Protecting Immigrant Families
Advancing Our Future Campaign
Public Charge 101
April 22, 2019

Presented by:

CLASP
Policy Solutions That Work For Low-Income People

National Immigration Law Center
What is the PIF Campaign?

• 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.
  • Created in 2017 and co-chaired by NILC and CLASP
  • Over 350 Active Member Organizations
  • 5 Working Groups: Communications, Federal Advocacy, Field, Policy & Legal Analysis, Research. In 2019 we formed 5 new subcommittees.
  • [Click here](#) for more information on the PIF Campaign.
Priority # 1
Combat and document the chilling effect of Trump’s anti-immigrant agenda, and empower immigrants and their families to make informed and accurate decisions

Priority # 2
Block, delay (and mitigate) the impact of proposed public charge changes and other related harmful policies from taking effect

Priority # 3
Build power and support for an affirmative vision forward
Questions we’ll address

• What’s the status of changes to public charge policy?
• What does current policy look like?
• What has already changed?
• What would change under the draft proposed regulation?
• How should we talk about public charge?
• What can I do to help?
Timeline of Public Charge Proposals

- **JAN 2018**: Changes to the Foreign Affairs Manual
- **OCT 2018**: DHS published the proposed rule
- **DEC 2018**: More than a quarter million people submitted comments against the rule change
- **NOW**: DHS must review and consider all comments
- **TBD**: A final rule posted to the Federal Register
- **60 DAYS**: There is a minimum 60 day waiting period before the rule can go into effect (could be longer)
- **Effective Date**: The rule is in effect

Effective Date

60 DAYS

JAN 2018

OCT 2018

DEC 2018

NOW

TBD

- Effective Date

Changes to the Foreign Affairs Manual

DHS published the proposed rule

More than a quarter million people submitted comments against the rule change

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A final rule posted to the Federal Register

There is a minimum 60 day waiting period before the rule can go into effect (could be longer)

The rule is in effect
What does current public charge policy look like?
Longstanding 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
Current public charge test in the U.S.

The public charge assessment is forward looking

Is the person likely to rely on cash or long-term care in the future?

- No one factor (including past use of cash benefits) can alone determine whether or not someone is a “public charge”
- Positive factors can be weighed against negative factors

Totality of Circumstances

- Age
- Health
- Family status
- Financial status
- Education and skills
- Affidavit of support
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) - obtaining a green card
- A green card holder leaves the U.S. for more than 180 consecutive days (6 months) and reenters
Public charge does **NOT** apply to everyone. Here are some examples of public charge does **NOT** apply to:

- Lawful Permanent Residents (Green card holders)
- Immigrants 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 Foreign Affairs Manual (FAM) to make decisions about whether to grant people permission to enter the U.S.
Foreign Affairs Manual Changes

- **Revisions to FAM instructions** (Jan. 2018):
  - Public charge definition did not change
  - **BUT:**
    - Affidavit of support no longer sufficient in and of itself
    - Look broadly at 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**: These changes only affect decisions made by consular officials abroad
Foreign Affairs Manual Changes

- **What is the impact so far?**
  - Increased refusals on public charge grounds in FY 2018 - by 300%
  - 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

- **It is important to remember:**
  - 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

NEW DEFINITION
A dramatically different definition of public charge

TOTALITY OF CIRCUMSTANCES
New weighted factors of the totality of circumstances test designed to make it harder for low and moderate income people to pass

ADDITIONAL BENEFITS
Additional public benefits programs can be considered by immigration officials.
Definition of public charge

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

**PROPOSED**
An immigrant who is likely to “receive **one or more** public benefits”
Proposed Changes: Totality of Circumstances Factors

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

Positive Factor

Negative Factor

Age 18 to 60

TOO OLD (Age 61 or Older)

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

Positive Factor

Negative Factor

Perfect Health

Diagnosed with a medical condition

Condition will interfere with ability to attend school or work
• 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.
Imposes income test on immigrant - not only the immigrants sponsor.

The government can consider:
- Income of people in household
- Assets in cash or savings account
- Application for fee waiver
- Credit history or credit score
- Enrollment in private insurance or $ to pay for extensive medical treatment or institutionalization
Totality of Circumstances: Education/Skills

Positive Factor
- Fluent in English
- Degree and/or skills, certifications, licenses

Negative Factor
- No high school degree (or equivalent)
- Not proficient in English
CURRENT POLICY

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

PROPOSED POLICY

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

**Government will consider:**

- Sponsor’s financial status
- Relationship to applicant and whether living together
- Likelihood sponsor would actually provide financial support

**Totality of Circumstances:**

Affidavit of Support
Heavily Weighed Positive Factors

- 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

Totality of Circumstances: Heavily Weighed Factors
## Public benefits included in NPRM

<table>
<thead>
<tr>
<th>Public Benefits</th>
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</thead>
<tbody>
<tr>
<td>*Cash Support for Income Maintenance</td>
</tr>
<tr>
<td>Supplemental Nutrition Assistance Program (SNAP or Food Stamps)</td>
</tr>
<tr>
<td>*Long Term Institutional Care at Government Expense</td>
</tr>
<tr>
<td>Medicare Part D Low Income Subsidy</td>
</tr>
<tr>
<td>**Most Medicaid Programs</td>
</tr>
<tr>
<td>Housing Assistance (Public Housing or Section 8 Housing Vouchers and Rental Assistance)</td>
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</table>

* Included under current policy as well
** Exceptions for emergency Medicaid & certain disability services offered in school. DHS asked for input on inclusion of CHIP, but the program was not included in the regulatory text
If you receive any of the newly proposed additional benefits before the rule is final - the use of these benefits will not be considered in future public charge determinations.

Under the new proposal, DHS cannot judge:
- Public benefits received before the proposed rule is finalized
- Proposed program additions to the public charge test (previous slide BLUE)
- Any other benefits that are not cash or long term care (see next slide)

Remember* DHS current policy considers use of cash and long-term care. That element of the policy will remain the same (Previous slide ORANGE)
Public benefits not included in the proposal

Any benefit not specifically listed in the regulation will not be considered

- Benefits received by immigrant’s family members
- Disaster relief
- Emergency medical assistance
- Entirely state, local or tribal programs (other than cash assistance)
- CHIP* (DHS requested input on inclusion of CHIP during the comment period in 2018, but CHIP was not included in regulatory text)

- Special Supplemental Nutrition for 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
Why this proposal is a radical change

**DEFINITION CHANGE**
This 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**
The 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, etc.

**ADDITIONAL BENEFITS**
Additional benefits included in the test: Medicaid, SNAP, Housing assistance, Medicare Part D low-income subsidy.
Who would the proposed regulation harm?
Direct and indirect impacts

• Directly impacted individuals
• Broader population of people in immigrant and mixed-status families are at risk of “chilling effect”
• States and localities
• Providers and communities
• All of us
Directly Impacted: Clara

Clara is afraid that Medicaid during pregnancy will cause a problem

- She’s from Nicaragua
- She’s had TPS since 2001 but TPS ends in January 2019
- She’s pregnant and enrolled in Medicaid in the state of Ohio
- Her husband wants to sponsor her for a green card
How the rule would impact Clara

Current Policy

Clara’s enrollment in Medicaid will not affect her green card application.

Proposed Rule

Positive Factors

Negative Factors

Income

Received Medicaid after the rule is final

Age
Directly Impacted: Kareena

Kareena wants to return to India to visit her ill sister, but she’s worried that if she leaves the U.S. - she can’t return.

- She’s from India
- She lives in the US and has had a green card for 12 years
- Her son petitioned for her and currently lives with her son and grandson
- She’s 72 and retired from her job as cashier
- She receives Medicare and extra help through Low-Income Subsidy Program for prescriptions
How the rule would impact Kareena

**Current Policy**

If Kareena leaves the U.S. to visit her sister in India for 6 months, her enrollment in Medicare would not be a factor in her public charge test.

**Proposed Rule**

- **Positive Factors**
  - Son is sponsor

- **Negative Factors**
  - Age
  - Received Medicare subsidy after rule is final
  - Unemployed
The rule may deter (and has already deterred) legal immigrants and mixed-status families from using public benefits they are eligible to receive due to:

- Confusion over what benefits are covered
- The complexity of the rule’s structure
- Discretionary application of the rule

After 1996 eligibility changes, there was a 25% decrease in use of Medicaid by children of foreign-born residents, the majority of these children were still eligible.¹

In a 2018 survey at public health clinics in CA:²
- **Two-thirds** of health providers reported an increase in parents’ fear about enrolling kids in Medicaid, WIC
- **Nearly half** of providers reported an increase in no shows at public health clinics.

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The Chilling Effect: The Big Picture

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 parent²

1“Public Charge Proposed Rule: Implications for Non-Citizens and Citizen Family Members Data Dashboard,” Manatt Health, October 2018
2 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
The Chilling Effect: The Big Picture

Impacts by Race and Ethnicity:

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

- **3.2 million ASIAN**
  > 17.4% of all ASIAN

- **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
Costs to States and Localities

Implementation costs, including:
- Explaining the rule and helping potentially affected individuals understand its implications
- Re-working eligibility and enrollment IT systems and processes
- Updating/developing systems to better track other benefit use

Reduced income in communities, an estimated (nationwide):
- $17.5 billion reduction in benefits; $33.8 billion in economic ripple effects; and 230,000 jobs lost.

Resources:
- State Policymakers Oppose Public Charge
- Mayors Oppose Public Charge
- The Impact of Public Charge on Select States and Localities
- FPI Economic and Fiscal Calculations for All 50 States

Draft Form I-944:
Attached to the public charge proposed rule.
It asks applicants to submit documentation of all benefits received.
This includes dates, amounts, and who was covered by the benefit.
**Costs to Providers and Communities**

**Increased uncompensated care**
- Hospitals and community health centers likely to see more uninsured patients.
- Immigrants and their families may forego preventive care or chronic care management, driving an increase in costly emergency and acute care.
- Safety net providers—including hospitals and community health centers—may feel the greatest impact.

**Added costs for schools and social services**
- Loss of SNAP may drive reduced participation in school meals.
- Hungry children are less ready to learn.

**Resources:**
- [America’s Leading Health Plans Oppose Public Charge](#)
- [Public Health Groups Oppose Public Charge](#)
We are all worse off when people do not have access to key health care, nutrition, and housing supports.

• Proposed rule is grounded in the false claim that receiving benefits means that you’re not contributing.
• The vast majority (91%) of those who would be newly affected are working but being paid low-wages.*
• Investments in key supports pay off in the long run and lead to improved health and better economic outcomes.

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 can you talk to immigrant families about public charge?
Speaking to immigrant families...

• For public charge decisions made *in the U.S.*, **nothing has changed yet.** We recommend that you continue to get the help you need.

• If your family plans to apply for a green card or visa outside the U.S., you should talk with an expert before making decisions.

  [www.immigrationadvocates.org/nonprofit/legaldirectory](http://www.immigrationadvocates.org/nonprofit/legaldirectory).

View this [FACT SHEET](http://www.immigrationadvocates.org/nonprofit/legaldirectory) for more info on talking with immigrant families about public charge.
Speaking to immigrant families...

- Use of public benefits alone will NOT make you a public charge.
- The public charge determination is a forward-looking test.
- Some immigrants are exempt by law from the public charge test.
- The proposed rule is NOT retroactive.
- Your personal information is safe.
- We are continuing to fight this attack on immigrant families.

View this FACT SHEET for more info on talking with immigrant families about public charge.
What can I do to get involved?
Public comment period ended

DHS must review and consider the more than 250,000 public comments submitted

This process could take months or even years to complete

A final rule posted to the Federal Register

A 60 day waiting period before the rule is in effect

The rule is in effect
Stop Trump’s Attack on Immigrant Families

In 2017, The Protecting Immigrant Families, Advancing Our Future (“PIF”) campaign was created by the Center for Law and Social Policy (CLASP) and the National Immigration Law Center (NILC) to combat the Trump Administration’s attack on access to health care, nutrition, housing, and economic security programs for millions of immigrant families. Our campaign brings together leading advocates for immigrants, children, education, health, anti-hunger, anti-poverty, and faith communities. Together, we not only defend against these threats, but also work to lay the foundation for a more productive national dialogue about our immigrant tradition and our country’s future.
Community Education Resources

In 2019, the Protecting Immigrant Families (PIF) Campaign is dedicated to providing more community-facing materials on public charge to help better equip immigrants with what they need to know to make the best decision for themselves and for their families.

For People Working with Immigrant Families:

- Updated in April*: [How to Talk About Public Charge with Immigrants and Their Families](#) (PIF Campaign)

- [Frequently Asked Questions on Public Charge for Immigrant Families](#) (MomsRising and PIF Campaign)

- NEW*: [Immigrant Self-Sufficiency Fact Sheet: How Benefits Can Help](#) (Massachusetts Law Reform Institute)
How to Get Involved with PIF?

Join our Email List
Stay up-to-date on news, developments, and other threats that impact immigrant families and join our email list. Every Monday, we provide the state of play, advocacy opportunities, and new resources. To join go to: http://bit.ly/PIFCampaign

Become an Active Member
Join the hundreds of organizations working to protect immigrant families. There are no fees or work requirements to join as an Active Member, and you can participate in one of our many working groups and subcommittees. To join go http://bit.ly/PIFActivemember

Share Your Story
Everyone’s voice matters in this fight - please share your lived experience. Go to http://bit.ly/PIFstory and we will follow up to have a more in-depth conversation. Your information will never be shared without your permission.

Take Action!
Be sure to check out our Events page for more opportunities to learn and take action to support immigrant families.

Protectingimmigrantfamilies.org
Questions & Answers

Please type your questions and comments into the Chatbox