

Public Charge

Maripat Pileggi
Community Legal Services
(215) 227-4738
mpileggi@clsphila.org

October 2, 2018



What is public charge?

- The term “public charge” has been in immigration law for decades. Immigration law says that **some** people who are likely to become public charges may be denied entry to the U.S. or denied permission to immigrate here.
- Public charge has been defined by immigration courts and past immigration agencies as meaning “primarily dependent on the government for subsistence.”



Who makes public charge decisions?

- Department of State staff working in consulates overseas. These consular processing officials make decisions about who is eligible for visas to come to the U.S. from their home countries.
- Department of Homeland Security (DHS), United States Citizenship and Immigration Service (USCIS). USCIS takes applications for visas and lawful permanent residency (green cards) from people who are already in the U.S.



Who makes public charge rules?

Statute, laws passed by U.S. Congress- CANNOT BE CHANGED BY REGULATION, EXECUTIVE ORDER or POLICY



Regulations, rules issued by federal agencies (e.g., Dept of Homeland Security), interpreting and implementing statute



Agency Policies

USCIS public charge guidance

Dept. of State's Foreign Affairs Manual



What does the statute say?

- Immigration officials may, after considering **the totality of an immigrant's circumstances**, find that an immigrant is likely to become a public charge.
- Factors considered: age, health, family status, resources, financial status, education and skills + Affidavit of Support.



What does the statute say?

- People who are subject to public charge tests and are found to be public charges may face immigration consequences, including:
 - Denial of lawful permanent resident application (aka green card application)
 - Denial of entry into US (denial of visa)



What does the statute say?

- Does **NOT** apply to refugees, asylees, Special Immigrant Juveniles, VAWA petitioners, U- and T-Visas, and some others when applying for one of these statuses and when applying for a green card.
- Does **NOT** apply to immigrants applying for U.S. Citizenship.
- Does **NOT** apply to U.S. Citizens.
- Green card holders cannot be denied reentry to the U.S. on public charge grounds after travelling abroad for less than 180 days.



What does the statute say?

- Generally, does apply to immigrants who need an affidavit of support to be admitted to U.S. and/or adjust to Lawful Permanent Resident (LPR) status.
 - This includes family members (eg, spouses, children, parents) of US Citizens/LPRs who are immigrating to the US on a petition filed by the family member.

*An Affidavit of Support is a binding contract that an immigrant's sponsor must sign. The sponsor certifies that s/he (the sponsor) has income of at least 125% FPL and promises to provide financial support to the sponsored immigrant.



Public charge policies- USCIS

USCIS public charge policies have been in effect since 1999 and are still in effect today.

Immigration officials may consider receipt of cash welfare benefits (TANF, SSI) or long-term care MA (LTC MA, for nursing home care, for example) when making public charge determinations.

Immigrant family's receipt of TANF, SSI, LTC MA generally not considered.



Public charge policies- USCIS

Current policy says that all non-TANF, SSI, LTC MA benefits are **NOT** considered in public charge determinations:

- Medical Assistance (“regular” MA, not LTC MA)
- SNAP
- UC
- LIHEAP
- WIC
- School meals
- Housing assistance
- Child care subsidy
- CHIP
- Marketplace subsidies
- Foster care and adoption subsidies
- And everything else that isn’t cash welfare (TANF, SSI) or LTC MA.



Expected changes to public charge policies

- Department of State changes to Foreign Affairs Manual. Affidavit of Support no longer dispositive. People being asked to provide proof of things like employment offers, health insurance.
- USCIS has drafted new regulations on public charge to replace the 1999 guidance that is currently in effect.
- The USCIS draft regulations are not in effect now and we do not know when or if they will be.
- Latest draft released by USCIS on Sept 22, 2018. This was not an “official” publication, but it indicates that the official proposal will be published soon.



Expected changes to USCIS regulations on public charge

- If the draft regulations take effect, a new broad definition of “public charge” will be used. Someone is a public charge if they are “likely at any time in the future to receive one or more public benefit.”



Expected changes to USCIS regulations on public charge

- Benefits included in the draft regulation's definition of "public benefit":
 - Federal, state, and local Cash Assistance (TANF, GA, SSI)
 - Non-emergency federal Medical Assistance
 - SNAP (Food Stamps)
 - Public housing and housing subsidies (section 8 and project-based)
 - Medicare Part D subsidies



Expected changes to USCIS regulations on public charge

Benefits excluded:

- CHIP*
- WIC
- LIHEAP
- UC
- WC
- Marketplace subsidies
- Child care subsidies
- School lunch
- All state and local benefits that aren't cash assistance
- And everything else that isn't included (see previous slide)

* Draft regulation asks for comment on whether to include CHIP



Expected changes to USCIS regulations on public charge

If the leaked draft regulations take effect, USCIS will heavily and negatively weigh an immigrant's current and past (within last 36 mos) receipt of "public benefits" when deciding if someone is a public charge.



Expected changes to USCIS regulations on public charge

- Other heavily weighted negative factors:
 - Having a health concern that requires extensive medical care or interferes with ability to work or go to school and no private insurance to pay for care required
 - Having income under 125% FPL, \$31,380/year for family of four (in 2018)
 - Being work authorized but not currently working, unable to demonstrate recent employment history, or reasonable expectation of future employment.



Expected changes to USCIS regulations on public charge

- Heavily weighted positive factor: Having income and assets at or over 250% FPL, about \$62,760/year for a family of four (in 2018).
 - This is 15% higher than the median income in PA of \$54,895.



Expected changes to USCIS regulations on public charge

- Now: likely to become “primarily dependent on the government for subsistence,” consideration of cash welfare as sole means of support. Typically, people who receive cash welfare as sole means of support have income at 25-50% FPL.
- Proposed change: likely at any time to “receive one or more [of the following] public benefits”
 - SNAP (160%FPL, \$3347/mo for family of four)
 - MA (138-220% FPL, \$2886-4602/mo for family of four)
 - Medicare Pt D subsidies (150% FPL, \$3138/mo for family of four)



Expected changes to USCIS regulations on public charge

- Some short-term or very small \$ amount of benefits may be excluded from public charge determinations.
- Benefits that were excluded before the regulation takes effect will not be considered until 60 days after the regulation takes effect.



Case examples

Susanna has been living in the U.S. with Temporary Protected Status since 2010. In 2014, she met and married to a U.S. citizen, with whom she has 2 U.S. citizen children. In 2015, her husband filed a petition and an affidavit of support for her immigrant visa and green card. She received her green card in 2015 and now wants to start the application process to become a U.S. citizen.

She and her husband work and earn about \$3000/mo, putting them at about 145% FPL. Her husband and children receive SNAP. Her younger child receives MA, her older child receives CHIP. She and her husband receive Marketplace subsidies, but she received MA when she was pregnant.



Case examples

- Is Susanna subject to a future public charge test?

NO! There is no public charge test during US Citizenship application processes.

- Might Susan think that she and her family should stop using public benefits?

Yes! Confusion and fear might lead her to believe that her family's use of benefits will cause her to be denied US Citizenship.

- What should she do?

Keep her benefits on! And then submit comments in opposition to the proposed regulation once it's published!



Case Examples

Sandra has been living in the U.S. with Temporary Protected Status since 2010. In 2014, she met and married a U.S. citizen, with whom she has 2 U.S. citizen children. In 2018, her husband filed a petition and an affidavit of support for her immigrant visa and green card. Her visa application is still being processed.

She and her husband work and earn about \$3000/mo, putting them at about 145% FPL. Her husband and children receive SNAP. Her younger child receives MA, her older child receives CHIP. She and her husband receive Marketplace subsidies, but she received MA when she was pregnant.



Case Examples

- Is Sandra subject to a future public charge test?

Yes. She will be subject to a USCIS public charge test during her visa and LPR application.

- What should she do?
 - Talk with an immigration attorney.
 - Remember: latest draft of the rule do NOT consider family members' receipt of benefits. **Very likely no reason for husband and kids to not get benefits.**
 - Remember: latest draft of the rule does NOT consider receipt of Marketplace subsidies. **Very likely no reason for anyone to drop Marketplace subsidies.**
 - Remember: **ALL drafts of the rule do NOT permit retroactive application.** Her past receipt of MA very likely will not be considered.
 - And submit comments in opposition to the proposed regulation as soon as it is published!!



Case examples

- Sarah came to the U.S. on a temporary visa. During her first few months in the U.S., she applied for asylum. After 4 long years, her asylum application was approved in 2017. Now she would like to apply for a green card. She has been receiving SSI, SNAP, and Medicaid since 2017.



Case examples

- Is Sandra subject to a future public charge test?

NO! There is no public charge test for asylees, so there will be no public charge test for Sandra when she applies for her green card. There is no public charge test for *anyone* who applies for US Citizenship, so Sandra will not be subject to a public charge test if she decides to become a US Citizen in the future.

- Might Sandra think that she should stop receiving benefits?

Yes! Confusion and fear might lead her to believe that her use of benefits will cause her to be denied a green card and US Citizenship.

- What should she do?

Keep her benefits on! And then submit comments in opposition to the proposed regulation once it's published!



Get Ready to Take Action!

Comment submission is very important!

- Once the proposed regulations are published, there will most likely be a 60-day comment period.
- Once the comments are reviewed, DHS can publish the “final” regulation.



Get Ready to Take Action!

Comment submission is very important!

- Stories from immigrant families who will be affected, who would've been affected had these rules been in place when they adjusted status, or who will not be directly affected but who are so fearful that they plan to forgo or are already forgoing benefits.
- People who serve immigrant communities directly- advocates, social workers, case managers, nurses, doctors, teachers, etc.
- Institutions like hospitals, health clinics, government agencies, child care providers, schools, food banks, grocery stores, utility companies, etc.



Get Ready to Take Action!

Comment submission is very important!

- Join NILC's and CLASP's Protecting Immigrant Families (PIF) Campaign to get updates: bit.ly/PIFCampaign
- Use PIF's website to submit comments: <https://www.ouramericanstory.us/> (will be accessible once the regulation is officially published)
- Submit *individual* comments and encourage others to submit their *individual* comments



What's the potential harm?

- Discourage immigration.
- Penalize hard-working families.
- Immigrant families, many of which include U.S. citizen children, will be deterred from seeking help when they need it and that help keep all of our communities strong.
- Destabilizing families. Denying green cards to parents of US citizen children may lead to family separation.
- State and local economies will suffer. When immigrant families forgo benefits, uncompensated care at hospitals and health clinics will increase, people will have less money to spend in grocery stores, local charitable resources will be drained, etc.



Advocacy Tools and Resources

- Join NILC's and CLASP's "Protecting Immigrant Families" Campaign: bit.ly/PIFCampaign
- PIF is collecting FAM public charge incidents: bit.ly/PublicChargeFAM
- NILC is collecting public charge stories more generally: publiccharge@nilc.org
- PIF is creating advocacy materials: bit.ly/PIFresources



Questions?

