

# IMMIGRANTS and PUBLIC CHARGE: Updates & Strategies to Respond

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# AGENDA

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- II. Overview of Public Charge
- III. Recent Changes to the Foreign Affairs Manual (FAM)
- IV. Up Next: Notice of Public Rulemaking (NPRM)
- V. Messaging
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# WHAT IS PUBLIC CHARGE?



# BACKGROUND: PUBLIC CHARGE

**Public Charge:** Immigration law term used to describe someone who is primarily dependent on the government for support. If someone is deemed to be dependent on government, cannot be admitted and cannot get a green card.

*\*\* Historically, deportation based on public charge has been **rare***

# WHAT BENEFITS ARE CONSIDERED?

Currently, only two types of benefits are currently considered in public charge determination:

- 1. Cash assistance** for income maintenance
- 2. Institutionalization** for long-term care

# WHEN IS PUBLIC CHARGE ASSESSED?

A public charge assessment is made:

- When a person **applies to enter** the U.S. or
- **Applies to adjust status** to become a Lawful Permanent Resident (LPR), **NOT** when applying to become a U.S. citizen

# PUBLIC CHARGE FACTORS

- Officer to look at applicant's:
  - Age
  - Health
  - Family status
  - Financial status
  - Education and skills
  - Affidavit of support

# THINGS TO KEEP IN MIND

## EXEMPTIONS

- Certain immigrants, including refugees, asylees, survivors of trafficking, domestic violence and other serious crimes, and others are not subject to the “public charge” test nor are people applying for U.S. citizenship.

## TOTALITY OF CIRCUMSTANCES

- This “totality of the circumstances” test requires the government to look at ALL the factors together.

## FORWARD-LOOKING

- The decision is forward-looking and can't be based only on what happened in the past.



RECENT CHANGES:

FOREIGN AFFAIRS MANUAL (FAM)



# FOREIGN AFFAIRS MANUAL (FAM) CHANGES

- On January 3, 2018, the U.S. Department of State published revised sections of its Foreign Affairs Manual (FAM) that deal with “public charge.”
- Major changes:
  - Receipt of non-cash benefits in the past or present may be considered as part of totality of circumstances test
  - Shifts focus from sponsor to applicant or family members
  - Sufficient affidavit of support merely one positive factor
- **NOTE: Impacts ONLY: People Seeking to Enter the U.S. From Abroad**

# FOREIGN AFFAIRS MANUAL (FAM)

## **Current and potential impact of the FAM guidance**

- Reports that a consulate has changed its practices and will be looking harder at the applicant's earning potential.
- Possible that applicants could be refused if unemployable, retired, and/or disabled.
- **Limitations on harm**
  - ONLY applies to applicants entering from abroad
  - Forms have NOT changed
  - Practically, difficult to find out about use of public benefits by family members in US
  - Language is confusing and consular officers still have discretion

ANTICIPATED CHANGES:  
**NOTICE OF PROPOSED RULEMAKING  
(NPRM)**



# PUBLIC CHARGE PROPOSED RULE

## Timeline

- NPRM published by July 2018 (according to Unified Agenda)
- Accelerated timeline in response to White House pressure
- Draft leaked to press on February 8, 2018
- USCIS → OMB/ OIRA → published NPRM → comments → final rule

## Content

- The NPRM is likely to alter public charge rules by allowing DHS/USCIS to consider a much broader array of services and benefits in the public charge determination.
- Benefits received by dependents – including citizen children – may be considered

## POTENTIAL PROGRAMS THAT COULD BE TARGETED:

- Health programs like Medicaid, CHIP and the marketplace subsidies/tax credits
- Nutrition programs like SNAP and WIC
- Homeless shelters and Housing assistance
- Energy assistance (LIHEAP)
- Transportation services
- Educational benefits under Head Start

# POSSIBLE CHANGES

- Noncash **benefits used before a public charge rule is finalized** are not likely to be used as a factor in a public charge determination for an individual or family member.
- **Certain benefits EXEMPT** from consideration in the public charge determination including school meals, “earned” benefits connected to work or military service (SSDI, veteran’s benefits, unemployment, worker’s comp), Medicare, loans, and emergency and disaster assistance.
- Likely exempts programs, services, or assistance (soup kitchens, crisis intervention, short-term shelter) **provided by local communities or private nonprofit organizations**

# NEXT STEPS

## **BEFORE the Proposed Rule is Published**

- Educate stakeholders about existing “public charge” rules and discuss potential for harmful changes in the future
- Map out coalitions and groups you can work with to fight back

## **AFTER the Proposed Rule is Published**

- Join efforts to submit public comments: organizational and individual
- Educate and advise immigrant families
- PIF campaign will share information for immigrant families and talking points for the public, draft arguments, and story gathering templates



# PUBLIC MESSAGING

- UNDEMOCRATIC end-run around Congress
- Current laws **ALREADY** bar immigrant access benefits
- Bad for public health and our economy
- Forces parents to decide between obtaining a permanent immigration status or providing for children
- Harms **CHILDREN** and future generations

# PUBLIC MESSAGING (CONT.)

- We need smart policy-solutions, not attacks on the health and well-being of our communities.
- Underlying premise is wrong
- Costs to businesses/ charitable sector
- Taking away critical benefits from people with disabilities

# MESSAGING TO FAMILIES

- The rules for immigrants who apply for a green card in the U.S. (who are not processed abroad) **have not changed**. Receipt of non-cash public benefits for which you are eligible currently are not considered when you obtain a green card in the U.S.
- Many families are **not subject to public charge**
- Public charge test considers **totality of the circumstances**.
  - Families need to make *individual determinations* based on their situation.
  - Using health care and nutrition benefits can help you be stronger, healthier and less likely to be dependent on the government
- For **individuals currently receiving public assistance**, there may be **no advantage to terminating benefits at this time**.

# STRATEGIES TO RESPOND

- EDUCATE your networks to fight the chilling effect and prepare them to fight back
- TALK TO policymakers to urge them to oppose the changes
- SUBMIT public comments for NPRM and encourage others (including affected families and community providers) to do the same
- DOCUMENT the harm

# ***PROTECTING IMMIGRANT FAMILIES, ADVANCING OUR FUTURE:***

## **THE CAMPAIGN**



# WORK OF THE CAMPAIGN

- **Building a network** of state, local, and national organizations that brings together the various sectors potentially impacted by these threats and working together to align, coordinate, strategize, and take action
- Offering **united public opposition** to policy changes that would use poverty as a weapon against immigrants and use immigration status as a weapon against the poor
- **Advocating for public policy** that includes immigrants in the United States' fundamental promise of life, liberty, and the pursuit of happiness
- **Researching** the impact of public policy threats and the best way to explain those threats to policymakers and the broader public
- **Communicating** with the public about a future built together by those whose families have been in the United States for generations and those who come today

# GET INVOLVED!

Sign up for Campaign listserv: <http://bit.ly/PIFCampaign>

To join Campaign as an active member and participate in working groups: <http://bit.ly/PIFActiveMember>

# RESOURCES

## **Protecting Immigrant Families Campaign Resources:**

- [Fact sheet](#) on proposed changes to public charge
- [Fact sheet](#) on changes to the Foreign Affairs Manual (FAM)
- Updated guide on “[Things to Keep in Mind When Talking with Immigrant Families](#)” in light of the leaked NPRM and the changes to the FAM

**Questions or to share stories:** [mhardee@clasp.org](mailto:mhardee@clasp.org)