

# Health, Immigrant Communities, & Public Charge

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November 2, 2018

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**CALIFORNIA RURAL LEGAL  
ASSISTANCE FOUNDATION**

*Advocates for Justice*

# Disclaimers

- Things are changing ***fast.***
- There are a lot of unknowns.
- We are sharing the information we have at this time.
- We are providing general information and not legal advice.
  - Consult with an attorney who can advise your organization.
- ***For case specific inquiries, refer clients to trusted legal service providers***
  - i.e. an experienced immigration attorney or DOJ OLAP Accredited Representative.

# Public Charge

- A [Public Charge](#) is a person dependent on the government for financial and material support
- The likelihood that a person will become a public charge is assessed:
  - when they **apply to enter the US and**
  - when they **apply to become a lawful permanent resident (LPR)**
  - **there is no public charge test when a LPR applies for citizenship**
- If the immigrant is “likely to become a public charge,” the immigrant can be denied LPR status (a green card) or entry.

## Many Immigrants are Exempt from Public Charge

- Exempt immigrants include (but not limited to):
  - **Most Lawful Permanent Residents**
  - **Refugees and asylees** (applicants and holders);
  - **survivors of trafficking and other serious crimes** (such as T-Visa and U-Visa recipients—applicants and holders);
  - **self-petitioners under VAWA** (the Violence Against Women Act);
  - **special immigrant juveniles**
  - **U.S. Citizens**

How does the gov't decide if someone is likely to be a public charge?

There are two tests related to public charge:

**(1) The Totality of the Circumstances Test**

**(2) Affidavit of Support** (for family petitions and some employment-based petitions).

## Public Charge's "Totality of the Circumstances" Test

- USCIS defines "public charge" as an individual who is likely to become "primarily dependent on the government for subsistence, as demonstrated by either
  - the receipt of public cash assistance for income maintenance, OR
  - institutionalization for long-term care at government expense."
- Whether a person (the applicant for the green card/admission) is likely to become a public charge is based on **all of the facts** relevant to their ability to support themselves, which means that immigration agents must consider the "totality of the circumstances" when adjudicating an applicant's case.
- Immigration agents are **required** by law to, *at a minimum*, consider the applicant's:
  - Age,
  - health,
  - family status,
  - assets, resources, financial status, AND
  - Education and skills
- In addition, other relevant factors may be considered, such as
  - any affidavit of support

## The Test (continued...)

- Under current policy, only two types of public benefits used by the applicant may be considered:
  - **1. Cash assistance for income maintenance**
    - Supplemental Security Income (SSI)
    - Temporary Assistance for Needy Families (TANF)(aka CalWORKs)
    - State and local cash assistance programs (often called “General Assistance”)
  - **2. Institutionalization for long-term care at government’s expense**
    - In a nursing home or mental health institution

## Affidavit of Support

**The second test is an affidavit of support.** This requirement applies only to persons immigrating through a family visa petition and in some cases, employment-based petitions.

- Generally, under this test, most people immigrating through a family visa petition must have an affidavit of support submitted on their behalf, or *they will be found inadmissible as a public charge*.
- The affidavit of support requires the person to have a certain level of income or assets (for income, 125% of the Federal Poverty Income Guidelines), and
  - it is a legally enforceable contract to provide financial support to the applicant.

On family-based immigrant petitions,  
Consulates Abroad may evaluate the  
relevant factors and the Affidavit of Support  
differently.

Adjustment of Status:  
applying for and obtaining a green card within the U.S.

Applicant's past or current use of:

- cash aid or
- Long term institutionalized care at government's expense

AND

Affidavit of Support filled on behalf of the applicant (including affidavits of supports filed by joint sponsors)

Consular Processing: obtaining your green card at a U.S. consulate *abroad*

Changes to the Foreign Affairs Manual (FAM) may make certain applicants more vulnerable to refusal on public charge grounds.

(1) Applicant's past or current use of:

- cash aid or
- Long term institutionalized care at government's expense
- **public assistance of any type** by the visa applicant or a **family member** in the visa applicant's household may be considered.
  - However, the determination must be made on the present circumstances.

(2) Affidavit of Support:

- **sponsor's** past or current receipt of means-tested benefits (including many of the forms of assistance listed on the USCIS website—see handout) may be a factor in making a public charge determination, if it affects the applicant's resources and financial status, including the sponsor's ability to support the applicant.

Receipt of food stamps (SNAP), the Child Health Insurance Program (CHIP), Women, Infants and Children (WIC), Medicaid, or other health and medical benefits – while not given the same weight as cash assistance programs – may still be taken into account.

# Public Charge Proposed Rule: some highlights

- On October 10, the Department of Homeland Security (DHS) published a proposed public charge regulation.
- **Proposal changes the definition of public charge to apply to anyone who uses or receives one or more benefits**
  - But maintains the totality of the circumstances test
- **Adds certain federal non-cash **medical, housing, and food benefits** in public charge test**
- Establishes new standards and heavily weighted factors
- Offers \$10,000 public charge bond to cure public charge issues
- And other features...

## Benefits Included for Public Charge

*Benefits include:*

- Cash Support for Income Maintenance\*
- Long Term Institutional Care at Government Expense\*
- Non-Emergency Medicaid\*\*
- 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*

*\*\* Exception for 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*

## **Benefits Excluded from Public Charge**

*ANY benefits not on the included list will not be applied toward the public charge test, such as:*

- Disaster relief
- Emergency medical assistance
- **Entirely state local or tribal programs** (other than cash assistance)
- Benefits received by immigrant's family members
- CHIP\*
- 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

*\*DHS is asking for input on inclusion of CHIP, but the program is not included in the regulatory text.*

# Excluded Benefits

**(Anything not listed is not included)**

- Emergency & school-based Medi-Cal
- Emergency & disaster relief
- School-based nutrition services
- Public education (incl. Head Start)
- WIC
- ACA tax credits
- EITC
- Benefits received by others in the household
- Benefits used by members of the military & their spouses, children
- Fully state/local/tribal funded benefits (*except cash & long-term care*)

# Monetizable Benefits

- Cash assistance for income maintenance (*already included*):
  - SSI
  - TANF (CalWORKS)
  - CAPI (Cash Assistance Program for Immigrants)
- Non-cash:
  - **SNAP (CalFresh/food stamps)**
  - **Housing assistance** (e.g. Section 8 vouchers, rental assistance)
- Counted if received in any 12-month consecutive period and is  $\geq 15\%$  FPL for one person (*\$1,821*)

# Non-Monetizable Benefits

- **Medi-Cal**—except emergency, & school-based Medi-Cal for children (students with disabilities).
- Long-term care (*already included*)
- Medicare Part D low-income subsidy
- Subsidized housing
  
- Counted if received for > 12 cumulative months during a 36-month period
  - Or > 9 months while also receiving monetizable benefit
- Each benefit counted separately (*e.g. two different benefits received for 6 months each counts as 12 months total*)

# New Standards

- **Age:** too young (under 18) or too old (61 or older) to work
- **Health:** physical or mental health condition that could affect ability to work or attend school, or require expensive care
- **Family:** household size, number of dependents
- **Financial Resources:**
  - Earning 125% FPL or lower is a negative factor
  - Application for an immigration benefit fee waiver
- **Skills:** English proficiency

# Adds “heavily weighted” factors

## **Negative**

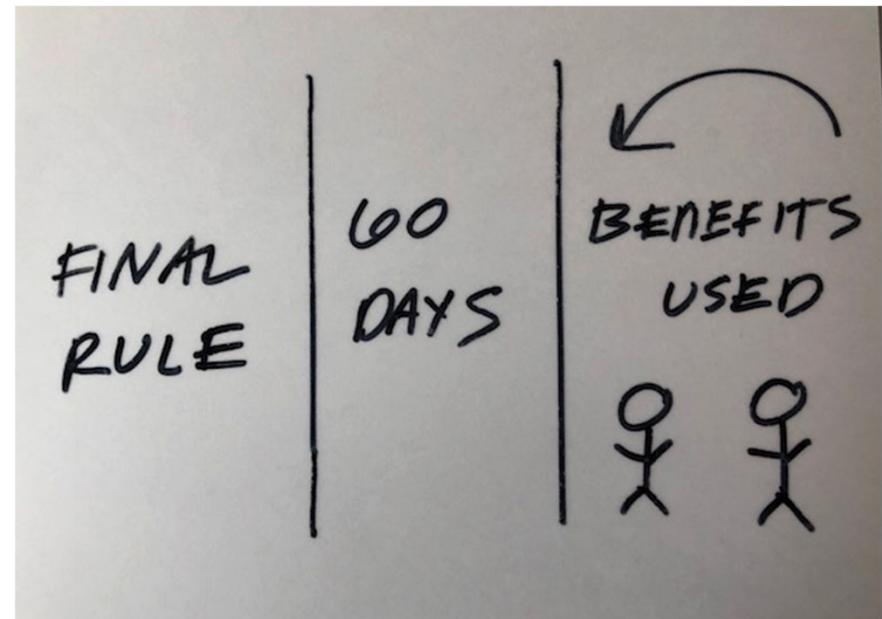
- Health conditions that require extensive treatment or that affect applicant’s ability to work, attend, school or care for themselves
  - Unless they have access to private health insurance or resources to pay for treatment
- Receipt of the listed public benefits within last 36 months (3 years prior to applying for admission/“green card”)
- Uninsured without prospect of obtaining private insurance or paying for care
- Previously determined to be a public charge

## **Positive**

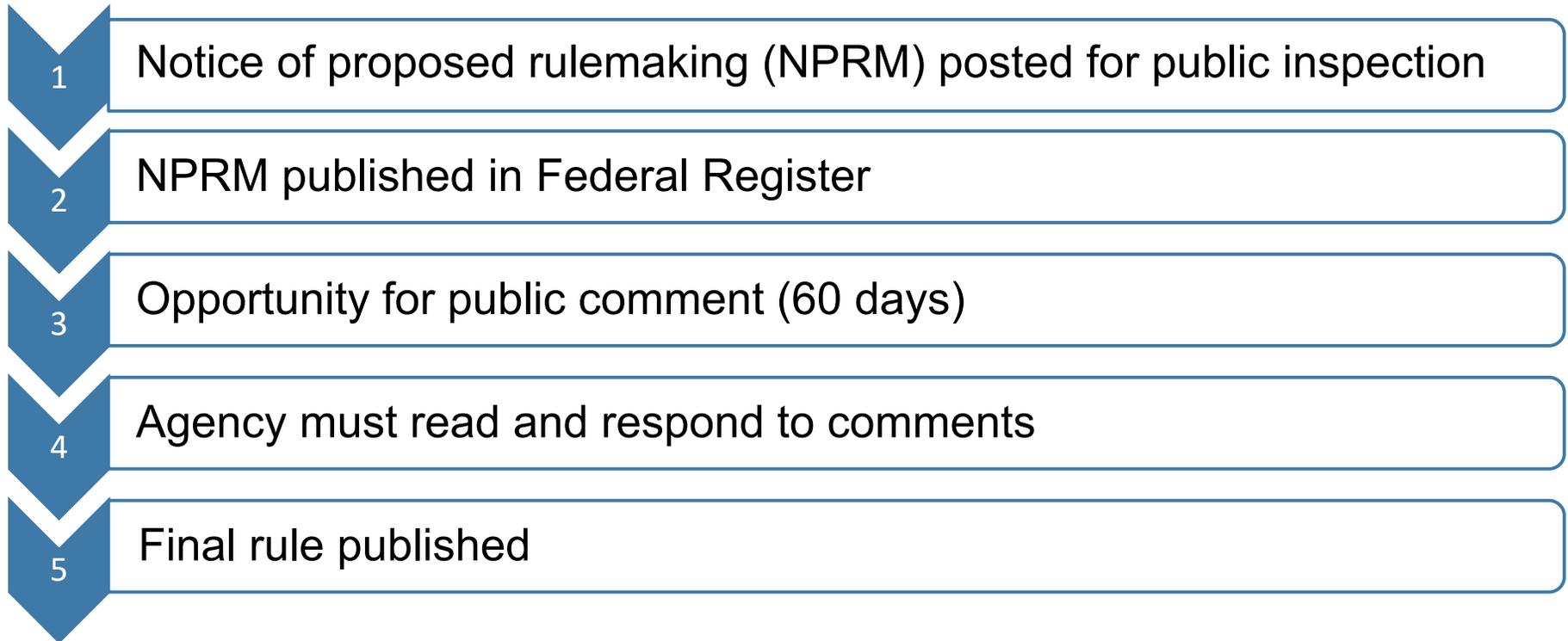
- Income or resources above 250% FPL (*over \$62,000 for family of four*)

# Not Retroactive

Benefits other than cash and long-term care will not be considered until 60 days after the rule becomes final



# Timeline



## What this means for immigrants, our nation, state, & local communities?

- Forces immigrants to make the impossible choice between meeting basic needs and keeping their families together in this country
- Strengthens existing attempts to erode ACA & social safety-net
- Makes certain applicants more vulnerable to refusal on public charge grounds.
  - *These include children, the aged, the unemployed, retired persons, the disabled, or those who have health conditions.*
  - *Central Valley's working-class households with limited resources/assets*
- **“Chilling effect”** on mixed immigration status communities

# How We can fight back

- Flood DHS with comments
  - Stories, research & data, arguments about impact
- Avoid panic & misinformation among impacted communities
  - CRLAF and the PAT has worked residents, trusted messengers and with ethnic media
  - **California Protecting Immigrant Families (CA PIF) Coalition** supporting state & county agencies with messaging & outreach
- Public awareness, narrative change via media
- Brief leaders and prime them to respond
  - Request that they assess impact to their jurisdictions and gather data for comments

# Why Public Comment Matters :

1. Best **(and only)** opportunity for general public to directly weigh in on proposed regulation
2. Administration is required by law to consider every comment and justify its actions
  - All unique arguments must be addressed in preamble of final rule
  - If any concerns raised in comments are not addressed, it provides an opportunity to challenge the regulation in court
3. Delays the rulemaking process

# Who Should Comment?

- Impacted individuals
  - Can submit anonymously
  - Recommended: have a friend or representative submit on their behalf rather than anonymously
- Concerned community members
- Organizations
- Elected officials
- ...*anyone!*

# How to Comment

Each comment requires:

- (1) **First and Last Name,**
- (2) **Zip Code, and**
- (3) **Email address**

1.) Directly to the Federal Register's Federal Comment Portal at:

[https://www.regulations.gov/comment?D=DHS\\_FRDOC\\_0001-1706](https://www.regulations.gov/comment?D=DHS_FRDOC_0001-1706)

Attachments may be uploaded.

For link to proposed rule, you may visit the Federal Register at:

<https://www.regulations.gov/document?D=USCIS-2010-0012-0001>

**OR**

2. At a microsite, such as The Protecting Immigrant Families Campaign (microsites will transfer your comment to the Federal Register). (no uploads feature)

<https://protectingimmigrantfamilies.org/>

**NOTE: 5,000 characters max.** for submissions via the comment box. **Attachment size** must be **less than 10MB.**

# PIF's Template Comment Ready for Customization

"I oppose the Department of Homeland Security's shameful proposed rule change to "public charge." The proposed policy will make immigrant families afraid to access essential health, nutrition and shelter programs. By forcing choices no family should have to make, it puts our whole country at risk.

If finalized, the rule would impact millions of immigrant families hoping to secure their permanent future in this country. States and localities would also be negatively impacted, due to decreased participation in programs that improve the health and well-being of their communities.

The Trump Administration should immediately withdraw its proposal. 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."

*NOTE: To achieve comment uniqueness when using this template, it's recommended that 30% of the comment is personalized/customized.*

## Tips for submitted anonymously

- Example: “I am a community health worker in Los Angeles, California. I am writing on behalf of one of my patients/clients who does not wish to disclose her information. Mrs. R is a 45-year-old mother of two U.S. citizen children, who are enrolled in Medicaid and SNAP (Medi-Cal and CalFresh). Mrs. R said that her son would not be alive today if he didn't have Medicaid coverage to pay for his asthma medication. These programs help her family thrive...”

# Messaging for Consumers

The rules/policies 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.

Each household should get an immigration consultation so they can assess their immigration benefits candidacy—if any. Links to locating service providers:

- CA Department of Social Services Immigration Services Contractor  
<http://www.cdss.ca.gov/Benefits-Services/More-Services/Immigration-Services/Immigration-Services-Contractors>
- Immigrationlawhelp.org

Public charge looks at the balance of negative and positive factors. No single factor makes someone a public charge.

Public charge is assessed when a person applies to become a permanent resident (get a green card) or for entry to the US. People decide when they apply, and can make sure they have established a good balance of factors.

Families need to make individual determinations based on their situation.

People should get the help they need for their families to thrive.

# Messaging for Consumers

For individuals currently receiving public assistance, there may be no advantage to terminating benefits at this time.

Using health care and nutrition benefits can help you be stronger, healthier and less likely to be dependent on the government.

If you have questions about your eligibility/candidacy for an immigration benefit, consult an experienced immigration attorney or OLAP accredited representative.

Take Action, get Resources, & sign up for alerts

- **National:** [www.protectingimmigrantfamilies.org](http://www.protectingimmigrantfamilies.org)
- **California:** [www.bit.ly/californiapif](http://www.bit.ly/californiapif)