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December 7, 2018

The Honorable Kirstjen M. Nielsen
Secretary, U.S. Department of Homeland Security
3801 Nebraska Ave., NW
Washington, D.C. 20528

RE: DHS Docket No. USCIS-2010-0012

Dear Secretary Nielsen:

On behalf of the National Conference of State Legislatures (NCSL), we write in opposition to the Department of Homeland Security's (DHS) proposed regulation on public charge. This new proposal alters current law and will create a vastly expanded definition of public charge that DHS will apply to immigrants seeking legal admission to the U.S., a change in status, or an extension of their stay.

First, the proposed rule departs from existing law by expanding the list of public benefits considered. Second, the proposed rule will look at whether a person or family has received minimal public assistance rather than examining whether a person or family has had a long-term dependence on public assistance. Third, the proposed rule includes a subjective totality of the circumstances test under which an immigrant's age, health, family status, financial status, and education are evaluated to determine whether that immigrant is a public charge. These changes to existing law will create a significant fiscal burden on states, create a chilling effect on immigrants, who came to this country legally, to seek public benefits for which they and their families are eligible, and is essentially a regulatory end-run around Congress whose job it is to study, draft, and pass comprehensive immigration reform.

The proposed rule would place an immense fiscal and administrative burden on states. Under the proposed expanded definition of public charge, federal benefits programs in addition to Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI) and government funded long-term care will be included. These additional benefits that will be weighed in the public charge determination include Supplemental Nutrition Assistance Program (SNAP), non-emergency Medicaid, Medicare Part D, public housing assistance under Section 8, and rental assistance. This expansion of current law will adversely impact states as they will lose significant federal revenue they receive from these programs. If this rule goes forward, everything from children's health and nutrition, access to health care and housing options will be compromised, with very real and substantive fiscal and economic impacts on states. DHS has not conducted any research to determine the extent of the impact on state economies, nor has it consulted with state legislatures, responsible for state appropriations, to discern this information.

The addition of these programs to the public charge determination will also place a time-consuming burden on states to explain to clients, legally eligible for the programs, that there could be adverse federal consequences if they participate. Families in need of these services will be faced with a Hobbesian choice—take the benefit that they are eligible to receive or decline it thereby making a choice that is detrimental to their children’s health, education and well-being. The [Kaiser Family Foundation](#) has found that, “decreased participation in these programs would contribute to more uninsured individuals and negatively affect the health and financial stability of families and the growth and healthy development of their children.” The decline in enrollments in vital federal programs adds fiscal stress on states.

NCSL has a longstanding [immigration policy](#). State legislators recognize the contributions legal immigrants make to our state economies and cultures. Our policy calls for balance between our democratic principles, states’ economic strength, and keeping our nation safe and secure. We believe that Congress, not a federal agency, should tackle comprehensive immigration reform that addresses security issues and the fiscal and economic impact of immigration on the states. With the promulgation of this proposed rule, DHS seeks to bypass the congressional process and define new and burdensome standards for legal immigration. NCSL, along with several other state and local government groups, sent a letter to the Immigration and Naturalization Service (INS) in 1999 commending the INS for excluding the very programs DHS now wants to include in this new public charge definition. We stated that, “by excluding medical and nutrition programs from public charge consideration, [it] would encourage eligible immigrants to seek needed services for themselves and their citizen and noncitizen children.” NCSL maintains the same position today.

NCSL is very concerned about the impact this proposed rule would have on our states, our communities, and on those who have immigrated legally to our country seeking a better life. We oppose this rule and ask that DHS withdraw it.

Sincerely,



Representative Eric Hutchings, Utah
Co-Chair, NCSL Law, Criminal Justice &
Public Safety Committee



Representative Roger Goodman, Washington
Co-Chair, NCSL Law, Criminal Justice & Public
Safety Committee



Senator Mo Denis, Nevada
Co-Chair, NCSL Immigration Task Force



Senator John McCollister, Nebraska
Member, NCSL Immigration Task Force