Proposed Public Charge Rule: The Threat to Immigrant Families

Wednesday, November 28, 2018

PRESENTED BY:
National Community Action Partnership
www.communityactionpartnership.com

Community Action Program Legal Services
www.caplaw.org

National Association for State Community Service Programs
www.nascsp.org

Agenda

- What is “public charge”?
- What is the current public charge test?
- What would change under the proposed public charge rule?
- How does the proposed rule impact Community Action?
- How can we weigh in on these changes?
What is “public charge”?  

- **Federal immigration law**  
  - Test used to identify people who may become dependent on the government for their main source of support  
  - Individuals applying to enter the U.S. or to become a Legal Permanent Resident (green card holder) are **inadmissible** if they are likely to become a **public charge** at any time (8 U.S.C. § 1182(a)(4))

- **New proposed “public charge” rule**  
  - On October 10, 2018, the Department of Homeland Security (DHS) **proposed a new rule** for determining who would be found inadmissible as a public charge

When does the public charge test apply?  

**A public charge assessment** is made when a person:  

- Applies to enter the U.S.  
- Applies to adjust immigration status to lawful permanent resident (i.e., green card)  
- Who is a green card holder leaves the U.S. for more than 180 consecutive days and reenters

**A public charge assessment** is **NOT** made when a person:  

- Applies to become a U.S. citizen  
- Falls under certain categories of immigrants, including refugees, asylees, and victims of domestic violence or other violent crimes
What is the current public charge test?

**Definition**

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

**Public Benefits Considered**

Only two types of benefits considered:

1. **Cash** assistance for income maintenance (e.g., SSI, TANF)
2. Institutionalization for long-term care at government’s expense

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**What is the current public charge test?**

- **Totality of circumstances considered**
  - Age
  - Health
  - Family status
  - Assets, resources, and financial status
  - Education and skills (including English language proficiency)
  - Affidavit of support

- **Forward-looking test**: Is the person likely to become a public charge in the future?
  - No one factor is determinative
  - Positive factors can outweigh negative factors
What would change under the proposed public charge rule?

- New definition of “public charge”
- Additional public benefits considered as negative factors in public charge determination
- Changes the “totality of circumstances” calculus, heavily weighting use of public benefits and other factors as strikes against applicant

New Definition of “Public Charge”

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

Proposed: An immigrant “likely at any time in the future to receive one or more public benefit”
**Additional Public Benefits Considered**

<table>
<thead>
<tr>
<th>TANF</th>
<th>SSI</th>
<th>Other federal, state, or local cash assistance programs</th>
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<tbody>
<tr>
<td></td>
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<td>Government-funded long-term institutional care</td>
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<td>SNAP</td>
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<td>Medicare Part D low-income subsidy</td>
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<td></td>
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<td>Housing assistance (public housing or Section 8 vouchers)</td>
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<td>CHIP (Children’s Health Insurance Program)</td>
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</tbody>
</table>

- Already counted under current rule
- Proposed to be counted
- DHS asking for public input on whether to count CHIP as a public benefit

**Public Benefits NOT Considered**

Any benefit not specifically listed in the regulation would not be counted.

- CSBG
- LIHEAP
- Head Start
- Weatherization (WAP)
- Women, Infants, and Children (WIC)
- Employment or job-training (e.g., WIOA)
- School breakfast and lunch
- Transportation vouchers or non-cash transportation services
- Non-cash TANF benefits
- Federal Earned Income Tax Credit and Child Tax Credit
- Disaster relief
- Emergency medical assistance
- Entirely state, local, or tribal programs (other than cash)
- CHIP (DHS requests input on whether to include CHIP, but it is not included in proposed rule)
- Benefits received by immigrant’s family members
Totality of Circumstances Test

- Proposed rule continues to use the **totality of circumstances** test

- **Heavily Weighed Factors**
  - Lack of job or job prospects
  - Receipt of public benefits
  - Health condition without private insurance or $ to pay for care

- **Heavily Weighed Negative Factors**
  - Individual or household income at 250% of FPL or above

- **Heavily Weighed Positive Factors**
**Totality of Circumstances Test**

**Age**

- *Too old* (Age 61 or older)
- *Too young* (Younger than 18)

- Age 18-60

**Totality of Circumstances Test**

**Health**

- Diagnosed with a medical condition that will interfere with ability to provide for himself/herself, work or attend school
- No health conditions

- Negative Factor
- Positive Factor
Totality of Circumstances Test
Family Status

- Whether the individual’s household size makes him/her more or less likely to become a public charge
  - Receipt of benefits by dependents (including U.S. citizen children) will not directly be a factor in individual’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

Totality of Circumstances Test
Assets and Income

125% of FPL or lower
- Current or past receipt of public benefits
- Certification or approval to receive public benefits
- Application for fee waiver (for immigration benefit)
- Negative credit history or low credit score
- No private health insurance

250% of FPL or higher

Heavily Weighed
POSITIVE
Factor
Totality of Circumstances Test

**Education and Skills**

**NEGATIVE Factor**
- No high school degree (or equivalent)
- Not proficient in English

**POSITIVE Factor**
- Degree
- Occupational skills/certifications/licenses
- Proficient in English

How does the proposed rule impact public benefits an individual currently receives?

The changes proposed in the new rule are **NOT** retroactive.

Under the NPRM, benefits:
- Received before the proposed rule is finalized and
- That are currently excluded from the public charge test
  (*i.e.*, anything other than cash or long-term care)

will **NOT** be considered in an individual’s public charge determination.
Does the proposed rule affect an individual’s eligibility to receive public benefits?

- **NO.** The proposed rule does not change the criteria for receiving public benefits.
- **However,** immigrants are faced with a difficult choice:

<table>
<thead>
<tr>
<th>Forgo public benefits</th>
<th>Continue using public benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Risk health and well-being of children and vulnerable families</td>
<td>• Jeopardize immigration application to keep families together</td>
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<tr>
<td>• Increase financial instability</td>
<td>• Risk potential deportation</td>
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<tr>
<td>• Chilling effect on immigrant families who will avoid seeking services for which they are eligible (e.g., health insurance and food assistance)</td>
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Public Charge FAQs

Impact of Proposed Rule

Immediate Effects

- Large scale disenrollment of immigrants from public benefits programs
  - Including those not affected by the rule, due to confusion and risk aversion
- Immigrant families reluctant to access any form of healthcare, emergency or otherwise
- Immigrants losing status and thus becoming deportable
- Immigrants being detained and deported

Impact of Proposed Rule

Longer-Term Consequences

- Increased health expenditures associated with food insecurity
- Uncompensated health care costs to local hospitals from the loss of health coverage
- Cost of supporting separated children
Impact of Proposed Rule

As many as 26 million people in families with immigrants may be afraid to participate in programs that make their families healthier and stronger.

1 in 4 children have an immigrant parent.

Sources

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

Impact of Proposed Rule

By Race and Ethnicity

- 18.3 million LATINOS
  - 33.4% of all LATINOS
- 3.2 million ASIAN & PACIFIC ISLANDERS
  - 17.4% of all 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
Potential Impact on Community Action and Our Customers

- **Housing**
  - Public housing, Section 8 housing vouchers, and project-based Section 8
  - May impact your CAA's housing program
    - Decreased applications
    - Confusion among families, extended families
  - Fear of applying
  - Less stability for families
  - Increased risk of homelessness

- **SNAP**
  - Hunger
  - Fear of applying
  - Increased burden on CAA food pantries

Potential Impact on Community Action and Our Customers

- **Rumor and Innuendo**
  - Chilling effects
  - Inaccurate information and hard to find correct information
  - Will communities be able to communicate clearly and accurately about coverage and availability?
  - Other immigration actions have placed people on edge
  - From the trauma informed care model we know this will have long term impacts on families
Potential Impact on Community Action and Our Customers

- **Early Childhood**
  - *Does NOT change eligibility for early childhood programs but we believe it will have a chilling effect*
  - One estimate has this impacting 9.02 million children
  - Research on Adverse Childhood Experience:
    - Increases in toxic stress for children at early stages of development impacts their whole lives
  - **Head Start and Early Head Start**
    - While excluded from the list, the proposed rule will likely impact and *depress enrollment rates* given fear
    - Kids missing out on primary foundation for school success, health care screenings, etc.
    - Impact on families and CAAs
  - **WIC**
    - Health impact at the earliest stages of life
    - Fear of applying leads to lack of nutrition prenatal and postnatal

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Potential Impact on Community Action and Our Customers

- **LIHEAP**
  - *Does NOT change eligibility but we believe it will have a chilling effect*

- **Free and Reduced Lunch**
  - *Does NOT change eligibility but we believe it will have a chilling effect*

- **EITC and CTC**
  - VITA sites may be impacted with additional questions/concerns
  - New training may be needed with volunteers
How can you weigh on these changes?

Submit Comments by December 10

Organizational Comments

▪ Who?
  – CAAs, State Associations, State CSBG Offices, and their partners

▪ What?
  – Edit template comments developed for Community Action
  – Include community- or state-specific information about harm that would be caused

▪ Where?
  – Regulations.gov
    https://www.regulations.gov/comment?D=DHS_FRDOC_0001-1706

Individual Comments

▪ Who?
  – You and your colleagues and friends and family

▪ What?
  – Edit text at ProtectingImmigrantFamilies.org
  – Modify to include stories, experiences, examples of harm that would be caused

▪ Where?
  – ProtectingImmigrantFamilies.org
Template Comments

Separate templates for:
- CAAs
- State Associations
- State CSBG Offices


Template Comments on the Proposed Public Charge Rule
For Community Action Agencies (CAAs), State Community Action Associations, and State CSBG Offices

Background and Information

On October 10, 2018, the U.S. Department of Homeland Security (DHS) proposed new “public charge” regulations that represent a significant departure from long-standing immigration policy. These proposed rules would create significant barriers to access programs that support basic needs, including the Supplemental Nutrition Assistance Program (SNAP), or otherwise related to public assistance.

Many Community Action Agencies (CAAs) provide services and programs that would be directly impacted by the proposed rule. It is critical to share your comments about the proposed rule with DHS in an effective and meaningful manner.

Your voice matters! The comment period is open through December 10, 2018, and is the best and only opportunity to help influence the final rule.

From now through December 10, 2018, individuals and organizations have the opportunity to voice their concerns about the public charge proposed rule to DHS through the official “written comments” portal. DHS is required to read and consider all unique comments received, and these comments are part of the administrative record.

Comments are more effective if they are specific and unique! Please refer to the following guidelines on how to use the current template for your organization.


Template Comments for CAAs

- Modify template to reflect your organization’s unique experiences and perspective
- Share data and describe specific impact on the communities you serve
- Customize yellow highlighted text

Comments are more effective if they are specific and unique!


Pages 3-6
Template Comments for CAAs

- Arguments for 3 specific programs with green headers:
  - Head Start
  - Food/nutrition services (e.g., SNAP)
  - Workforce development/ adult education (e.g., WIOA)

Include arguments if your CAA offers any of these programs


Pages 3-6

Template Comments for State Associations

- Modify template to reflect your state association’s unique experiences and perspective
- Share data and describe specific impact on the communities that CAAs in your state serve
- Customize yellow highlighted text

Comments are more effective if they are specific and unique!


Pages 7-10
Template Comments for State CSBG Offices

- Modify template to reflect the unique experiences and perspective of CAAs in your state
- Share data and describe specific impact on the communities that CAAs in your state serve
- Customize yellow highlighted text

Comments are more effective if they are specific and unique!

Pages 11-14

State CSBG Offices

- Follow state policies and procedures for commenting on proposed federal rules.
- Consider working with your state's government relations office
- Collaborate with other areas of state government to get buy in from other state agencies
- Comments from higher level of state government could have largest impact
TIPS FOR SUBMITTING EFFECTIVE COMMENTS*

✓ There is no minimum or maximum length for an effective comment

9. **Identify credentials and experience** that may distinguish your comments from others. If you are commenting in an area in which you have relevant personal or professional experience (i.e., scientist, attorney, fisherman, businessman, etc.), say so.

10. Agency reviewers look for sound science and reasoning in the comments they receive. When possible, support your comment with **substantive data, facts, and/or expert opinions**. You may also provide personal experience in your comment, as may be appropriate. By supporting your arguments well, you are more likely to influence the agency decision making.

11. Consider including **examples** of how the proposed rule would impact you **negatively or positively**.

15. **Keep a copy** of your comment in a separate file — this practice helps ensure that you will not lose your comment if you have a problem submitting it using the Regulations.gov web form.

Full guide from regulations.gov [here](https://www.regulations.gov/document?D=DHS_FRDOC_0001-1706)
Other Advocacy Avenues

- **Media**
  - Op/Eds, social media, interviews

- **FAQs for Community Action**

- **Template Comments (for CAA, State Associations, and State CSBG Offices)**

- **Additional Resources**
  - Protecting Immigrant Families Campaign at [protectingimmigrantfamilies.org](http://protectingimmigrantfamilies.org)

Questions?
Continue the Conversation

Community Action Partnership’s
Management and Leadership Training
Conference Wednesday Plenary

Immigration and Equality of Opportunity
UnidosUS

January 16, 2019
New Orleans, LA
www.communityactionpartnership.com