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Office of Policy and Strategy, U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

Re: DHS Docket No. USCIS-2010-0012

December 7, 2018

National Skills Coalition opposes the proposed changes to federal policies regarding the public charge. We urge DHS to withdraw the regulation in its entirety and return to the prior standard of principles that were affirmed in the 1999 field guidance on public charge. This field guidance, issued by the legacy Immigration and Naturalization Service (INS), is consistent with Congressional intent and case law. It represents a clear, straightforward standard that is administratively simple and relatively non-burdensome for workforce and education service providers to communicate to their immigrant constituents, and has been in use for decades.

In contrast, the proposed new regulation would impose significant uncertainty and significant new costs on a wide array of stakeholders involved in the upskilling of the US workforce. The nonprofit National Skills Coalition (NSC) has documented these concerns through conversations with many of our 22,000 members over the past several months.

Founded in 1998, NSC is a broad-based coalition working toward a vision of an America that grows its economy by investing in its people so that every worker and every industry has the skills to compete and prosper. Our members include small businesses, higher education institutions, workforce development providers, nonprofit community-based organizations, public officials, labor-management partnerships, and more – a robust array of workforce development and adult education advocates who recognize the importance of upskilling for American workers, businesses, and our economy.

Across this diverse array of members, we have heard broadly shared concerns about the compliance costs for this new proposed regulation. This is an unfunded federal mandate that is already creating widespread confusion and imposing new costs on thousands of organizations across the United States, even before its finalization. For example, many small and mid-sized enterprises (SMEs) lack in-house counsel or even a dedicated Human Resources position. As a result, business owners must scramble to answer their employees' questions and concerns about public charge issues, taking their time and attention away from their actual business. The subjective nature of the public charge test makes it difficult for them to provide definitive guidance in any given employee's case, and puts SMEs in the impossible position of trying to reassure their worried employees without overstepping and providing immigration legal advice that they are not equipped to provide.

Similar challenges face community colleges and nonprofit community-based organizations that provide adult education and workforce development services. At community colleges, frontline staff such as advisors, counselors, and navigators are already tasked with helping their students – whose average age is 26, and many of whom are working adults – with accurate information about a rapidly changing landscape with numerous variables. Advising students about whether and how to access financial aid, as well as vital supportive services such as healthcare and nutrition assistance, are core responsibilities of these staff members and are being made significantly harder by the increased complexity caused by this proposed regulation.

For nonprofit organizations -- many of which are multi-service agencies providing a range of human services – this proposed regulation adds confusion to the intake and enrollment process. While it is clear that services such as an adult English language class or job training course would not count negatively in the public charge test, it is not uncommon for adult jobseekers to be receiving other services for themselves or their family members, some of which *would* be counted as negative factors. As a result, nonprofit intake staff are already having to become versed in the proposed regulation so that they can appropriately guide, clarify and reassure their clients about the ramifications of participating in their programs and services.

DHS’s analysis of the anticipated costs of this rule fails to account for the type of costs outlined above, which stretch far beyond the narrow confines of “regulatory familiarization” alluded to in the Notice of Proposed Rulemaking (NPRM).

In addition, the mere proposal of these regulations has already had a notable chilling effect¹ – beyond the specific populations of immigrants and types of public benefits outlined in the NPRM – that we anticipate will continue to grow,² encompassing millions of individual immigrants and the institutions that serve them.

Additional specific concerns about the NPRM are outlined below.

1. The rule would undercut state and local education and workforce policy goals

The public charge rule would damage state and local governments’ ability to support their residents in achieving higher education and workforce policy goals. State and local governments regularly advance policies to improve the education and employability of their residents. For example, more than 40 states have established goals for postsecondary credential attainment, such as having 60 percent of state residents earn a college degree or other

¹ For evidence of this effect, see: “A proposed federal policy won’t target immigrants for using welfare. In Texas, they might drop out anyway” (*Texas Tribune*, Sept 28, 2018). Available at: <https://www.texastribune.org/2018/09/28/public-charge-immigration-chilling-effects-texas/>

² There is precedent for such a chilling effect, as this study on the effects of 1996 welfare reform and immigration legislation demonstrates. Susmita Pati & Shooshan Danagoulian, Immigrant Children’s Reliance on Public Health Insurance in the Wake of Immigration Reform, *American Journal of Public Health*, Nov. 2008 *available at* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2636442/>

postsecondary credential by 2025.³ Many states won't be able to reach their ambitious goals without including their immigrant residents.⁴

To accomplish these goals, states have established programs and services to equip returning adult students to persist and succeed in their education, including through assistance in accessing key public benefits. For example, in 2018 Illinois passed Senate Bill 351, known as the College Hunger Bill, to facilitate access to Supplemental Nutrition Access Program (SNAP) benefits for certain low-income college students.⁵ Research has shown that supportive services that help individuals access public benefits programs are often vital to ensuring that working adults succeed in postsecondary education.⁶

But the public charge rule would penalize immigrants for using such benefits, thus creating a disincentive for immigrants to participate in the very programs that are intended to help them succeed in their education and contribute economically. As a result, this federal regulation would undercut state and local efforts to invest in the human capital of their residents, by discouraging qualified immigrants from even applying for public benefits programs.

2. The rule would undermine workers' ability to upskill for in-demand occupations

The overwhelming majority of jobs in the US economy today require some postsecondary education, and this trend is only continuing. An analysis of Bureau of Labor Statistics data shows that 84% of jobs today require education and skills beyond the high school level.⁷ The US labor market has especially strong demand for workers at the middle-skill level: jobs that require more than a high school diploma, but not a four-year degree.⁸

³ See overview of all states here:

<https://www.wsac.wa.gov/sites/default/files/2017.04.19.04.Attainment%20Goals%20are%20Critical.pdf> and details on 29 of the state goals here: <http://strategylabs.luminafoundation.org/wp-content/uploads/2013/10/State-Attainment-Goals.pdf>

⁴ See, for example: *Middle Skill Credentials and Immigrant Workers : Texas' Untapped Assets* (National Skills Coalition, 2017.) <https://m.nationalskillscoalition.org/resources/publications/file/Middle-Skill-Credentials-and-Immigrant-Workers-Texas-Untapped-Assets.pdf>

⁵ Source : "Governor signs College Hunger Bill, assuring low-income community college students can access food security via SNAP, " (Chicago Coalition for the Homeless, n.d.) Available at : <http://www.chicagohomeless.org/governor-signs-sb315-assuring-low-income-community-college-students-can-access-food-security-through-snap/>

⁶ Source: *Connecting College Students to Alternative Sources of Support The Single Stop Community College Initiative and Postsecondary Outcomes* (Rand Corp., 2016.) Available at: http://www.singlestopusa.org/wp-content/uploads/2016/11/RAND-Report_Executive-Summary-1.pdf

⁷ Source: *The United States' Forgotten Middle* (National Skills Coalition, 2017.) Available at : <https://www.nationalskillscoalition.org/resources/publications/2017-middle-skills-fact-sheets/file/United-States-MiddleSkills.pdf>

⁸ *Ibid.*

Immigrants represent 1 in 6 American workers,⁹ and are crucial to meeting the demand for middle-skill positions such as machine operators, welders, certified nurse aides, and computer user support specialists. Training for middle-skill positions is often provided by community colleges, where some immigrants draw on public benefits such as SNAP to enable them to complete their studies. Counting these students' use of public benefits as a negative factor in the public charge test will undermine immigrants' ability to upskill and prepare for the jobs that American employers need.

3. The rule would undercut small and mid-sized businesses' ability to manage their talent pipelines

Nearly half (48 percent) of private-sector workers in the United States are employed in small and mid-sized enterprises.¹⁰ Unlike large corporations, which may have in-house training programs, small businesses rely on strategic partnerships and related tools to ensure a strong talent pipeline of workers who are equipped with the skills they need. These tools include industry sector partnerships,¹¹ work-based learning programs such as apprenticeship,¹² and collaboration with workforce boards, community colleges or other organizations to provide industry-specific occupational training. Because most of these training programs do not provide wages, individuals who are responding to business demand for skilled workers often draw upon public benefits to support themselves or their families during their training period or even when they first begin work. Adopting the public charge rule would penalize immigrants for using such benefits and undercut business efforts to build effective talent pipelines.

4. The rule's description of positive and negative factors is in conflict with itself.

The proposed regulation states that an individual's educational attainment and English language proficiency would be viewed as *positive* considerations in the totality of circumstances assessment. Yet the evidence is clear that in order to improve one's education and skills, it is often necessary to draw on short-term supportive services, such as Medicaid while in an apprenticeship program or nutrition assistance while enrolled in community college.¹³ Drawing

⁹Source : Frequently Requested Statistics on Immigrants and Immigration (Migration Policy Institute, February 8, 2018.) <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states>

¹⁰ Source: *Small Business Profile* (US Small Business Administration, 2016.) Available at : https://www.sba.gov/sites/default/files/advocacy/United_States.pdf

¹¹ Source: Industry Partnerships (Business Leaders United, n.d.) Available at : <https://www.businessleadersunited.org/business-practices/industry-partnerships>

¹² Source: Workforce Development : Advancing Apprenticeships for Small Business (U.S. House of Representatives hearing, March 20, 2018.) Available at : <https://smallbusiness.house.gov/calendar/eventsingle.aspx?EventID=400715>

¹³ Source: *Public Benefits and Community Colleges* (OMG Center for Collaborative Learning, 2014). Available at: <http://www.equalmeasure.org/wp-content/uploads/2014/12/BACC-Final-Report-FINAL-111914.pdf>

on such means-tested public benefits would be a *negative* consideration in the totality of circumstances test. The proposed regulation sets up a contradictory situation in which individuals attempting to strengthen their positive factors may instead add to the negative factors for their case. As a result, the proposed regulation could actually backfire in its intended consequences – in other words, make it *less* likely that immigrants will attain economic self-sufficiency and contribute financially to American society.

5. The rule could punish immigrants for attempting to improve their English skills.

Research from the Organization for Economic Cooperation and Development (OECD) shows that the US has a very tight connection between better basic skills and higher earnings – more so than other industrialized countries.¹⁴ This means that as an immigrant improves their reading, math, and spoken English skills, they will be better able to contribute economically to American society. Again, the proposed regulation acknowledges the centrality of English language skills to economic self-sufficiency by characterizing them as a positive factor in the totality of circumstances test. However, individuals commonly improve their English skills through participation in education programs, including those offered at community colleges and other higher education institutions. Individuals who rely on Medicaid or other public benefits to enable them to succeed in their English language classes could be discouraged from continuing their education and improving their employability by fear of being found a public charge.

6. The rule would reduce enrollment, retention, and completion rates in adult education and workforce programs.

Evidence from prior changes in immigration policy strongly suggests that many immigrants who are *not* subject to the public charge test will nevertheless withdraw from a broad array of public programs and services out of confusion, fear, or an abundance of caution. Following the passage of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) in 1996, thousands of immigrant families withdrew from public benefits programs *for which they were eligible*.¹⁵ The proposed regulation has already been widely publicized, and human services agencies have already reported an increase in immigrants disenrolling from public benefits programs.¹⁶ If this regulation is enacted forward, it is reasonable to assume that this type of

¹⁴ *Time for the US to Reskill?* (OECD, 2013.)

¹⁵ Michael Fix & Jeffery Passel, *Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform*, March 1999, (noting fear and confusion around public charge as a factor in noncitizen benefit enrollment decreases), available at <https://www.urban.org/research/publication/trends-noncitizens-and-citizens-use-public-benefits-following-welfare-reform>. Also see Leighton Ku & Alyse Freilich, *Caring for Immigrants: Health Care Safety Nets in Los Angeles, New York, Miami, and Houston*, Feb. 2001 (detailing several conversations with immigrants who decided that the risk of public charge was too great to receive Medicaid, even though policy had been issued that Medicaid posed no public charge risk), available at <https://files.eric.ed.gov/fulltext/ED453330.pdf>

¹⁶ Source: "Spooked by Trump Proposals, Immigrants Abandon Public Nutrition Services," (New York Times, March 6, 2018.) Available at: www.nytimes.com/2018/03/06/us/politics/trump-immigrants-public-nutrition-services.html

disenrollment will continue, and will include two types of erroneous disenrollment: 1) immigrants who are *not* subject to the public charge test, and 2) immigrants who are disenrolling even from services that are not included in the public charge determination. This mistaken disenrollment would lower overall participation rates for adult education and workforce programs, as well as reducing the likelihood of success for participants who withdraw from services midway through.”

7. The rule would increase college students’ financial instability and heighten their risk of dropping out.

Many college students are part of larger households – either as adult children or as spouses and parents themselves. This is especially true for community college students, whose average age is 26 years old. According to the National Center for Education Statistics, one-third of community college students have family income of less than \$20,000 per year.¹⁷ Penalizing immigrant students for accessing public benefits would send an earthquake across these financially fragile households, making it more likely that students would need to cut back on their course load and/or withdraw from education altogether. The long-term effects of these events would be to reduce higher education attainment among some of the very students who most need to build a strong economic footing for themselves, their families, and their American communities.

8. The rule fails to account for significant costs to state and local governments.

The current federal policy on public charge has been in place for more than two decades, during which time extensive infrastructure has been built up around its requirements. For example, many states use online applications for public benefits programs, which often include disclaimers or reassurances onscreen that applying for the benefit will not jeopardize a person’s immigration status. States have also spent significant time and money creating joint applications so that individuals can apply for multiple forms of assistance within a single form, thus streamlining the administrative processes for individuals and public agencies alike.

If the proposed regulation moves forward, state and local governments will face the enormous task of reprogramming computer software, redesigning application forms, and otherwise engaging in a complicated and expensive systemic process to ensure that individuals are given accurate information about what will be a far more complex public charge policy. Providing responsible guidance to benefits applicants on such a nuanced and detailed set of eligibility considerations will be difficult even for highly trained personnel, much less programmers trying to add legal language to legacy computer systems that must meet a host of other technical requirements.

As described above, it is expected that states will also be faced with a surge in requests from existing students and workers to dis-enroll themselves or their family members from publicly funded education and workforce programs. Finally, once the regulation goes into effect, states

¹⁷ Source: *Community College FAQs* (Community College Research Center, Columbia University, n.d.) Available at : <https://ccrc.tc.columbia.edu/Community-College-FAQs.html>

and localities will be bombarded with requests from current or former program participants for official documentation verifying that they have *not* received public benefits during a specified time frame. Gathering this historical data and responding to these requests while also obeying privacy restrictions and other technical constraints will be a significant undertaking, and one for which states and localities are receiving zero additional funding to support.

9. The rule would create confusion and add expensive, time-consuming responsibilities for financial aid advisors, guidance counselors, and educators.

Students and workers rely on professionals to give them accurate guidance as they make important life decisions about which higher education or workforce program to enroll in, how to pay for tuition, how much debt they can safely take on, and what the financial consequences of their decisions will be. The proposed rule would increase training and preparation required for high school guidance counselors, college financial aid advisers, career navigators, and other education professionals, as they would need substantive training in order to provide accurate guidance to immigrant applicants and their families about the repercussions of accessing public benefits to enable them to succeed in their educational goals. School districts, higher education institutions, and nonprofit organizations would thus be subject to an unfunded mandate.

10. The rule would present workforce professionals with the risk of providing advice far beyond their areas of expertise.

There are more than 550 workforce boards in the United States, thousands of American Job Centers, and tens of thousands of workforce training providers. Staff at these agencies and programs are expected to be knowledgeable about workforce development, not to be immigration legal experts. It would be expensive, unrealistic, and extraordinarily laborious for even a small percentage of these staff to be trained on the complex nuances of public charge determination and the potential repercussions. As a result, there are two potential outcomes of concern: first, that workforce systems will be forced to use scarce public resources to train their staff on an exceptionally complicated new set of federal restrictions, and second, that confusion or excessive caution will lead individuals to be turned away from services for which they should be eligible.

11. The uncertainty generated by the proposed regulation could trigger increased liability concerns.

Given the subjective nature of the totality of circumstances assessment, education and workforce providers may rightly hesitate to provide definitive advice to immigrant students and workers. Moreover, because there could be such severe immigration consequences if an applicant is given bad advice, some education and workforce providers may wish to steer clear of providing *any* guidance, lest they be liable for providing inaccurate information or even accused of the unauthorized practice of immigration law. In either case, states, localities, and

private organizations are likely to incur additional costs as they seek legal counsel in developing and implementing their own policies in response to federal changes.

12. The rule would damage education and workforce providers' ability to braid and leverage multiple public funding sources.

Braided funding streams are a hallmark of many education and workforce programs.¹⁸ For example, a job training program may combine funds from the Workforce Innovation and Opportunity Act (WIOA) with Temporary Assistance for Needy Families, or a community college certificate program may combine WIOA and Supplemental Nutrition Access Program Employment & Training (SNAP E&T) funds. The strategy of braiding various funding streams together is a pragmatic one that is typically done in order to increase the efficiency and leverage of any single public investment. However, the proposed regulation is already increasing confusion among providers using these braided funding strategies, who are concerned about how to determine whether the strategies that they are relying on to sustain effective programs could inadvertently place students at risk of losing their immigration status.

In light of the above concerns, we urge DHS to withdraw this proposed rule in its entirety, and instead allow the longstanding principles that were affirmed in the 1999 field guidance on public charge to remain in effect.

Thank you in advance for your thoughtful consideration of these comments and action in response to the concerns we raise.

Sincerely,

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¹⁸ See, for example : *Funding Career Pathways and Career Pathway Bridges: A Federal Policy Toolkit for States* (Center for Law and Social Policy, 2016). Available at : <https://www.clasp.org/publications/report/brief/funding-career-pathways-and-career-pathway-bridges-federal-policy-toolkit>