

IMMIGRANTS and PUBLIC CHARGE: Updates & Strategies to Respond

JACKIE VIMO, NATIONAL IMMIGRATION LAW CENTER



AGENDA

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II. What is Public Charge?

III. Recent Changes to the Foreign Affairs Manual (FAM)

IV. Up Next: Notice of Public Rulemaking (NPRM)

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INTRODUCTION

- Public charge is changing
- Families are worried
- CHILLING EFFECT
- Misinformation
- We must continue to work to ensure that ALL people, regardless of immigration status, have access to the food and nutrition programs they need

WHAT IS PUBLIC CHARGE?



BACKGROUND: PUBLIC CHARGE

Public Charge:

Within immigration law, a public charge determination is based on if someone is, or is likely to become, dependent on the government for basic subsistence

- *Historically*, deportation based on public charge has been **rare**.

WHAT BENEFITS ARE CONSIDERED?

Currently, determination is based on assessment of all relevant factors, and 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



AFFIDAVIT OF SUPPORT

An affidavit of support is a document an individual signs to accept financial responsibility for another person, usually a relative, who is coming to the United States to live permanently.

- Required for family-based petitions
- Petitioner becomes sponsor
- Must show income at or above 125% of poverty
- Can also use assets if income too low
- Can also get joint sponsor



THINGS TO KEEP IN MIND

- EXEMPTIONS
- TOTALITY OF CIRCUMSTANCES
- FORWARD-LOOKING.

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.”
- Officials in U.S. embassies and consulates abroad use the FAM to make decisions about whether to grant non–U.S. citizens permission to enter the U.S.

NOTE: Impacts ONLY People Seeking to Enter the U.S. From Abroad

HOW DO NEW FAM INSTRUCTIONS CHANGE THE LONGSTANDING POLICY?

- Shifts focus from sponsor to applicant or family members
- Sufficient affidavit of support merely one positive factor
- New concerns for those with advanced age, health problems, retired, disabled, low-skilled, underemployed
- May require job offers and proof of medical insurance
- Past receipt of any public assistance an issue, including receipt by children

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

PUBLIC CHARGE:

**NOTICE OF PROPOSED RULEMAKING
(NPRM)**



PUBLIC CHARGE PROPOSED RULE

Timeline

- NPRM published by July 2018 (according to Unified Agenda)
- USCIS → OMB/ OIRA → published NPRM → comments → final rule
 - There will be OPPORTUNITY for PUBLIC COMMENT

Content

- The NPRM is likely to allow DHS/USCIS to consider a much broader array of services and benefits in the public charge determination.
- A draft copy has been leaked to the press.

POTENTIAL PROGRAMS THAT COULD BE TARGETED:

- Non-cash TANF benefits like child care, transportation, pregnancy prevention or after school programs
- 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 (CONT.)

- 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 would be EXEMPT** from consideration in the public charge determination, including school meals, Child Nutrition Act or National School Lunch Act benefits, “earned” benefits connected to work or military service (veteran’s benefits, unemployment, worker’s comp), Medicare, loans, and emergency and disaster assistance.
- Services that are **available to communities rather to specific individuals** are also exempt from consideration under the draft proposed rule.
- Likely exempts programs, services, or assistance (soup kitchens, crisis intervention, short-term shelter) provided by local communities or private nonprofit organizations

POSSIBLE CHANGES (CONT.)

Statutory protections that CAN'T change in NPRM:

- Some immigrants are not subject to public charge test: Refugees, asylees, trafficking survivors, U visa holders, VAWA self-petitioners, and SIJS recipients
- Public Charge is not a factor in naturalization (LPRs seeking to become citizens)

Open questions and concerns:

- Definition of “dependent”
- Health conditions / disabilities
- Retrospective vs. prospective application

NEXT STEPS: PROPOSED RULE

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
- PIF campaign monitors environment and IDs key arguments and partners

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
- 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
- States' Rights
- Taking away critical benefits from people with disabilities

MESSAGING TO FAMILIES

- **Many families are not subject to public charge**
- **Does not apply to LPRs seeking citizenship**
- **Public charge test considers totality of the circumstances.**
- **Families need to make *individual determinations* based on their situation.**
- **For individuals currently receiving public assistance, there may be no advantage to terminating benefits at this time.**

STRATEGIES TO RESPOND

- EDUCATE immigrant families to fight the chilling effect
- TALK TO policymakers to urge them to oppose the changes
- SUBMIT public comments for NPRM
- DOCUMENT the harm

PROTECTING IMMIGRANT FAMILIES, ADVANCING OUR FUTURE:

THE CAMPAIGN



GET INVOLVED!

[Bit.ly/pifcampaign](https://bit.ly/pifcampaign)

RESOURCES

Protecting Immigrant Families Campaign Resources:

- [Fact sheet](#) on proposed changes to public charge (we'll be updating this soon based on the leaked NPRM draft)
- [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: publiccharge@nilc.org

National Immigration Law Center: www.nilc.org

Jackie Vimo

vimo@nilc.org

TWITTER: @jackievimo

www.nilc.org

