Public Charge 101
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The Protecting Immigrant Families Advancing Our Future Campaign

Created in 2017 and Co-Chaired by:

CLASP
Policy Solutions That Work For Low-Income People

NILC
National Immigration Law Center

Purpose: Unite to protect and defend access to health care, nutrition programs, public services and economic supports for immigrants and their families at the local, state and federal level.

- Nearly 250 Active Member Organizations
- 5 Working Groups: Communications, Federal Advocacy, Field, Policy & Legal Analysis, Research
- [Click here](https://protectingimmigrantfamilies.org) to see PIF Campaign overview
Questions we will address

• What’s the status of changes to public charge policy?
• What does this policy look like today?
• What has already changed?
• What would change under the draft proposed regulation?
• How should we talk about public charge?
  • With the public?
  • With immigrant families?
• How can we fight these changes?
Public Charge: What’s happened?

- **February 2017**: Draft Executive Order leaked – never issued
- **January 2018**: Changes made to Foreign Affairs Manual
- **Feb-March 2018**: Draft rule leaks
- **Sept 22 2018**: Text of NPRM released on DHS website
- **Oct 5 2018**: NPRM posted for Public Inspection on Federal Register
- **Oct 10 2018**: NPRM published in Federal Register. 60 day comment period begins
What does public charge policy look like today?
Current public charge test

**Definition**

A person who is considered “likely to become primarily dependent on the government for subsistence.”

**Benefits Considered**

Only **two types** of benefits considered:

1. **Cash** assistance for income maintenance
2. Institutionalization for **long-term care** at government expense
Totality of Circumstances Considered

✓ Age
✓ Health
✓ Family status
✓ Financial status
✓ Education and skills
✓ Affidavit of support

**Forward looking test**: Is the person likely to rely on cash or long-term care in the future? No one factor (including past use of cash benefits) is dispositive. Positive factors can be weighed against negative factors.
When does the public charge test come up?

A public charge assessment is made when a person:

• Applies to enter the U.S.
• Applies to adjust status to become a Lawful Permanent Resident (LPR)
• A green card holder leaves the U.S. for more than 180 consecutive days (6 months) and reenters
Who is exempt from public charge determination?

Public charge does NOT apply to:

- Lawful Permanent Residents applying for citizenship
- Refugees and Asylees
- VAWA self-petitioners
- Survivors of Domestic Violence, Trafficking, or other Serious Crimes (Applicants/ recipients of U or T visa)
- Special Immigrant Juveniles
- Certain Parolees, and several other categories of non-citizens
Public charge changes in the Foreign Affairs Manual
Officials in U.S. consulates abroad use the Department of State’s FAM to make decisions about whether to grant permission to enter the U.S.
Foreign Affairs Manual Changes

● **Revisions to FAM instructions** (Jan. 2018). Public charge definition not changed, but:
  ○ Affidavit of support no longer sufficient
  ○ Look to applicant’s age, health, family status, financial resources, skills. “Totality of circumstances” test now considers:
    - Use of non-cash benefits
    - Benefits used by sponsors or family members

● **NOTE**: Only affects decisions made by consular officials **abroad**
Foreign Affairs Manual Changes

● Impact so far?
  ○ Reports of denials or requests for additional evidence
  ○ More scrutiny of affidavits of support by joint sponsors
  ○ More questions about employment/income, family members with disabilities

● But
  ○ Forms have NOT changed
  ○ Consular officers still have discretion – practice varies
  ○ FAM could be revised again

● We are monitoring this – please let us know what you hear!
How would the public charge test change under the proposed regulation?
Changes in proposed regulation

1. New definition of “public charge”

2. Totality of circumstances test has new detailed negative factors that make it harder for low and moderate income people to pass

3. Additional public benefits included
Definition of public charge

**Currently**
An immigrant “likely to become primarily dependent on the government for subsistence”

**As Proposed**
An immigrant “who receives one or more public benefits”
Totality of Circumstances Test: Factors

- Age
- Health
- Family Status
- Income and Financial Status
- Education and Skills
- Affidavit of Support
Totality of Circumstances Test: Age

Positive Factor

Negative Factor

Age 18 to 60

TOO OLD (Age 61 or Older)

TOO YOUNG (Younger than 18)
Totality of Circumstances Test: Health

Positive Factor

Perfect Health

Negative Factor

Diagnosed with a medical condition

Condition will interfere with ability to attend school or work
Totality of Circumstances Test: Family Status

- Receipt of benefits by dependents (including U.S. citizen children) will **not** directly be a factor in applicant’s public charge test.

- If a child or family member is an immigrant, his/her own use of benefits counts toward his/her own public charge determination.

- Dependents are included in the calculation of household size and may make it harder for immigrants to meet the income test.
Totality of Circumstances Test: Income

The government can consider:

- ✓ Income of people in household
- ✓ Assets in cash or savings account
- ✓ Application for fee waiver (for immigration benefits)
- ✓ Credit history or credit score
- ✓ Enrollment in private insurance or $ to pay for extensive medical treatment or institutionalization

Imposes income test on immigrant (not only the sponsor)

Heavily Weighed Positive Factor
- 250% of FPL or higher

Negative Factor
- 125% of FPL or lower
Totality of Circumstances Test: Education and Skills

Positive Factor
- Higher degree and/or skills, certification, license
- Fluent in English

Negative Factor
- No high school degree (or equivalent)
- Not proficient in English
Totality of Circumstances Test: Affidavit of Support

Current Policy

Government looks to Affidavit of Support from sponsor and joint sponsor if individual’s income is not 125% of FPL or above.

Proposed Policy

Affidavit of support is a positive factor, but not heavily weighed. Government considers:

- Sponsor’s financial status
- Relationship to applicant and whether living together
- Likelihood sponsor would actually provide financial support
Totality of Circumstances Test: Heavily Weighed Factors

Heavily Weighed Positive Factor

- Individual or Household income 250% of FPL or above

Heavily Weighed Negative Factors

- Lack of job or job prospects
- Health condition w/o private insurance or $ to pay for care
- Receipt of public benefits
Changes are not retroactive

Under NPRM, benefits:

- Received before the proposed rule is finalized
- That are currently excluded from the public charge test

*(Anything other than cash or long term care)*

**Will not** be considered in the public charge determination
Public benefits included in NPRM

| *Cash Support for Income Maintenance |
| *Long Term Institutional Care at Government Expense |
| **Most Medicaid Programs |
| Supplemental Nutrition Assistance Program (SNAP or Food Stamps) |
| Medicare Part D Low Income Subsidy |
| Housing Assistance (Public Housing or Section 8 Housing Vouchers and Rental Assistance) |

* Included under current policy as well
** Exceptions for emergency Medicaid & certain disability services offered in school. DHS is asking for input on inclusion of CHIP, but the program is not included in the regulatory text
Public benefits not included

Any benefit not specifically listed in the regulation is NOT included

- Benefits received by immigrant’s family members
- Disaster relief
- Emergency medical assistance
- Entirely state local or tribal programs (other than cash assistance)
- CHIP* (DHS requests input on inclusion of CHIP, but not included in regulatory text)
- Women Infants and Children (WIC)
- School Breakfast and Lunch
- Energy Assistance (LIHEAP)
- Transportation vouchers or non-cash transportation services
- Non-cash TANF benefits
- Federal Earned Income Tax Credit and Child Tax Credit
- Student Loans
Who would the proposed regulation harm?
Impacts of the proposed regulation
Who might be impacted?

As many as **26 million** people in families with immigrants might be chilled from participating in programs that make their families healthier and stronger.¹

**1 in 4 children have an immigrant parent**

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**Source**: ¹ “Public Charge Proposed Rule: Implications for Non-Citizens and Citizen Family Members Data Dashboard,” Manatt Health, October 2018

**Source**: Samantha Artiga and Anthony Damico “Nearly 20 Million Children Live in Immigrant Families that Could Be Affected by Evolving Immigration Policies” Kaiser Family Foundation, 2018
Impacts of the proposed regulation
Impacts by race and ethnicity

• 18.3 million **LATINOS**
  > 33.4% of all LATINOS

• 3.2 million **ASIAN/API**
  > 17.4% of all ASIAN/API

• 1.8 million **BLACK & AFRICAN**
  > 4% of all BLACK & AFRICAN

• 2.5 million **WHITES**
  > 1% of all WHITES

Source: “Public Charge Proposed Rule: Implications for Non-Citizens and Citizen Family Members Data Dashboard,” Manatt Health, October 2018
Summary: Why the proposed policy is a radical change

Definition Change
Definition would change from someone who relies on government for main source of support to someone who participates in a health, nutrition or housing benefit to support work.

More Factors Considered
Totality of circumstances test has new detailed factors that make it harder for low and moderate income people to pass. Immigrants can fail the test if they are low income, don’t speak English well, have a medical condition.

Additional Benefits
Additional benefits included in the test: Medicaid, SNAP, Housing assistance, Medicare Part D low-income subsidy.
• From Nicaragua
• TPS since 2001 but TPS is ending January 2019
• Pregnant and enrolled in Medicaid in Ohio
• Husband wants to sponsor her for a green card
• Clara is afraid that Medicaid during pregnancy will cause a problem
Clara under the proposed regulation
Kareena

- From India
- Living in the US as a green card holder for 12 years
- Her son petitioned for her and lives with her son and grandson
- 72 and retired from job as cashier
- Receives Medicare and extra help through Low-Income Subsidy Program for prescriptions
- Wants to return India to visit her sister who is ill -- **but**, worried that if she leaves the US, she can’t return
Clara under the proposed regulation

**Positive Factor**
- Son sponsoring

**Negative Factors**
- Age
- Receipt of Medicare subsidy (after final rule effective)
- Unemployed
Keep in Mind

• The existing 1999 public charge guidance is still in place until a new rule is finalized.
• The final regulation could look different from the proposed regulation.
• The proposed regulation may never be finalized.
How should we talk about this issue?
What is it really about?
Key public messages

MESSAGE MUST HAVES:

• **Start with a shared value:** How you live your life and contribute to your community should define you in this country, not how you look or how much money you have.

• **Explain how Trump’s proposed regulation is an affront to those values.** This regulation puts the wealthy ahead of families who’ve waited years to be reunited.

• **Call for people to speak out and fight back.** People can share their stories and spread the word. And when the time comes, people should send a comment!
Messaging Toplines

● **Hurts children, families, communities, our health, our future**
  ○ No way to hurt parents without hurting children
  ○ We are all healthier and stronger when families are healthy and strong

● **An America only for the rich**
  ○ Wealthy-only policy
  ○ Green cards to the highest bidder

● **A new family separation policy**
  ○ We value families, and families should be able to stay together

● **Radical change through the back-door of our family-based immigration system**
  ○ Presidential overreach and end-run around Congress

● **Continues ugly history of discrimination against immigrants**
  ○ We’ve seen abuses like this before in our history — whether it was turning away Jews fleeing the Holocaust, excluding Chinese and Asian immigrants, or discriminating against Catholics from Ireland and Italy.
Values messaging examples

“This harsh and misguided policy goes against our basic values as a nation. It would not only set us back decades by undermining progress made in building healthier communities, it would put our friends, family and neighbors in harm's way.”

“This disruption of family unity comes mere months after the same government agency pursued a policy of forcibly separating immigrant parents and children at the border, many of whom remain separated today. Pediatricians will oppose any proposal that puts children's health at risk, and we will continue to speak out to ensure that all children, no matter where they or their parents were born, can be healthy and safe.”

American Academy of Pediatrics
Values messaging examples

“You don’t kick the cane away from a person and criticize them for not standing. But that’s what this rule is doing.”
- Rep. Chu (D-CA)

“Our immigration laws and rules should be designed to attract and welcome those who are willing and able to contribute to our country, but this proposal will make it more difficult for the spouses and children of U.S. citizens to obtain green cards,”
- Rep. Curbelo (R-FL)
How can you talk to immigrant families about this?
How can you talk to immigrant families about this?

1. The public charge rules in the US have not yet changed

2. The proposed regulation would not consider any newly listed benefits before it is final

3. The regulation does not apply to all immigrants

4. The privacy of your personal information is protected by law

5. You are not alone, and you can fight back!

For more information on talking with immigrant families about public charge, check out this FACT SHEET
How can you fight back?
Rulemaking process

- Oct 05: Proposed regulation published in Federal Register for public inspection
- Oct 10: Proposed regulation published on regulations.gov for public comment
- 60 Days: Opportunity for public comments
- Dec 10: Comment Period Ends
- ??: DHS Reviews and considers all comments
- ??: Final Regulation published in Federal Register
Help us reach 100,000 comments by December 10

High Quality Organizational Comments

• Who?
  ○ Nonprofits, direct service providers, local, state and national elected officials

• What to say?
  ○ Model comment and Templates for 40+ sectors available soon

• Where to submit?
  ○ Federal Comment Portal on Regulations.gov

• When?
  ○ Draft now and wait until second half of comment period to submit

High Quantity Individual Comments

• Who?
  ○ You and your colleagues and friends and family

• What to say?
  ○ Text to edit on websites with a few clicks.

• Where to submit?
  ○ ProtectingImmigrantFamilies.org
  ○ Other microsites available too!

• When?
  ○ Starting now and every day until December 10
Comment best practices

● Do write comments in your own words!
  ○ Templates are fine -- but we strongly encourage you to edit them!
  ○ Reflect your own thoughts and experiences
  ○ Explain why this matters to YOU and/or YOUR organization

● Don’t suggest corrective language. We do not recommend suggesting ways that the agency can “fix” the proposed language.

● Don’t discuss programs that aren’t specifically included in the NPRM

● Do oppose the expansion of the rule to include any additional programs, not just the program that matters most to you.

For more comment FAQs, check out this FACT SHEET
What else can you do?

Join the Campaign bit.ly/PIFActivemember

Share a Story bit.ly/PIFstory

Speak Up #ProtectFamilies
Have questions?

Please submit your questions in our FAQ Form [bit.ly/askPIFcampaign](https://bit.ly/askPIFcampaign)

Someone from the campaign will respond to you as soon as possible.
Will the rule affect green card holders when they renew their cards?

A person’s lawful permanent residence does not expire when the green card expires. Since there is no new admissions test when a person renews their green card, the public charge ground of inadmissibility would not apply at that stage.

How will the rule affect individuals with disabilities?

DHS would negatively consider applicants that have physical or mental health conditions that could affect their ability to work, attend school or care for themselves.
FAQs

Are educational programs included?

No. Non-cash benefits that provide education, child development, and employment and job training are excluded from the public charge determination under current law and in the proposed rule.

Will people be deported if they become a public charge?

In extremely rare circumstances, a person who has become a public charge can be deported. The proposed rule does not interpret or expand the public charge ground of deportability. Parallel rulemaking by the Department of Justice is possible.
How would the different income status pieces of the regulation work?

- People earning under 125% FPL percent of the poverty line ($31,375 annually for a family of 4) would be weighed negatively.
- Earning over 250% of the poverty line ($62,750 annually for a family of 4) would be a heavily weighed positive factor.
- Public charge remains a totality of circumstances test. Household income carries weight but will not necessarily be single deciding factor.
Who will be making the judgement whether someone is going to be a public charge?

• If applying to enter the US from abroad, consular officials make the PC determination based on criteria in the Foreign Affairs Manual (FAM).

• If applying for a green card in the U.S., USCIS staff make the PC determination based on criteria in the statute, any implementing regulations and field guidance. Note: some people need to leave the U.S. and go through consular processing.