDN) that provides removal defense to low-income residents of Seattle and King County, Washington. OIRA also funds and facilitates naturalization assistance programs focused on low- and middle-income lawful permanent residents (LPRs), helping individuals to improve their English, prepare for the citizenship interview, and if needed, obtain a Form N-648 disability waiver.

As a Welcoming City that respects and upholds the American value of welcoming immigrants, OIRA strongly urges DHS to withdraw the Proposed Rule. Especially in light of the COVID-19 pandemic and the economic hardship it has caused for many families, the administration should not impose heightened requirements for those assisting others—usually their close relatives—in obtaining legal immigration status.

I. DHS has not provided enough time for comment on the Proposed Rule.

This Proposed Rule substantially changes a key aspect of immigration policy for those seeking permanent residence in the United States. It would give USCIS adjudicators authority and discretion to cast doubt over a sponsor's eligibility and require additional proof—potentially proof that is difficult or impossible to obtain—that goes far beyond current standards.

Submitting a thorough response to the Proposed Rule requires at least 60 days, especially given the need to thoroughly evaluate a 50-page rule and determine its likely impact on intending immigrants and the complex web of sponsors, joint sponsors, and household members of sponsors. Instead, DHS has allowed only 30 days to comment. Under any circumstances, 30 days would be insufficient to comment on regulatory changes of this complexity and scope, but these challenges are magnified by the ongoing COVID-19 pandemic and its resulting harm to health and livelihoods. It is especially suspect that DHS has allowed 60 days for comment on the collection of information (i.e., changes to the I-864 and related forms), but only 30 days for the proposed rulemaking, which is the justification for the form changes.

This Proposed Rule does not seek to resolve an emergent situation. Therefore, DHS should not be rushing the rulemaking process. DHS has instead chosen an abbreviated notice and comment period which does not comply with their obligations under the Administrative Procedure Act.

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[1] See http://murray.seattle.gov/wp-content/uploads/2016/11/Executive-Order-2016-08_Welcoming-City.pdf
[2] See http://clerk.seattle.gov/~scripts/nph-brs.exe?s1=&s3=&s2=&s4=Ordinance+121063&Sect4=AND&l=200&Sect2=THESON&Sect3=PLURON&Sect5=RESNY&Sect6=HITOFF&d=RESF&p=1&u=%2F~public%2Fresny.htm&r=7&f=G
[3] See http://clerk.ci.seattle.wa.us/~scripts/nph-brs.exe?d=CBOR&s1=114436.cbn.&Sect6=HITOFF&l=20&p=1&u=/~public/cbor2.htm&r=1&f=G

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II. The Proposed Rule deters sponsors and their household members from using public benefits.

If implemented, the Proposed Rule would deter immigrants and U.S. citizens from relying on health care and nutrition benefits, however briefly they may be needed. The Proposed Rule imposes harsh new requirements if the sponsor—or any member of the sponsor's household—has used public benefits. If the individual intending to sponsor an intending immigrant ("the Sponsor") or any member of their household whose income is to be considered as part of the household's income, has used means-tested public benefits, including Medicaid, CHIP, SNAP, SSI and TANF, *anytime in the 36 months prior to* executing the Affidavit of Support, the sponsor must enlist a joint sponsor from outside the household. Under the previous policy, sponsors were not required to find a joint sponsor simply because they or a member of their household had previously used means-tested benefits.

It is easy to imagine a scenario where the sponsor, or one of their household members, briefly used public benefits during a difficult time. Subsequently, however, the individual obtained stable employment and no longer needed the benefits. At the time of executing the Affidavit of Support, the sponsor's household clearly met the income threshold to do so, and under the current rule, the past use of benefits would not have been disqualifying. This Proposed Rule unfairly punishes sponsors and their household members for benefits used within the last 36 months, regardless of the household's income status at the time of filing the Affidavit of Support.

III. The Proposed Rule imposes excessive documentary requirements for sponsors, their household members, and potentially the joint sponsor.

The Proposed Rule would require U.S. citizen and LPR petitioners to provide detailed bank account and credit information in order to complete the Form I-864, I-864A, or I-864EZ. These are the "Affidavit of Support" forms that a petitioner must use to help their foreign spouse or close relative to obtain a green card.

Specifically, sponsors (and household members whose income and/or assets are being used by the main sponsor to qualify via the Form I-864A) would be required to provide the name of their banking institution, the number of the bank account, the routing number of the account, and the account holder's name. The proposed Affidavit of Support would require all sponsors (and when applicable, household members) to provide information needed to obtain an individual's credit report and score. The sponsor (and when applicable, their household members) must also provide their last three years of federal tax returns.

In cases where the main sponsor (combined with their household) do not meet all the requirements, they must enlist a joint sponsor. In turn, this joint sponsor will be required to provide the same information listed above. A requirement to provide extensive personal financial information, combined with the proposed Form I-864's ominous warnings about sponsor reimbursement and sweeping release of information, will make it extremely difficult

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for petitioning family members to obtain a joint sponsor when it is legally required.

IV. The Proposed Rule imposes harsh and complex mandatory requirements, but also gives too much discretion to USCIS adjudicators.

The Proposed Rule, if implemented, would act in a similar fashion to the "totality of circumstances" test recently incorporated into the assessment of public charge inadmissibility.[4] The Proposed Rule describes a complex array of mandatory and discretionary grounds for determining that an Affidavit of Support, even one in which the mandatory income level is met, will be deemed insufficient.

As explained above, any sponsor (or household member if their income is being considered as part of the household income) who has used means-tested public benefits within the previous 36 months, will have their Affidavit of Support deemed insufficient. Even if the sponsor, or the combined household, demonstrates a current income far in excess of the 125% threshold, their past benefit use will deem their Affidavit of Support insufficient, absent the contributions of a joint sponsor. Unlike the public charge determination imposed by the 2018 rule, which considers aggregate benefit use of 12 months or more to be disqualifying, this proposed rule provides no duration for which benefits may be used. Accessing food stamps or other means-tested assistance—even if only for a single month—makes it impossible for that person to be deemed an acceptable sponsor (or contributing household member) for at least 36 months afterwards.

Under the Proposed Rule, the adjudicator may also use discretionary factors to determine whether the Affidavit of Support is insufficient. These factors include a "material change" in employment or income history, the number of prior beneficiaries (individuals for which the sponsor has previously filed an I-864 or I-864A) for whom the support obligation has not yet commenced, and quite broadly, "any other relevant facts."

The interpretation of the "material change" and "any other relevant facts" language is highly subjective. Is it a material change if a sponsor changes jobs? What if the new job pays slightly less than the previous one but still meets the income requirement? Under what circumstances will "any other relevant facts" include the sponsor's credit history and current credit score? What if the sponsor's income is clearly sufficient to meet the 125% threshold, but they have a poor credit score? Under what circumstances will the adjudicator determine that the sponsor's Affidavit of Support is insufficient for discretionary factors and require the enlistment of a joint sponsor?

[4] See 8 CFR § 212.22. As of the date this comment is submitted, the public charge final rule is under a nationwide injunction pursuant to *Cook County, et al. v. Wolf*, et al., 11/2/20.

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a. *A sponsor's income over the past three years is not an accurate reflection of their current or future income, nor their ability to comply with the Affidavit of Support.*

The Proposed Rule would require all sponsors to provide their last three years of federal income tax returns, as opposed to the current requirement of only the most recent year. While sponsors currently have the *option* of providing up to the past three years of tax returns, it is not mandatory, and is generally used for sponsors who have recently seen lower earnings due to reduced hours or gaps in employment. Making three years of tax returns a *requirement* potentially harms sponsors by de-emphasizing their current financial situation and painting a distorted picture, based on past economic struggles, of their ability to support the intending immigrant.

b. *An individual's credit score is not an accurate reflection of their current or future income, nor their ability to comply with the Affidavit of Support.*

Requiring in-depth bank account information from all sponsors is neither relevant nor necessary, nor is it fair to use the sponsor's credit history, to determine the sufficiency of an Affidavit of Support. The Proposed Rule's justification for obtaining the sponsor's credit report is that it will "serve as evidence of tending to show whether the sponsor is likely to be able to maintain his or her income in the future."

However, using credit history as a determining factor will have a disproportionately negative impact on communities of color. The current credit scoring system penalizes borrowers for using the type of credit disproportionately used by people of color. The U.S. has a history of explicitly excluding communities of color from low-cost and mainstream loans, and as a result, many people of color, including immigrant communities, have been steered towards high-cost lending products like payday loans that often damage an individual's credit score.

V. Conclusion

This Proposed Rule, if implemented, would make it much harder for middle- and lower-income families to sponsor their family members seeking permanent residence in the U.S. Imposing new, and excessively onerous, requirements on sponsors (and often, their household members) will deter individuals from submitting Affidavits of Support. The new requirements deter sponsors and household members from lawfully seeking means-tested benefits and incorporate discretionary factors that give USCIS adjudicators authority to reject an Affidavit that otherwise meets the income and documentary requirements.

Incorporating these new requirements not only increases the burden on sponsors and applicants for permanent residence, but also exacerbates the administrative strain already facing USCIS. It will require more staff, more time, and more money to review additional documents. Implementing this rule would not improve the process but rather create unnecessary hurdles for those seeking to reunite their families. **The Seattle Office of Immigrant**

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and Refugee Affairs is firmly in opposition to this proposed rule and urges DHS to rescind it immediately.

Sincerely,

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