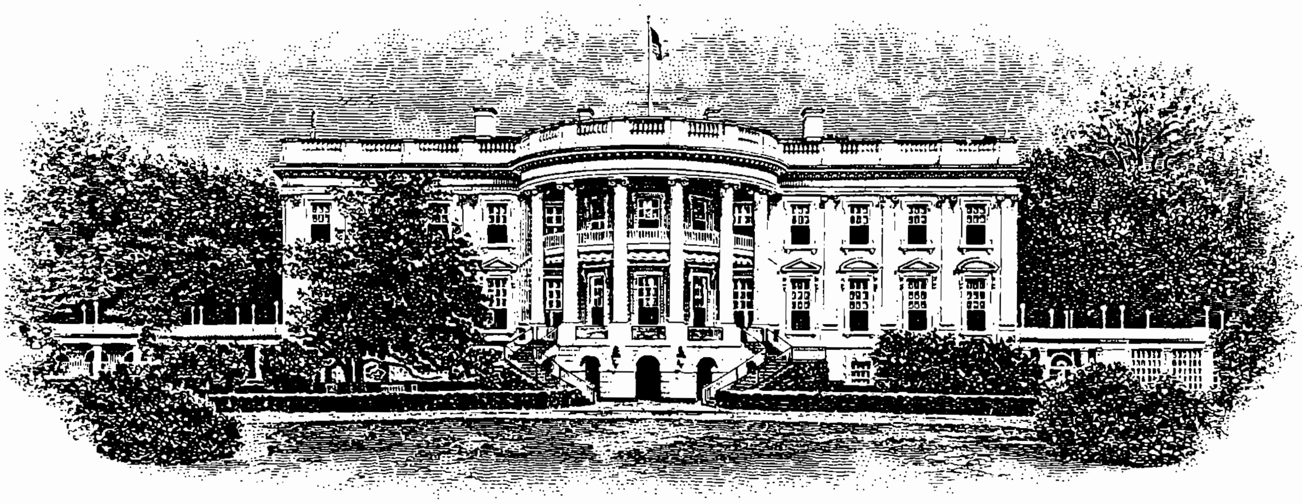
The White House



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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1988-99]

Field Guidance on Deportability and Inadmissibility on Public Charge Grounds

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Department of Justice (Department) is publishing a proposed rule in this issue of the **Federal Register** which proposes to establish clear standards governing a determination that an alien is inadmissible or ineligible to adjust status, or has become deportable, on public charge grounds.

Before the proposed rule becomes final, the Immigration and Naturalization Service (Service) is publishing its field guidance on public charge issues as an attachment to this notice. This is necessary to help alleviate public confusion over the meaning of the term "public charge" in immigration law and its relationship to the receipt of Federal, State, and local public benefits. This field guidance will also provide aliens with better guidance as to the types of public benefits that will and will not be considered in public charge determinations.

DATES: This notice and field guidance are effective May 21, 1999.

FOR FURTHER INFORMATION CONTACT: Sophia Cox or Kevin Cummings, Immigration and Naturalization Service, 425 I Street, NW, Office of

Adjudications, Washington, DC 20536, telephone (202) 514-4754.

SUPPLEMENTARY INFORMATION:

Recent immigration and welfare reform laws have generated considerable public confusion about the relationship between the receipt of Federal, State, and local public benefits and the meaning of "public charge" in immigration statutes governing deportation, admissibility, and adjustment of status. The Department decided to publish a proposed rule defining "public charge" in order to reduce the negative public health consequences generated by the existing confusion and to provide aliens with better guidance as to the types of public benefits that will and will not be considered in public charge determinations.

In addition, the Service has issued guidance to its field officers on a variety of issues related to public charge determinations. That field guidance is included as an attachment to this notice to provide additional information to the public on the Service's implementation of the public charge provisions of the immigration laws.

Doris Meissner

Dated: 5/20/99

Doris Meissner,

Commissioner, Immigration and

Naturalization Service.

U.S. Department of Justice
Immigration and Naturalization Service

HQOPS-70-21.1.13

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

MAY 20 1999

MEMORANDUM FOR ALL REGIONAL DIRECTORS

DEPUTY EXECUTIVE ASSOCIATE COMMISSIONER,
IMMIGRATION SERVICES, FIELD OPERATIONS

FROM: Michael A. Pearson
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Public Charge: INA Sections 212(a)(4) and 237(a)(5)

This memorandum provides guidance concerning the public charge ground of inadmissibility, section 212(a)(4) of the Immigration and Nationality Act (INA), and the related deportation charge under section 237(a)(5) of the INA. It also discusses the impact of these subsections on the new enforceable Affidavit of Support prescribed by section 213A of the INA, established by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and welfare reform laws.[1]

IIRIRA and the recent welfare reform laws have sparked public confusion about the relationship between the receipt of federal, state, local public benefits and the meaning of "public charge" under the immigration laws. Accordingly, the Service is taking two steps to ensure the accurate and uniform application of law and policy in this area. First, the Service is issuing this memorandum which both summarizes longstanding law with respect to public charge and provides new guidance on public charge determinations in light of the recent changes in law. In addition, the Service is publishing a proposed rule for notice and comment that will for the first

[1] The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, as amended by the Balanced Budget Act of 1997, Pub. L. 105-33; the Agricultural Research, Extension, and Education Reform Act of 1998, Pub. L. 105-185; and the Noncitizen Technical Amendments Act of 1998, Pub. L. 105-306.

time define "public charge" and discuss evidence relevant to public charge determinations. Although the definition of public charge is the same for both admission/adjustment and deportation, the standards applied to public charge adjudications in each context are significantly different and are addressed separately in this memorandum. After discussing the definition and standards for public charge determinations, the memorandum goes on to discuss exceptions from public charge determinations and particular types of benefits that may and may not be considered for public charge purposes, in addition to other issues.

1. Definition of "Public Charge"

The Service is publishing a rule for notice and comment that defines "public charge" for purposes of both admission/adjustment and deportation. That rule proposes that "public charge" means an alien who has become (for deportation purposes) or who is likely to become (for admission/adjustment purposes) **"primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense."** Institutionalization for short periods of rehabilitation does not constitute such primary dependence.

The Service is adopting this definition immediately, while allowing the public an opportunity to comment on the proposed rule. Accordingly, officers should not initiate or pursue public charge deportation cases against aliens who have not received public cash benefits for income maintenance or who have not been institutionalized for long-term care. Similarly, officers should not place any weight on the receipt of non-cash public benefits (other than institutionalization) or the receipt of cash benefits for purposes other than for income maintenance with respect to determinations of admissibility or eligibility for adjustment on public charge grounds. Supplementary guidance will be issued, as necessary, in conjunction with publication of a final rule.

See section 6, below, for a more detailed discussion of particular types of benefits that may and may not be considered for public charge purposes.

2. Admission and adjustment of status

Under INA section 212(a)(4), an alien seeking admission to the United States or seeking to adjust status to that of an alien lawfully admitted for permanent residence is inadmissible if the alien, "at the time of application for admission or adjustment of status, is likely at any time to become a public charge." [2] IIRIRA amended section 212(a)(4) of the INA to codify the factors relevant to a public charge determination. **Officers must consider, at a minimum, the alien's age, health, family status, assets, resources, and financial status, and education and skills when making a public charge inadmissibility determination.** Every denial order based on public

[2] See Section 4 below on categories of aliens who are not subject to public charge determinations.

charge must reflect consideration of each of these factors and specifically articulate the reasons for the officer's determination.

The most significant change to section 212(a)(4) under IIRIRA is the creation of a new affidavit of support (AOS), which, coupled with new section 213A, imposes on the sponsor a legally enforceable support obligation. The law requires that sponsors demonstrate that they are able to maintain the sponsored alien at an annual income of not less than 125 percent of the federal poverty level. The AOS requirement applies to all immediate relatives (including orphans), family-based immigrants, and those employment-based immigrants who will work for a relative or for a firm in which a U.S. citizen or lawful permanent resident (LPR) relative holds a 5 percent or more ownership interest. Immigrants seeking admission or adjustment of status in these categories are inadmissible under subparagraphs (C) and (D) of the modified section 212(a)(4), respectively, unless an appropriate sponsor has completed and filed a new AOS if the application for an immigrant visa or adjustment of status was filed on or after December 19, 1997. Note that this requirement applies to these aliens <u>even if</u>, under the factors codified in section 212(a)(4)(B), the adjudicator would ordinarily find that the alien is not likely to become a public charge. The only exceptions from this requirement are for qualified battered spouses and children (and their eligible family members) and for qualified widow(er)s of citizens, *if* these aliens have filed visa petitions on their own behalf. Where such an AOS has been filed on an alien's behalf, it should be considered along with the statutory factors in the public charge determination.

The standard for adjudicating inadmissibility under section 212(a)(4) has been developed in several Service, BIA, and Attorney General decisions and has been codified in the Service regulations implementing the legalization provisions of the Immigration Reform and Control Act of 1986. **These decisions and regulations, and section 212(a)(4) itself, create a "totality of the circumstances" test.**

In determining whether an alien is likely to become a public charge, Service officers should assess the financial responsibility of the alien by examining the "totality of the alien's circumstances *at the time of his or her application*. . . . The existence or absence of a particular factor *should never be the sole criterion* for determining if an alien is likely to become a public charge. The determination of financial responsibility *should be a prospective evaluation*" based on the alien's age, health, family status, assets, resources and financial status, education, and skills, among other factors.[3] An alien may be considered likely to become a public charge even if there is no legal obligation to reimburse the benefit-granting agency for the benefits or services received, in contrast to the standards for deportation, discussed below.[4]

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[3] 8 C.F.R. § 245a.4(b)(11)(iv)(B), and see INA § 212(a)(4)(B). The federal courts have also endorsed this "totality of the circumstances" test. See, e.g., <u>Zambrano v. INS</u>, 972 F.2d 1122 (9th Cir. 1992), *judgment vacated on other grounds, 509 U.S. 918 (1993).*

[4] <u>Matter of Harutunian</u>, 14 I. & N. Dec. 583 (BIA 1974) (interpreting § 212(a)(15), recodified as § 212(a)(4))

In addition, the Attorney General has ruled that "[s]ome specific circumstances, such as mental or physical disability, advanced age, or other fact reasonably tending to show that the burden of supporting the alien is likely to be cast on the public, must be present. A healthy person in the prime of life cannot ordinarily be considered likely to become a public charge, especially where he has friends or relatives in the United States who have indicated their ability and willingness to come to his assistance in case of an emergency."[5] Under the new AOS rules, all family-based immigrants (and some employment-based immigrants) will have a sponsor who has indicated an ability and willingness to come to the immigrant's assistance.

Current receipt of cash benefits for income maintenance and current institutionalization

If at the time of application for admission or adjustment an alien is receiving a cash public assistance for income maintenance or is institutionalized for long-term care (as discussed in section 6, below), that benefit should be taken into account under the totality of the circumstances test, along with the other statutory factors under section 212(a)(4)(B)(i) and any AOS. It is possible, for example, that an alien receiving a small amount of cash for income maintenance purposes could be determined not likely to become a public charge due to other positive factors under the totality of the circumstances test. Aliens should not be asked to repay the cost of any benefits received in order to qualify for admission or adjustment.

Current receipt of non-cash benefits or the receipt of special-purpose cash benefits not for income maintenance should not be taken into account under the totality of the circumstances test in determining whether the alien is likely to become a public charge.

Past receipt of cash benefits for income maintenance and past institutionalization

Past receipt of cash income-maintenance benefits does not automatically make an alien inadmissible as likely to become a public charge, nor does past institutionalization for long-term care at government expense. Rather this history would be one of many factors to be considered in applying the totality of the circumstances test. In the case of an alien who has received cash income-maintenance benefits in the past or who has been institutionalized for long-term care at government expense, a Service officer determining admissibility should **assess the totality of the alien's circumstances at the time of the application** for admission or adjustment and **make a forward-looking determination** regarding the likelihood that the alien will become a public charge after admission or adjustment. The longer ago an alien received such cash benefits or was institutionalized, the less weight these factors will have as a predictor of future receipt. Also, the "length of time an applicant has received public cash assistance is a significant factor."[6] The longer an alien has received cash income-maintenance benefits in the past and the greater the amount of benefits, the stronger the implication that the alien is likely to become a public

[5] Matter of Martinez-Lopez, 10 I&N 409, 421-422 (AG, Jan. 6, 1964).
[6] 8 CFR § 245a.2(k)(4).

charge. The negative implication of past receipt of such benefits or past institutionalization, however, may be overcome by positive factors in the alien's case demonstrating an ability to be self-supporting. For instance, a work-authorized alien who has current full-time employment or an AOS should be found admissible despite past receipt of cash public benefits, unless there are other adverse factors in the case.

Past receipt of non-cash benefits (other than institutionalization for long-term care) should not be taken into account under the totality of the circumstances test. Similarly, past receipt of special-purpose cash benefits not for income maintenance should not be taken into account.

Repayment of public benefits

IIRIRA did not create any requirement that aliens repay benefits received in the past in order to avoid being found inadmissible on public charge grounds, nor has such a requirement existed in the past. Accordingly, officers should not instruct or suggest that aliens must repay benefits previously received as a condition of admission or adjustment, and they should not request proof of repayment as a condition for finding the alien admissible to the United States. (See INS Memorandum, "Public Charge: INA Sections 212(a)(4) and 237(a)(5) – Duration of Departure for LPRs and Repayment of Public Benefits," dated December 16, 1997, for further discussion.)

Repayment is relevant to the public charge inadmissibility determination only in very limited circumstances. If at the time of application for admission or adjustment of status the alien is <u>deportable</u> on public charge grounds under section 237(a)(5) of the INA due to an outstanding public debt for a cash benefit or the costs of institutionalization, then the alien is inadmissible. **Only a debt that satisfies the three-part test under section 237(a)(5), described below, will render an alien deportable as a public charge and therefore ineligible for admission or adjustment.** If the debt is paid, then the alien will no longer be inadmissible based on the debt, and the usual totality of the circumstances test would apply. While the Service may not demand that an alien repay a public debt which meets the three-part test, it may inform an alien that if the alien does not repay the debt, he or she will continue to be inadmissible to the United States. Adjudicators should make sure also to inform aliens that even if they pay the debt, they may still be determined to be inadmissible as an alien likely to become a public charge under the totality of the circumstances test

If an INS officer finds evidence of possible benefit fraud in the course of performing his or her immigration duties, that information should be forwarded through official channels to the appropriate benefit-granting agency for possible investigation and enforcement action. In such cases, absent a determination of fraud by the benefit-granting agency, immigration benefits to which the alien is otherwise entitled should not be withheld or denied.

3. Public charge determinations - deportation

The determination of whether an alien is subject to removal under section 237(a)(5) is quite different from the determination of whether an alien is inadmissible under section 212(a)(4), although in both contexts the focus is on the receipt of cash benefits for income maintenance purposes. Section 237(a)(5) of the INA states that "[a]ny alien who, within 5 years after the date of entry, has become a public charge from causes not affirmatively shown to have arisen since entry is deportable." This section requires a two-step determination. First, the Service must determine whether the alien has become a public charge within 5 years after the date of entry.[7] Second, if the alien has become a public charge, then the Service must determine whether the alien has demonstrated that the circumstances that caused the alien to become a public charge arose after the alien's entry into the United States. An alien who can make such a showing is not removable under section 237(a)(5).

With respect to whether an alien has become a public charge, the Attorney General has determined that the mere receipt of a public benefit by an alien does not make an alien a public charge for purposes of deportation under section 237(a)(5). Rather, in Matter of B, 3 I. & N. Dec. 323 (BIA and AG 1948),[8] the Attorney General established a strict three-part test to determine if an alien has become a public charge. In order for an alien to become a public charge under section 237(a)(5), the following 3 requirements must be met:

1) The state or other government entity that provides the benefit must, by law, impose a charge or fee for the services rendered to the alien. In other words, the alien or designated relatives or friends must be legally obligated to repay the benefit-granting agency for the benefits or services provided. If there is no reimbursement requirement under law, the alien cannot be said to be a public charge.

2) **The responsible benefit-granting agency officials must make a demand for payment for the benefit or services** from the alien or other persons legally responsible for the debt under federal or state law (e.g., the alien's sponsor).

3) **The alien and other persons legally responsible for the debt fail to repay after a demand has been made.**

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[7] The 5-year period starts again each time an alien enters the United States after a departure, except for LPRs who are not applicants for admission unless they meet the terms of section 101(a)(13)(C).

[8] While this decision concerned the public charge provision of the 1917 Act, the test established continues to be valid under current law, which is substantially the same as the 1917 law. See Matter of L, 6 I. & N. Dec. 349 (BIA 1954), and Matter of Harutunian, 14 I. & N. Dec. 583 (BIA 1974).

The demand for repayment must be made within 5 years of an alien's entry in order to render the alien deportable as a public charge.[9] In addition, the Service has determined that, in order for an alien to become deportable as a public charge as a result of the failure of the sponsor to repay the agency, the benefit-granting agency must take all available actions to collect from the sponsor. This includes filing an action in the appropriate court and taking all steps available under law to enforce a final judgment against the sponsor or other obligated party.

Deportations based on public charge grounds have been rare, and the new immigration and welfare laws are not likely to change this. First, for aliens who are not sponsored under the new AOS, it is unlikely that there will be a legal obligation to repay public benefits or that the benefit-granting agency will make a demand for repayment. Thus, just as in the past, the first two prongs of the Matter of B test generally will not be satisfied. Only aliens who apply for immigrant visas or adjustment of status on or after December 19, 1997, may be sponsored under the new, enforceable AOS, which could satisfy the standards for deportation under Matter of B. However, under the new welfare reform laws, these same aliens will generally be barred from receiving federal means-tested public benefits for the first 5 years after admission or adjustment – the critical period for purposes of deportability.

In addition, under the "deeming" rules, the sponsor's and the sponsor's spouse's income and resources will be attributed to the alien in assessing his or her eligibility to receive a means-tested benefit, which would normally raise the alien's income over the benefit eligibility threshold. Only if an immigrant receives a cash benefit for income-maintenance within 5 years of entry or is institutionalized for long-term care (despite the eligibility limitations), there is a demand for repayment by the benefit-granting agency, and the sponsor or other responsible party fails to repay, can the immigrant become deportable as a public charge. However, even in this case, the alien must be given an opportunity to prove that he or she became a public charge for causes that arose after entry. If the alien can make such a showing, he or she will not be deportable as a public charge. Thus, the Service is unlikely to see a significant increase in cases of deportability on public charge grounds.

4. Exceptions from public charge determinations

Under the new laws, refugees and asylees remain exempt from public charge determinations for purposes of admission and adjustment of status pursuant to sections 207, 208, and 209 of the INA. Similarly, Amerasian immigrants are exempt from the public charge ground of inadmissibility for their initial admission.[10] In addition, various statutes contain exceptions to the public charge ground of inadmissibility for aliens eligible for benefits under their provisions, including the Cuban Adjustment Act (CAA), the Nicaraguan Adjustment and Central American

[9] Matter of L, 6 I & N Dec. 349 (BIA 1954).

[10] Amerasian immigrants are defined in section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988.

Relief Act (NACARA), and the Haitian Refugee Immigration Fairness Act (HRIFA).[11] These laws provide avenues of adjustment for certain aliens – including Cuban/Haitian entrants,[12] who remain eligible for many public benefits under welfare reform – without subjecting them to screening as potential public charges.

Most LPRs who have been outside the United States for 180 days or less are not applicants for admission and therefore are not subject to the grounds of inadmissibility, pursuant to section 101(a)(13)(C) of the INA.[13] Accordingly, absent an indication that they may be applicants for admission, such LPRs should not routinely be questioned on issues related to the likelihood that they will become a public charge.

Under section 249 of the INA, which allows aliens who have been in the United States since January 1, 1972, to "register" as LPRs, public charge is not a factor in determining eligibility. Receipt of public benefits is not an adverse factor in meeting the "good moral character" requirement for registry, absent evidence that an applicant procured or attempted to procure such benefits through fraud or misrepresentation.

5. <u>Receipt of benefits by children and other family members</u>

The Service has addressed the issue of receipt of benefits by children and other family members in a number of memoranda on the issue of public charge for aliens applying for legalization under section 245A of the INA. The Service's approach to the receipt of benefits by family members in the legalization context has been upheld in federal court and should govern the question for general public charge determinations as well.[14] The rule is well summarized in an April 21, 1988, memorandum from the Associate Commissioner for Examinations to the Regional Commissioners:

> As a general rule, the receipt of . . . benefits by a member of the . . . applicant's family is not attributed to the applicant for purposes of determining the likelihood that the applicant will become a public charge. . . . If, however, the family is reliant on the . . . benefits as its sole means of support, the . . . applicant may be considered to have received public cash assistance. This determination is to be made on a case-by-case basis and upon consideration of the totality of the applicant's circumstances.

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[11] See <u>Matter of Mesa</u>, 12 I. & N. Dec. (Dep. Assoc. Comm. 1967) (public charge exception under the CAA); NACARA, Pub. L. 105-100, section 202(a); HRIFA, Pub. L. 105-277, Title IX, section 902.

[12] Cuban/Haitian entrants are defined in section 501(c)(e) of the Refugee Education Assistance Act of 1980.

[13] Section 101(a)(13)(C) provides that an LPR seeking admission to the U.S. is not an applicant for admission unless the alien: (i) has abandoned or relinquished that status; (ii) has been absent for more than 180 days; (iii) has engaged in illegal activity after leaving the U.S.; (iv) left the U.S. while in removal proceedings; (v) has committed certain offenses in the U.S.; or (vi) is attempting to enter other than at a port of entry or has not been admitted to the U.S. after inspection and authorization.

[14] See <u>Perales v. Reno</u>, 48 F.3d 1305 (2d Cir. 1995).

Although this memorandum specifically addressed the receipt of cash assistance under the former Aid to Families with Dependent Children (AFDC) program, the rule is applicable generally to other cash benefit programs that may give rise to public charge determinations. (See section 6.A below.) **Accordingly, Service officers should not attribute cash benefits received by U.S. citizen or alien children or other family members to alien applicants for purposes of determining whether the applicant is likely to become a public charge, absent evidence that the family is reliant on the family member's benefits as its sole means of support.**

6. Benefits that may and may not be considered for public charge purposes

The term "public charge" has not been defined in law or regulation and, in the past, the Service has not provided comprehensive guidance on the kinds of benefits that could cause an alien to be considered a public charge. In light of the new laws and the complexity of the federal, state, and local public benefits system, this issue now requires that the Service adopt uniform standards. Accordingly, the Service is publishing a proposed rule for notice and comment, as noted above. The proposed standards take into account the law and public policy decisions concerning alien eligibility for public benefits and public health considerations, as well as past practice by the Service and the Department of State.

It has never been Service policy that any receipt of services or benefits paid for in whole or in part from public funds renders an alien a public charge, or indicates that the alien is likely to become a public charge. The nature of the public program must be considered. For instance, attending public schools, taking advantage of school lunch or other supplemental nutrition programs, or receiving emergency medical care would not make an alien inadmissible as a public charge, despite the use of public funds. While the Service has not previously issued guidance on a program-by-program basis, the Department of State did codify its policy in the Foreign Affairs Manual (FAM), excluding Food Stamps from consideration for public charge purposes because of its "supplemental" nature.[15] The Service is now taking a similar approach by adopting a definition of public charge that focuses on whether the alien is or is likely to become **primarily dependent on the government for subsistence**. After extensive consultation with benefit-granting agencies, the Service has determined that **the best evidence of whether an alien is primarily dependent on the government for subsistence is either (i) the receipt of public cash assistance for income maintenance, or (ii) institutionalization for long-term care at government expense.**

The Service is proposing this definition by regulation and adopting it on an interim basis for several reasons. First, confusion about the relationship between the receipt of public benefits and the concept of "public charge" has deterred eligible aliens and their families, including U.S. citizen children, from seeking important health and nutrition benefits that they are legally entitled to receive. This reluctance to access benefits has an adverse impact not just on the potential recipients,

[15] 9 FAM § 40.41, n.9.1.

but on public health and the general welfare. Second, non-cash benefits (other than institutionalization for long-term care) are by their nature supplemental and do not, alone or in combination, provide sufficient resources to support an individual or family In addition to receiving non-cash benefits, an alien would have to have either additional income – such as wages, savings, or earned retirement benefits – or public cash assistance. Thus, by focusing on cash assistance for income maintenance, the Service can identify those who are primarily dependent on the government for subsistence without inhibiting access to non-cash benefits that serve important public interests. Finally, certain federal, state, and local benefits are increasingly being made available to families with incomes far above the poverty level, reflecting broad public policy decisions about improving general public health and nutrition, promoting education, and assisting working-poor families in the process of becoming self-sufficient. Thus, participation in such non-cash programs is not evidence of poverty or dependence.

In adopting this new definition, the Service does not expect to substantially change the number of aliens who will be found deportable or inadmissible as public charges. First, under the stricter eligibility rules of the welfare reform laws, many legal aliens are no longer eligible to receive certain types of public benefits, so they run no risk of becoming public charges by virtue of receiving such benefits. Many of those who remain eligible for federal, state, and local public benefits are LPRs, refugees, and asylees, who are unlikely to face public charge screening in any case in light of the section 101(a)(13)(C) and the statutory exceptions.[16] Further, in light of the Matter of B test, deportations on public charge grounds have been rare and are expected to remain so. With respect to admissibility, the new AOS has already raised the threshold for many families to demonstrate that a sponsored alien is not likely to become a public charge. In addition, the statutory factors under section 212(a)(4)(B) continue to apply. **Thus, while the Service will not take an alien's past or current receipt of non-cash benefits such as medical assistance into account for public charge purposes, the alien's age, health, and resources must be considered (along with the other statutory factors) in determining whether he or she is likely to become primarily dependent on the government for subsistence in the future.**

The rules governing alien eligibility for federal, state, and local public benefits are complex and subject to change, including significant state-by-state variations. INS officers are not expected to know the substantive eligibility rules for different public benefit programs. Rather, this guidance and the proposed rule are intended to make public charge determinations simpler and more uniform, while simultaneously providing greater predictability to the public

A. Benefits that may be considered for public charge purposes

Cash assistance for income maintenance and institutionalization for long-term care at government expense may be considered for public charge purposes Programs that provide such benefits include

[16] See section 4, above, for a discussion of public charge exceptions.

1. Supplemental Security Income (SSI) under Title XVI of Social Security Act;
2. Temporary Assistance for Needy Families (TANF) cash assistance (part A of Title IV of the Social Security Act – the successor to the AFDC program);[17]
3. State and local cash assistance programs that provide benefits for income maintenance (often called "General Assistance" programs); and
4. Programs (including Medicaid) supporting aliens who are institutionalized for long-term care (e.g., in a nursing home or mental health institution).[18]

Past or current receipt of such cash benefits does not lead to a per se determination that an alien is either inadmissible or deportable as a public charge. Rather, such benefits should be taken into account under the totality of the circumstances test for purposes of admission/adjustment and should be considered for deportation purposes under the standards of section 237(a)(5) and Matter of B.

Note that not all cash assistance is provided for purposes of income maintenance, and thus not all cash assistance is relevant for public charge purposes. For example, some energy assistance programs provide supplemental benefits through cash payments, in addition to vouchers or in-kind benefits, depending on the locality and the type of fuel needed. Likewise, cash payments could also be provided for child care assistance. Such supplemental, special-purpose cash benefits should not be considered in public charge determinations because they are not evidence of primary dependence on the government for subsistence.

B. Benefits that may not be considered for public charge purposes

Non-cash benefits (other than institutionalization for long-term care) should not be taken into account in making public charge determinations, nor should special-purpose cash assistance that is not intended for income maintenance. Therefore, past, current, or future receipt of these benefits should not be considered in determining whether an alien is or is likely to become a public charge. Further, an alien need not repay benefits already received or withdraw from a benefit program in order to be eligible for admission or adjustment of status.

It is not possible to list all the supplemental, non-cash benefits or special-purpose cash benefits that an alien may receive that should not be considered for public charge purposes, but common examples include:

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[17] States have flexibility in administering the TANF program and may choose to provide non-cash assistance such as subsidized child care or transportation vouchers in addition to cash assistance. Such non-cash benefits should not be considered for public charge purposes. States may also provide non-recurrent cash payments for specific crisis situations under TANF. Such payments should not be considered for public charge purposes since they are not cash for income maintenance.

[18] Costs for imprisonment for conviction of a crime are not a basis for a public charge determination.

1. Medicaid and other health insurance and health services (including public assistance for immunizations and for testing and treatment of symptoms of communicable diseases; use of health clinics, short-term rehabilitation services, and emergency medical services) other than support for long-term institutional care;[19]
2. Children's Health Insurance Program (CHIP);
3. Nutrition programs, including Food Stamps, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the National School Lunch and School Breakfast Programs, and other supplementary and emergency food assistance programs;
4. Housing benefits;
5. Child care services;
6. Energy assistance, such as the Low Income Home Energy Assistance Program (LIHEAP);
7. Emergency disaster relief;
8. Foster care and adoption assistance;
9. Educational assistance, including benefits under the Head Start Act and aid for elementary, secondary, or higher education;
10. Job training programs; and
11. In-kind, community-based programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter).

State and local programs that are similar to the federal programs listed above should also be excluded from consideration for public charge purposes. Note that states may adopt different names for the same or similar publicly funded programs. In California, for example, Medicaid is called "Medi-Cal" and CHIP is called "Healthy Families." It is the underlying nature of the program, not the name adopted in a particular state, that determines whether or not it should be considered for public charge purposes.

In addition, and consistent with existing Service practice, cash payments that have been earned, such as Title II Social Security benefits, government pensions, and veterans' benefits, among other forms of earned benefits, do not support a public charge determination.

7. **Affidavit of Support**

The new AOS form, Form I-864, asks whether the sponsor or a member of the sponsor's household has received means-tested benefits within the past 3 years. The purpose of this question is not to determine whether the sponsor is or is likely to become a public charge, but to ensure that the adjudicating officer has access to all facts that may be relevant in determining whether the 125-percent annual income test is met. Any cash benefits received by the sponsor cannot be counted toward meeting the 125-percent income threshold, but receipt of other means-tested benefits, such

[19] The Service's decision not to consider Medicaid, CHIP, and Food Stamps for public charge purposes does not affect the authority of benefit granting agencies to seek repayment for benefits received by an alien from the alien's sponsor under the new AOS

as Medicaid, is not disqualifying for sponsorship purposes. As noted above, public benefit programs are increasingly available to families with incomes above 125 percent of the poverty line.

The regulations implementing the new AOS requirement are found at 8 CFR part 213a. Separate guidance has been issued on adjudicating applications including an AOS.

Continued Use of Form I-134

The use of the new AOS (Form I-864) is mandatory for those categories of immigrants listed in section 212(a)(4)(C) and (D), and a Service officer may not accept a Form I-134 in place of the new AOS for these immigrants if the application was filed on or after December 19, 1997. In those cases not governed by sections 212(a)(4)(C) and (D) and 213A (e.g., parolees, nonimmigrants, or diversity immigrants) in which the Service has traditionally accepted Form I-134, Service officers may continue to do so on a discretionary basis. Use of Form I-361 will continue in cases involving Amerasians under Public Law 97-361.

8. Naturalization

There is no public charge test for purposes of naturalization. There are two narrow circumstances under which the public charge issue can arise in a naturalization case. First, the alien's admission for permanent residence may not have been "lawful" pursuant to section 318 because, *at the time of admission or adjustment*, the alien was subject to exclusion as an alien likely to become a public charge. This would generally occur only if the Service can show that the alien withheld or misrepresented material facts relating to the public charge issue at the time of admission or adjustment. Secondly, the alien's initial admission may have been lawful, but later the alien became deportable as a public charge, under the test described in section 3, above. This would not be a bar to naturalization unless the Service actually instituted deportation proceedings against the alien. As a practical matter, neither of these situations is likely to occur.

The Service has no authority to make the repayment of public assistance a condition for granting naturalization, and officers should not request proof of repayment from applicants in connection with a naturalization adjudication.

9. Public Charge Bonds

Section 213 of the INA, Admission of Certain Aliens on Giving Bond, was amended by IIRIRA only by including a parenthetical reference to the new AOS prescribed in INA section 213A. Where appropriate, officers may use the public charge bond option pursuant to section 213 as has been done in the past.

10. Points of Contact

Questions concerning this memorandum should be referred to Sophia Cox or Kevin Cummings, Headquarters Office of Adjudications, at 202-514-4754, through appropriate channels.

FACT SHEET

05/25/99

Public Charge

In an effort to protect the public health and help people become self-sufficient, the Clinton Administration is publishing a proposed rule in the *Federal Register* on May 26 that clarifies the circumstances under which a non-citizen can receive public benefits without becoming a "public charge" for purposes of admission into the United States, adjustment of status to legal permanent resident, and deportation.

The new regulations, for the first time, define "public charge" and state which benefits a non-citizen may receive without concern for negative immigration consequences. The regulation describes the various issues that must be considered in making a public charge determination. This information will help non-citizens and their families make informed choices about whether to apply for certain benefits. The regulation also enhances the administration of the nation's immigration laws by promoting fair and consistent decision-making.

Background

"Public charge" has been part of U.S. immigration law for more than 100 years as a ground of inadmissibility and deportation. An alien who is likely at any time to become a public charge is inadmissible and ineligible to become a legal permanent resident of the United States. Also, an alien can be deported if he or she becomes a public charge within five years of entering the United States from causes that existed before entry. Instances of deportation on public charge grounds have been very rare.

Recent immigration and welfare reform laws have generated considerable public confusion and concern about whether a non-citizen who is eligible to receive certain Federal, State, or local public benefits may face adverse immigration consequences as a public charge for having received public benefits.

This concern has prompted some non-citizens and their families to deny themselves public benefits for which they are eligible -- including disaster relief, treatment of communicable diseases, immunizations, and children's nutrition and health care programs -- potentially causing considerable harm to themselves and the general public. This impact undermines the government's policies of increasing access to health insurance and health care and helping people to become self-sufficient by drawing temporarily on public support during a transition period.

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Definition of Public Charge

The proposed rule, which was drafted after an extensive interagency process with benefit-granting agencies, defines "public charge" to mean **an alien who has become (for deportation purposes) or is likely to become (for admission or adjustment of status purposes) "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."** This definition alone, however, cannot be used to determine if an alien is a public charge -- other issues must be considered, as specified below.

The Immigration and Naturalization Service (INS) is implementing this definition of public charge immediately through field guidance discussing the definition and standards for public charge determinations. The field guidance will be published along with the proposed rule in the *Federal Register*. In addition, the United States Department of State (DOS) will send a cable to U.S. consulates abroad providing guidance on public charge determinations for admission purposes. By making this guidance effective immediately, INS and DOS are helping to relieve public concerns about receiving health care and other important services, as well as providing field personnel with the tools needed to enforce immigration law in a clear and consistent manner.

At the same time, INS is seeking public comment on this approach. The proposed rule includes a 60-day public comment period.

Benefits Subject to Public Charge Consideration

The proposed rule specifies that cash assistance for income maintenance includes Supplemental Security Income (SSI), cash assistance from the Temporary Assistance for Needy Families (TANF) program and State or local cash assistance programs for income maintenance, often called "General Assistance" programs. Acceptance of these forms of public cash assistance could make a non-citizen a public charge, if all other criteria are met (as described below in the section "Criteria for Public Charge Determinations.")

In addition, public assistance, including Medicaid, that is used for supporting aliens who reside in an institution for long-term care – such as a nursing home or mental health institution – will also be considered by INS and DOS officials as part of the public charge analysis. Short-term institutionalization for rehabilitation is not subject to public charge consideration.

Benefits Not Subject to Public Charge Consideration

Non-cash benefits and special-purpose cash benefits that are not intended for income maintenance are not subject to public charge consideration. Such benefits include:

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Medicaid, Children's Health Insurance Program (CHIP), Food Stamps, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), immunizations, prenatal care, testing and treatment of communicable diseases, emergency medical assistance, emergency disaster relief, nutrition programs, housing assistance, energy assistance, child care services, foster care and adoption assistance, transportation vouchers, educational assistance, job training programs, and non-cash benefits funded under the TANF program.

Some of the above programs may provide cash benefits, such as energy assistance, transportation or child care benefits provided in cash under TANF or the Child Care Development Block Grant (CCDBG), and one-time emergency payments under TANF. Since the purpose of such benefits is not for income maintenance, but rather to avoid the need for on-going cash assistance for income maintenance, they are not subject to public charge consideration.

Criteria for Public Charge Determinations

The proposed rule states that an alien's mere receipt of cash assistance for income maintenance, or being institutionalized for long-term care, does not automatically make him or her inadmissible, ineligible to adjust status to legal permanent resident, or deportable on public charge grounds. The law requires that INS and DOS officials consider several additional issues as well. Each determination is made on a case-by-case basis.

Admission and Adjustment of Status

Before an alien can be denied admission to the United States or denied adjustment of status to legal permanent resident based on public charge grounds, a number of factors must be considered by INS and DOS, including: the alien's age, health, family status, assets, resources, financial status, education and skills. No single factor – other than the lack of an Affidavit of Support, if required -- will determine whether an alien is a public charge, including past or current receipt of public cash benefits for income maintenance.

Deportation

The INS can deport an alien on public charge grounds only if the alien has failed to meet the benefit-granting agency's demand for repayment of a cash benefit for income maintenance or for the costs of institutionalization for long-term care. INS may initiate removal proceedings only if the benefit-granting agency has the legal authority to demand repayment and has:

- chosen to seek repayment within five years of the alien's entry into the United States;
- obtained a final judgment;
- taken all steps to collect on that judgment; and
- been unsuccessful in those attempts.

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Even if these conditions are met, the alien is not deportable on public charge grounds if the alien can show that he or she received public cash benefits for income maintenance or was institutionalized for long-term care for causes that arose after entry into the United States.

Other Public Charge Clarifications

- There is no public charge test for naturalization.
- Public charge is not a factor in whether a non-citizen can sponsor a relative to come to the United States.
- Benefits received by one member of a family are not attributed to other family members for public charge purposes, unless the cash benefits amount to the sole support of the family.

– INS –

Questions and Answers

05/25/99

Public Charge

GENERAL

Q1: Why are the Department of Justice (DOJ) and the Immigration and Naturalization Service (INS) issuing field guidance and a proposed regulation concerning public charge, and what is the effect of these documents?

A1: DOJ and INS are issuing this guidance and proposed regulation to alleviate growing public confusion over the meaning of the currently undefined term "public charge" in immigration law and its relationship to the receipt of Federal, State, or local public benefits. By defining "public charge," DOJ seeks to reduce the negative public health consequences generated by the existing confusion and to provide aliens with better guidance as to the types of public benefits that will and will not be considered in public charge determinations. The guidance defines "public charge" and gives examples of benefits that will and will not be considered by INS officials for public charge purposes. It also summarizes the existing law regarding public charge and explains how the INS will administer these provisions.

Q2: What does it mean to be a "public charge" under the immigration laws?

A2: An alien who is likely at any time to become a "public charge" is ineligible for admission to the U.S. and is ineligible to adjust status to become a lawful permanent resident. An alien who has become a public charge can also be deported from the U.S., although this very rarely happens. These provisions have been part of U.S. immigration law for over 100 years, and the recent immigration reform and welfare reform laws did not substantively change them. Both INS (in the U.S.) and the Department of State (State) (overseas) make public charge determinations.

Q3: How is "public charge" defined, and when will this definition be implemented?

A3: The INS is issuing guidance and a proposed regulation that define "public charge" for the first time. "Public charge" means an alien who has become (for deportation purposes) or who is likely to become (for admission/adjustment purposes) primarily dependent on the government for subsistence. This definition is effective immediately. As discussed below, INS and State will consider the receipt of cash benefits for income maintenance purposes and institutionalization for long-term care at government expense in determining dependence on the government for subsistence.

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IMPLEMENTATION

Q4: How do INS and State decide whether someone is admissible or eligible for adjustment of status under the public charge rules?

A4: In deciding whether an alien is likely to become a public charge, the law requires that the INS (in the U.S.) or State (overseas) take certain factors into account, including the alien's age, health, family status, assets, resources, financial status, education and skills. The government official examines all of these factors, looking at the "totality of the circumstances" concerning the alien, to make a forward-looking decision. No single factor — other than the lack of an Affidavit of Support, if required — will be used as the sole basis for finding that someone is likely to become a public charge, that is, likely to become primarily dependent on the government for subsistence. As described below, non-cash benefits and certain special-purpose cash benefits will not be taken into account under the totality of circumstances test.

Q5: How does INS decide whether someone is deportable as a public charge?

A5: Deportations on public charge grounds are very rare because the standards are very strict. Under the Immigration and Nationality Act, an alien is deportable if he or she becomes a public charge within 5 years after the date of entry into the U.S. for reasons not affirmatively shown to have arisen since entry. The mere receipt of a public benefit within 5 years of entry does not make an alien deportable as a public charge. An alien is deportable only if (1) the state or other government entity that provides the benefit has the legal right to seek repayment from the alien or another obligated party (for example, a sponsor under an affidavit of support), (2) the responsible program officials make a demand for repayment; and (3) the alien or other obligated party, such as the alien's sponsor, fails to repay. The benefit granting agency must seek repayment within 5 years of the alien's entry into the United States, obtain a final judgment, take all steps necessary to collect on that judgment, and be unsuccessful in those attempts. Even if these conditions are met, the alien has the opportunity to show that the reasons he or she became a public charge arose after the alien's entry to the U.S. An alien who can make such a showing is not deportable as a public charge.

Q6: What kind of benefits are considered in deciding whether someone is or is likely to become a public charge?

A6: Not all publicly funded benefits are relevant to deciding whether someone is or is likely to become a public charge. INS' guidance and proposed regulation clarify what kinds of benefits may and may not be considered in making a public charge determination. In order to decide whether an alien has become or is likely to become a public charge, INS and State will consider whether the alien is likely to become primarily dependent on the government for subsistence as

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demonstrated by either (1) the receipt of public cash assistance for income maintenance purposes, or (2) institutionalization for long-term care at government expense (other than imprisonment for conviction of a crime). Short-term institutionalization for rehabilitation is not taken into account for public charge purposes.

Public benefits considered to be public cash assistance for income maintenance include:

(1) Supplemental Security Income (SSI);
(2) Temporary Assistance for Needy Families (TANF), but not including supplementary cash benefits excluded from the term "assistance" under TANF program rules or any non-cash benefits and services provided by the TANF program;
(3) State and local cash assistance programs for income maintenance (often called state "General Assistance," but which may exist under other names).

In addition, the costs for institutionalization for long-term care, which may be provided under Medicaid or other programs, may be considered in making public charge determinations.

While the receipt of these benefits may be considered by INS and State for public charge purposes, having received them does not automatically make someone a public charge. As explained above, the totality of circumstances test applies for admission and adjustment. For deportation, all of the procedural requirements, described above, apply.

Q7: Are there public benefits that aliens can legally receive without worrying that the INS and State will consider them a public charge?

A7: Yes. Not all publicly funded benefits will be considered by the INS or the State Department in deciding whether someone is or is likely to become a public charge. The focus of public charge is on cash benefits for income maintenance and institutionalization for long-term care at government expense. Examples of benefits that will not be considered for public charge purposes include:

- Medicaid and other health insurance and health services (including public assistance for immunizations and for testing and treatment of symptoms of communicable diseases; use of health clinics, prenatal care, etc.) other than support for institutionalization for long-term care
- Children's Health Insurance Program (CHIP)
- Nutrition programs, including Food Stamps, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the National School Lunch and Breakfast programs, and other supplementary and emergency food assistance programs

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- Housing assistance
- Child care services
- Energy assistance, such as the Low Income Home Energy Assistance Program (LIHEAP)
- Emergency disaster relief
- Foster care and adoption assistance
- Educational assistance, including benefits under the Head Start Act and aid for elementary, secondary, or higher education
- Job training programs
- In-kind, community-based programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter).

Note that not all categories of aliens are eligible to receive all of the types of benefits described above.

Q8: Do the INS and State consider all types of cash assistance in deciding whether someone is a public charge?

A8: No. INS and State only consider cash benefits intended for income maintenance purposes. Some programs provide cash benefits for special purposes, such as the Low Income Home Energy Assistance Program (LIHEAP), transportation or child care benefits provided in cash under TANF or the Child Care and Development Block Grant (CCDBG), and one-time emergency payments made under TANF to avoid the need for on-going cash assistance. These special-purpose cash benefits are not for income maintenance and therefore are not considered for public charge purposes.

Q9: Normally Food Stamp benefits are given in the form of paper coupons or an electronic benefit card that can be used at authorized stores to buy food. However, in a few areas Food Stamp benefits are given in the form of cash. If Food Stamp benefits are given in the form of cash, can those benefits be considered for public charge purposes?

A9: No. Food Stamp benefits will not be considered for public charge purposes regardless of the method of payment because they are not intended for income maintenance.

Q10: Are health care benefits and enrollment in health insurance programs like Medicaid and CHIP considered for public charge purposes?

A10: No, not unless an alien is primarily dependent on the government for subsistence as demonstrated by institutionalization for long-term care at government expense. In particular, INS and State will not consider participation in Medicaid or CHIP, or similar state-funded programs, for public charge purposes. This approach will help to safeguard public health, while still allowing INS and State

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to identify people who are primarily dependent on the government for subsistence by looking to the receipt of public cash assistance for income maintenance. In addition, short-term institutionalization for rehabilitation will not be considered for public charge purposes.

Q11: Do the public charge field guidance and regulation change the policy issued by the Food and Nutrition Service for the WIC Program in WIC Policy Memorandum #98-7, dated March 19, 1998, "Impact of Participation in the WIC Program on Alien Status"?

A11: No. The new field guidance and regulation on public charge are consistent with the WIC policy memorandum issued in 1998. The WIC policy memorandum was developed based on agreements reached with the INS and State. The new field guidance and regulation merely restate and reinforce the agreement previously reached on the impact of participation in the WIC Program and alien status. As noted above, INS and State will not take WIC participation into account for public charge purposes.

AFFIDAVIT OF SUPPORT

Q12: What is an affidavit of support, and who is required to have one?

A12: The Personal Responsibility and Work Opportunity Reconciliation Act and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Section 213A, created a new requirement for all family-sponsored immigrants and those employment-based immigrants who will work for a close relative or for a firm in which a U.S. citizen or lawful permanent resident relative holds a 5 percent or greater ownership interest. An alien who applies for an immigrant visa or adjustment of status in one of these categories on or after December 19, 1997, must have an affidavit of support (AOS), INS Form I-864, from a qualifying sponsor or he or she will be found inadmissible as a public charge. An AOS is a legally binding promise that the sponsor will provide support and assistance to the immigrant if necessary.

The AOS must be signed by a sponsor who meets certain statutory requirements. Sponsors must be able to demonstrate that they are able to maintain the sponsored alien(s) at an annual income of not less than 125 percent of the federal poverty level. (Currently, 125 percent of the poverty level for a family of four is $20,875.) If the family member who filed the visa petition does not have enough money to sponsor the alien(s), then another person can sign an AOS as a "joint sponsor," indicating that he or she is willing to support the immigrant in the future if needed. The sponsor's obligation under the AOS lasts until the immigrant has naturalized, has worked or can be credited with 40 quarters of work, leaves the U.S. permanently, or dies. The sponsor and joint sponsor (if any)

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must also agree to repay the government if the immigrant uses certain benefits during that time and if the government asks the sponsor for repayment.

Before IIRIRA, aliens were sometimes sponsored using INS Form I-134, but these affidavits of support were found by some courts not to be legally enforceable. Form I-134 may still be used for categories of aliens who are not required to use the new, enforceable affidavit of support, such as students, parolees, or diversity immigrants.

Q13: Can an affidavit of support help an alien demonstrate to the INS and State that he or she is not likely to become a public charge?

A13: Yes. Since many aliens who apply for an immigrant visa or adjustment of status after December 19, 1997, will have an affidavit of support, INS and State will take that into account in deciding whether the alien is likely to become a public charge in the future. Even though an AOS is necessary for some immigrants and helps to convince the government that they will not become dependent on the government for subsistence in the future, INS or State can still deny an immigrant admission or adjustment of status under the totality of circumstances test based on other factors such as age, health, employment, and education, as described above.

Q14: If lawful permanent residents want to sponsor a relative to come to the U.S., will it hurt their chances if they are receiving or have received public benefits in the past?

A14: Sponsors are not subject to public charge screening under the immigration laws; the question is whether the alien being sponsored is likely to become a public charge. Sponsors must satisfy a different test: they must be able to demonstrate that they are able to maintain the sponsored immigrant(s) at an annual income of not less than 125 percent of the federal poverty level.

Q15: Why does the new INS affidavit of support form ask about whether a sponsor or member of his or her household has received "means-tested public benefits" in the past 3 years?

A15: The purpose of this question is to ensure that the INS or State official making the decision has access to all facts that may be relevant in determining whether the 125 percent test, described above, is met. Any cash benefits received by the sponsor, such as SSI or cash TANF, cannot be counted toward meeting the 125 percent income threshold, but they are not held against the sponsor if he or she can meet the 125 percent test through other resources. The receipt of other means-tested public benefits – such as Food Stamps, Medicaid, or CHIP – have no effect on sponsorship.

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Q16: What happens if a sponsor who has signed the new affidavit of support dies?

A16: The obligation to support the alien terminates with the sponsor's death, but the sponsor's estate would still be obligated to repay any obligations accrued before the sponsor's death. If there is a joint sponsor and only one of the sponsors dies, the remaining sponsor would remain liable under the affidavit of support.

For deportation purposes, if a sponsor has died and there is no joint sponsor, there is no legal obligation under the affidavit of support to repay any means-tested benefits. This means that the first prong of the test for deportation would not be met and the sponsored alien would not become deportable based on the affidavit of support.

<u>EXAMPLE SITUATIONS</u>

Q17: Are there categories of aliens who are not subject to public charge determinations?

A17: Yes. Refugees and asylees are not subject to public charge determinations for purposes of admission or adjustment of status. Amerasian immigrants are also exempt from the public charge ground of inadmissibility for their initial admission to the U.S. In addition, various statutes contain exceptions to the public charge ground of inadmissibility for aliens eligible for adjustment of status under their provisions, including the Cuban Adjustment Act, the Nicaraguan Adjustment and Central American Relief Act (NACARA) and the Haitian Refugee Immigration Fairness Act (HRIFA).

Q18: If an alien has received cash public benefits in the past, but has stopped, will INS or State find that he or she is likely to become a public charge?

A18: Past receipt of cash public benefits does not automatically make an alien inadmissible as likely to become a public charge. It is one factor that will be considered under the totality of the circumstances test to decide whether the alien is likely to become a public charge in the future. For example, if an alien received benefits in the past during a period of unemployment, but now has a job and is self-supporting, he or she would most likely not be found inadmissible as a public charge. The more time that has elapsed since the alien stopped receiving the benefit, the less weight it will be given. The length of time that an alien received benefits and the amount of benefits received are also relevant considerations.

Q19: If an alien has received public benefits in the past, does the alien have to repay them to avoid having INS or State find that he or she inadmissible as a public charge, or ineligible to adjust status and become a lawful permanent resident?

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A19: No. INS and State do not have authority to request that aliens repay public benefits in connection with visa issuance, admission, or adjustment of status.

Q20: Who decides whether an alien must repay a public benefit he or she has received in the past?

A20: The requirements and procedures concerning any demand for repayment of a public benefit are governed by the specific program rules established by law and administered by the benefit granting agencies, or by state and local governments, not by INS or State. The public charge rules in the immigration law do not change these program requirements.

Q21: If a member of an alien's family is receiving or has received public benefits, but the individual alien hasn't, will INS or State hold this against the alien for public charge purposes?

A21: In most cases, no. As a general rule, receipt of benefits by a member of an alien's family is not attributed to the alien who is applying to INS or State for admission or to INS for adjustment of status to determine whether he or she is likely to become a public charge. The only time this general rule would not apply would be if the family were reliant on their family member's cash public benefits as its sole means of support.

In particular, alien parents do not have to worry that the INS or State will consider them to be public charges if they enroll their children in programs for which they are eligible, unless these are cash programs which provide the sole financial support for the family. This is true whether the children are U.S. citizens or non-citizens.

If a parent enrolls in TANF for cash benefits for the "child only," this could be used by INS or State for a public charge determination concerning the parent if this cash is the sole support for the family. However, if there are other sources of support or a parent is working, then the cash assistance would not represent the family's sole source of support.

Q22: If an alien receives public benefits, will it hurt his or her chances to become a U.S. citizen?

A22: No. There is no public charge test for naturalization purposes, so the receipt of benefits is not relevant, as long as they were legally received. Nor is there a requirement to repay benefits received in the past in order to qualify for citizenship.

Q23: Can a naturalized citizen lose his or her citizenship because of receiving public benefits?

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A23: No. Nobody can lose his or her citizenship because of receiving public benefits. Once an immigrant becomes a citizen, he or she can receive benefits on the same basis as all other citizens. Citizens cannot be deported or barred from reentering the U.S. after an international trip based on the receipt of public benefits.

Q24: Does an alien have to stop participating in some benefit programs in order to adjust status and become a lawful permanent resident?

A24: No, but someone who is receiving a cash benefit for income maintenance at the same time that he or she applies to become a lawful permanent resident may be considered ineligible for adjustment as a public charge. An alien who has received a cash benefit in the past could reapply to the INS after he or she stops receiving the benefit, and might or might not be considered a public charge.

Someone who is receiving a non-cash benefit – for example, WIC, Food Stamps, Medicaid, or CHIP – would not have to stop participating in the program in order to be eligible to adjust to lawful permanent resident status.

As explained earlier, in all of these situations, the usual "totality of the circumstances" test would apply.

Q25: If a lawful permanent resident has received public benefits and leaves the country, will INS stop him or her from returning on public charge grounds?

A25: In general, a lawful permanent resident who has been outside the U.S. for 6 months or less is not screened for public charge purposes when he or she returns. This is because lawful permanent residents who leave for 6 months or less at a time are not considered applicants for admission when they return, and none of the grounds of inadmissibility, including public charge, apply to them.

There are exceptions to this general rule if (1) the alien has abandoned his or her status as a lawful permanent resident; (2) the alien has engaged in certain illegal activity; (3) the alien was in removal proceedings before he or she left the country; or (4) the alien attempts to enter other than at a port of entry. See INA section 101(a)(13)(C) for more details on these exceptions.

Q26: Can an LPR continue to receive benefits while he or she is out of the country?

A26: If an LPR plans to be out of the country for longer than a month, he should check with the agency providing the benefit to determine the rules. In general, people are not allowed to receive many benefits if they are absent from the country or state of residence for longer than 30 days. If an LPR receives benefits improperly, it can hurt his chances of re-entering the U.S. or becoming a citizen.

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Q27: If a refugee has adjusted to LPR status and then leaves the country for more than 180 days – is he or she at risk of being found to be a public charge and denied reentry?

A27: As noted above, refugees are exempt from public charge determinations for their admission and adjustment to LPR status. Public charge has never been a problem for refugees who travel and return to the U.S., and nothing in the welfare reform law or immigration reform law has changed this.

Q28: When an LPR returns from an international trip, can INS make her pay back Medicaid or Food Stamps that she or her children used before?

A28: No. INS does not have the authority to ask immigrants to pay back these benefits. If an alien has received benefits improperly (e.g., if a person claims to be a resident of a state for purposes of eligibility when she is not a resident, or if she does not tell a caseworker about all of her income), it is up to the benefit-granting agency to request repayment, based on the rules governing that program. Typically a benefit-granting agency would only request repayment in situations involving fraud or overpayment, and it would follow its procedural rules involving notice to the individual and the right to appeal.

Q29: What if an alien has never used cash welfare and is not residing in a nursing home. Can the INS still deny him a green card because they think he might use cash welfare in the future?

A29: Yes, it is possible. INS and State officials must look at all of the factors listed above to determine if a person can support himself in the future. If an alien's current situation related to age, health, resources, and the other statutory factors does not satisfy them that the alien is likely to be able to be self-supporting in the future, then they can refuse to grant a visa or approve adjustment of status, even if he is not currently receiving public cash assistance.

Q30: What if a person is not receiving cash assistance but is very sick and needs an extended period of care in a nursing home or other long-term care institution? Will she have trouble getting her Permanent Resident Card ("green card")?

A30: Yes. If someone is living in a nursing home or has a serious long-term illness that requires institutionalization, she will probably have trouble getting a green card unless she can show that she can get the care she needs without using Medicaid or other government-funded health programs (e.g., county aid). However, a short-term stay in a nursing facility, for example, to physically rehabilitate after surgery, will not be used to deny a green card. The alien is not deportable on public charge grounds if the alien can show that she received benefits for causes that arose after entry into the U.S.

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Q31: An alien who is primarily dependent on the government for subsistence as demonstrated by the institutionalization for long-term care at government expense can be found deportable as a public charge. Does this mean that INS will be conducting raids in nursing homes or other long-term care institutions?

A31: No. INS will not send investigators into nursing homes or other long-term care facilities to look for aliens who might be deportable as public charges. INS may use information concerning institutionalization if it comes to ins' attention through other avenues, but the only way an alien could be found deportable is if all the procedural requirements described above were met.

Q32: If I'm eligible to self-petition for adjustment of status under the Violence Against Women Act (VAWA), do I have to show that I'm not likely to become a public charge?

A32: The Administration is still considering the extent to which self-petitioners under VAWA are subject to the public charge requirements, and will address this in future guidance. The law does make clear that self-petitioners under VAWA do not need to submit an affidavit of support with their application, unlike other family-based immigrants.

Q33: Cuban/Haitian entrants are eligible to receive certain public benefits under welfare reform. If they receive such benefits, will they be barred from adjusting status because they will be considered public charges?

A33: The answer depends on how they become eligible to adjust status. There are statutory exceptions to the public charge ground of inadmissibility for those Cubans who are eligible to adjust to lawful permanent resident status under the Cuban Adjustment Act and NACARA and for those Haitians who are eligible to adjust status under the HRIFA. Cuban/Haitian entrants are subject to the usual public charge rules if they seek adjustment under other provisions of law that do not contain public charge exemptions.

Q34: Certain Amerasian entrants are eligible to receive public benefits under welfare reform. If they receive such benefits, will they be considered public charges?

A34: Amerasian entrants are admitted to the U.S. as lawful permanent residents (LPRs), and they are exempt from the public charge ground of inadmissibility at their initial admission. In most cases, the issue of public charge would never come up again, unless the alien leaves the U.S. for more than 6 months and seeks readmission. At that time, the exemption from public charge screening would no longer apply and the alien would be treated like any other LPR under the totality of the circumstances test.

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Q35: If an alien has been in the U.S. since January 1, 1972, and wants to become a lawful permanent resident under the "registry" provision of the Immigration and Nationality Act, section 249, is there a public charge test?

A35: No. Public charge is not a factor for "registry" aliens under section 249.

Q36: Is it improper for an immigration or consular officer to ask non-citizens at an airport or in an interview whether they have received public benefits in the past, or whether someone in their family has?

A36: No. Immigration or consular officers can ask questions about whether a non-citizen or someone in his or her family is receiving or has received public benefits in the past. Non-citizens should answer such questions completely and truthfully. If an alien tells an immigration or consular officer that he or she has received a benefit that is exempt from consideration for public charge purposes, such as Food Stamps or Medicaid, the officer will not use that information in deciding whether the alien is likely to become a public charge.

Q37: INS is publishing this public charge definition as a proposed rule for notice and comment. What happens if an alien receives one of the "safe" benefits— that is, a supplemental, non-cash benefit and the final rule is different from the proposed rule — can aliens rely on the field guidance?

A37: Aliens may rely on ins' field guidance in determining the benefits that they may safely accept before the final rule is issued. If the final rule is different from the proposed rule, INS will issue additional guidance at that time designed to ensure that non-citizens who relied on the current guidance will not suffer harsher immigration consequences based on that reliance.

— INS —

THE CLINTON ADMINISTRATION'S HISTORIC COMMITTMENT TO PROVIDING HEALTH INSURANCE TO CHILDREN

CREATION OF THE CHILDREN'S HEALTH INSURANCE PROGRAM

The President, with bipartisan support from the Congress, created the Children's Health Insurance Program (CHIP). The Balanced Budget Act of 1997 allocated $24 billion dollars over the next five years to extend health care coverage to uninsured children through State-designed programs. States project that they will ensure 2.5 million children when their new CHIP programs are fully implemented, and because states are currently planning to revise and expand their CHIP programs as well as work with us on Medicaid outreach activities, we are confident that we will be able to reach our goal of providing insurance up to 5 million children through a combination of Medicaid and CHIP.

HIGHLIGHTING THE IMPORTANCE OF CHILDREN'S HEALTH OUTREACH

Over 11 million children in America are uninsured. Nearly 90 percent of these children have parents who work, but do not have access to or cannot afford health insurance. Over 4 million of these uninsured children are already eligible for Medicaid. However, many families are not aware that their children are eligible for Medicaid, and others have difficulty filling out the application. Similar problems could undermine the new Children's Health Insurance Program's goal to enroll millions of uninsured children.

The President, Vice President, First Lady, and Mrs. Gore have all worked to highlight the importance of children's health insurance outreach over the past year.

EVENT ON FEBRUARY 18, 1998

The President announced the first major state coverage expansions under the recently enacted Children's Health Insurance Program (CHIP) and released information showing that many States will soon follow. He also unveiled an unprecedented set of public/private initiatives designed to enroll the millions of uninsured children who are eligible but not enrolled in Medicaid and other state-based children's health programs.

EVENT ON JUNE 22, 1998

The President issued an Executive Memorandum ordering the Departments of Health and Human Services, Treasury, Agriculture, Education, Labor, Housing and Urban Development, Interior, and the Social Security Administration to enact over 150 initiatives designed to help enroll millions of uninsured children in Medicaid or the new Children's Health Insurance Program (CHIP).

EVENT ON SEPTEMBER 1, 1998

The Vice President hosted the National Child Health Caravan on its multi-state tour to promote children's outreach; unveiled major new children's health outreach and enrollment efforts from multiple departments within the Federal government; announced three state children's health insurance program (CHIP) approvals; and highlighted the special challenges that rural states face in targeting and covering uninsured children.

EVENT ON FEBURARY 23, 1999

The President and the First Lady, along with Governors Carper and Leavitt and Secretary Shalala, launched the nationwide Insure Kids Now campaign that aims to enroll every eligible but uninsured child in Medicaid and the new Children's Health Insurance Program (CHIP). To ensure that families know that their children may be eligible, the President has engaged a broad-based, bipartisan, public-private coalition to use every possible means to educate and assist families in insuring their children.

INTENSIVE PUBLIC-PRIVATE OUTREACH EFFORTS TO IDENTIFY AND ENROLL ELIGIBLE CHILDREN

In addition to the efforts of the President, Vice President, and First Lady to call national attention to the issue of children's health insurance outreach, the Administration has lauched several public-private initiatives to identify and enroll eligible uninsured children in either Medicaid or CHIP, inluding:

Launching a new nationwide "Insure Kids Now" Outreach Campaign. This campaign will engage a broad-based, bipartisan, public-private coalition to use a variety of means to educate and assist families in insuring their children. Initial activities include:

Unveiling the "1-877-KIDS NOW" Hotline. Together with members of the National Governors Association, the President unveiled 1-877 KIDS NOW, a toll free number developed by the NGA in partnership with Bell Atlantic and the Administration, to provide state-specific information about Medicaid and CHIP to families in all 50 states. Families calling this number will receive information about eligibility criteria, benefits, and how to apply for coverage.

Running public service announcements on national television and radio about Insure Kids Now. NBC, ABC, Univision, Turner Entertainment, the National Association of Broadcasters, and Viacom/Paramount have begun to air public service announcements providing information about the importance of health insurance and promoting the Insure Kids Now number. Radio ads on Insure Kids Now will also be aired nationwide, starting with California, Utah, Colorado, Alabama, Arkansas, Illinois, Ohio, and North Carolina.

Printing the Insure Kids Now toll free number on commonly used products. Building on a series of commitments made in 1998, K-Mart, General Motors, the American Dental Hygienists Association, and American Medical Response have pledged to put the new toll-free number on grocery bags, toothbrushes, diaper boxes, pharmaceutical products, child safety seats, and schoolbuses.

Releasing an Executive Memorandum ordering Federal Agencies to conduct new outreach activities. In an Executive Memorandum, the President ordered the Departments of Health and Human Services, Treasury, Agriculture, Education, Labor, Housing and Urban Development, Interior, and the Social Security Administration to enact over 150 initiatives designed to help enroll millions of uninsured children in Medicaid or the new Children's Health Insurance Program (CHIP). The Task Force has begun new outreach efforts include launching the new "insurekidsnow.gov" website; distributing 145,000 posters to over 20,000 health centers, providers, and other grantees; and providing 92,000 USDA employees with information about outreach, including the new toll-free number, on their wage and earning statements. The American Academy of Pediatrics characterized these initiatives as "representing the best of creative government and absolutely critical to achieving our common goal of providing health insurance for all eligible children."

New actions to assure families access to Medicaid, CHIP, and other benefits. The Administration unveiled new regulations assuring families that enrollment in Medicaid or the new Children's Health Insurance Program (CHIP) and the receipt of other critical benefits, such as school lunch and child care services, will not affect their immigration status. The new regulation, effective immediately, clarifies a widespread misconception that has deterred eligible populations from enrolling in these programs and undermined the public health. In addition, Federal agencies will send guidance to their field offices, program grantees and to work with community organizations to educate the public about this new policy.

Releasing new guidance to states to encourage them to reach out to children who are no longer eligible for cash assistance but are still eligible for Medicaid or CHIP. The Administration released new guidance reiterating their responsibilities to establish and maintain Medicaid eligibility for families and children affected by welfare reform and providing creative examples of the best way to liberalize eligibility. It also establishes that states must provide Medicaid applications upon request and process them without delay.

Investing in new children's health insurance outreach. The President has included a $1 billion, 5-year initiative to fund outreach to enroll uninsured children in Medicaid and the new Children's Health Insurance Program (CHIP) in his FY 2000 budget. These new funds will enable States to simplify enrollment systems, launch ad campaigns, educate community volunteers, outstation eligibility workers, and conduct outreach campaigns to identify and enroll uninsured children in both Medicaid and CHIP.

Public Charge

In an effort to protect the public health and help people become self-sufficient, the Clinton Administration is publishing a proposed rule in the *Federal Register* on May 26 that clarifies the circumstances under which a non-citizen can receive public benefits without becoming a "public charge" for purposes of admission into the United States, adjustment of status to legal permanent resident, and deportation.

The new regulations, for the first time, define "public charge" and state which benefits a non-citizen may receive without concern for negative immigration consequences. The regulation describes the various issues that must be considered in making a public charge determination. This information will help non-citizens and their families make informed choices about whether to apply for certain benefits. The regulation also enhances the administration of the nation's immigration laws by promoting fair and consistent decision-making.

Background

"Public charge" has been part of U.S. immigration law for more than 100 years as a ground of inadmissibility and deportation. An alien who is likely at any time to become a public charge is inadmissible and ineligible to become a legal permanent resident of the United States. Also, an alien can be deported if he or she becomes a public charge within five years of entering the United States from causes that existed before entry. Instances of deportation on public charge grounds have been very rare.

Recent immigration and welfare reform laws have generated considerable public confusion and concern about whether a non-citizen who is eligible to receive certain Federal, State, or local public benefits may face adverse immigration consequences as a public charge for having received public benefits.

This concern has prompted some non-citizens and their families to deny themselves public benefits for which they are eligible -- including disaster relief, treatment of communicable diseases, immunizations, and children's nutrition and health care programs -- potentially causing considerable harm to themselves and the general public. This impact undermines the government's policies of increasing access to health insurance and health care and helping people to become self-sufficient by drawing temporarily on public support during a transition period.

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Definition of Public Charge

The proposed rule, which was drafted after an extensive interagency process with benefit-granting agencies, defines "public charge" to mean **an alien who has become (for deportation purposes) or is likely to become (for admission or adjustment of status purposes) "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."** This definition alone, however, cannot be used to determine if an alien is a public charge -- other issues must be considered, as specified below.

The Immigration and Naturalization Service (INS) is implementing this definition of public charge immediately through field guidance discussing the definition and standards for public charge determinations. The field guidance will be published along with the proposed rule in the *Federal Register*. In addition, the United States Department of State (DOS) will send a cable to U.S. consulates abroad providing guidance on public charge determinations for admission purposes. By making this guidance effective immediately, INS and DOS are helping to relieve public concerns about receiving health care and other important services, as well as providing field personnel with the tools needed to enforce immigration law in a clear and consistent manner.

At the same time, INS is seeking public comment on this approach. The proposed rule includes a 60-day public comment period.

Benefits Subject to Public Charge Consideration

The proposed rule specifies that cash assistance for income maintenance includes Supplemental Security Income (SSI), cash assistance from the Temporary Assistance for Needy Families (TANF) program and State or local cash assistance programs for income maintenance, often called "General Assistance" programs. Acceptance of these forms of public cash assistance could make a non-citizen a public charge, if all other criteria are met (as described below in the section "Criteria for Public Charge Determinations.")

In addition, public assistance, including Medicaid, that is used for supporting aliens who reside in an institution for long-term care -- such as a nursing home or mental health institution -- will also be considered by INS and DOS officials as part of the public charge analysis. Short-term institutionalization for rehabilitation is not subject to public charge consideration.

Benefits Not Subject to Public Charge Consideration

Non-cash benefits and special-purpose cash benefits that are not intended for income maintenance are not subject to public charge consideration. Such benefits include:

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Medicaid, Children's Health Insurance Program (CHIP), Food Stamps, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), immunizations, prenatal care, testing and treatment of communicable diseases, emergency medical assistance, emergency disaster relief, nutrition programs, housing assistance, energy assistance, child care services, foster care and adoption assistance, transportation vouchers, educational assistance, job training programs, and non-cash benefits funded under the TANF program.

Some of the above programs may provide cash benefits, such as energy assistance, transportation or child care benefits provided in cash under TANF or the Child Care Development Block Grant (CCDBG), and one-time emergency payments under TANF.
Since the purpose of such benefits is not for income maintenance, but rather to avoid the need for on-going cash assistance for income maintenance, they are not subject to public charge consideration.

Criteria for Public Charge Determinations

The proposed rule states that an alien's mere receipt of cash assistance for income maintenance, or being institutionalized for long-term care, does not automatically make him or her inadmissible, ineligible to adjust status to legal permanent resident, or deportable on public charge grounds. The law requires that INS and DOS officials consider several additional issues as well. Each determination is made on a case-by-case basis.

Admission and Adjustment of Status

Before an alien can be denied admission to the United States or denied adjustment of status to legal permanent resident based on public charge grounds, a number of factors must be considered by INS and DOS, including: the alien's age, health, family status, assets, resources, financial status, education and skills. No single factor -- other than the lack of an Affidavit of Support, if required -- will determine whether an alien is a public charge, including past or current receipt of public cash benefits for income maintenance.

Deportation

The INS can deport an alien on public charge grounds only if the alien has failed to meet the benefit-granting agency's demand for repayment of a cash benefit for income maintenance or for the costs of institutionalization for long-term care. INS may initiate removal proceedings only if the benefit-granting agency has the legal authority to demand repayment and has:

- chosen to seek repayment within five years of the alien's entry into the United States;
- obtained a final judgment;
- taken all steps to collect on that judgment; and
- been unsuccessful in those attempts.

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Even if these conditions are met, the alien is not deportable on public charge grounds if the alien can show that he or she received public cash benefits for income maintenance or was institutionalized for long-term care for causes that arose after entry into the United States.

Other Public Charge Clarifications

- There is no public charge test for naturalization.
- Public charge is not a factor in whether a non-citizen can sponsor a relative to come to the United States.
- Benefits received by one member of a family are not attributed to other family members for public charge purposes, unless the cash benefits amount to the sole support of the family.

-- INS --

THE WHITE HOUSE

Office of the Vice President

For Immediate Release
Tuesday, May 25, 1999

Contact:
(202) 456-7035

VICE PRESIDENT GORE TAKES NEW ACTION TO ASSURE FAMILIES ACCESS TO HEALTH CARE AND OTHER BENEFITS

New Regulation Clarifies That Receiving Medicaid, CHIP, or Other Benefits Will Not Affect Immigration Status

McAllen, TX -- Vice President Gore announced today a new Department of Justice regulation to assure families that enrolling in Medicaid or the new Children's Health Insurance Program (CHIP) and receiving other critical benefits, such as school lunch and child care services, will not affect their immigration status.

The new policy, effective immediately, clarifies a widespread misconception that has deterred eligible populations from enrolling in these programs and undermined the nation's public health. In addition, the Vice President directed Federal agencies to send guidance to their field offices, program grantees and to work with community organizations to educate Americans about this new policy.

"This new regulation will improve the health of our families by addressing widespread confusion that prevents legal immigrants from signing up for health insurance, school lunch, child care and other essential programs," said Vice President Gore.

WIDESPREAD CONFUSION ABOUT CURRENT POLICY DETERS LEGAL IMMIGRANTS FROM ACCESSING CRITICAL BENEFITS

Recent immigration and welfare reform laws have generated widespread public confusion about whether legal immigrants receiving certain publicly funded benefits can be deemed to be a "public charge," meaning they may be denied the ability to become a legal permanent resident and subject to deportation. This confusion and fear has deterred legal immigrant families from enrolling their children in Medicaid and CHIP, and prevented legal immigrants from receiving immunization and treatment for communicable diseases, which places the entire national public health at risk. It also reduces payment sources for hospitals and other health care providers serving this population, thus increasing their uncompensated care burden. A 1998 Urban Institute study found that in Los Angeles County the rate of legal immigrants applying for health insurance dropped by 21 percent from January 1996 to January 1998, suggesting that legal immigrants do not take full advantage of their eligibility for currently available programs.

NEW STEPS ENSURE THAT LEGAL IMMIGRANTS WILL HAVE ACCESS TO CRITICAL HEALTH CARE AND SOCIAL SERVICES WITHOUT FEAR.

These new regulations provide clear and consistent guidance that health care and other critical services cannot be used to deny individuals admission to the United States or to attain legal permanent resident status, or a request to remain in the country. Eligible legal immigrants can now receive the following benefits without fear of jeopardizing their immigration status:

- *Health insurance under Medicaid and CHIP.* There have been reports of individuals being told that receiving Medicaid or CHIP will negatively effect their immigration status leading to widespread concern in the immigrant community about enrolling in Medicaid or CHIP, even where the beneficiary is a child who is a United States citizen. These new regulations take a significant step towards eliminating that concern by clarifying that legal immigrants are eligible for these programs (with the exception of institutionalization for long term care).

- *Access to immunization, testing, and treatment for communicable disease.* After an outbreak of rubella in New York in 1997, public health officials learned that the major reason that people had not been vaccinated was the fear that using health department services would affect their immigration status. These new regulations take new steps to protect the health of all Americans by ensuring legal immigrants can access – without fear – free immunizations, testing, and treatment for communicable diseases, such as rubella or tuberculosis.

- *Access to essential nutrition programs.* These new regulations remove the perceived barriers to receiving critical nutrition benefits, including Food Stamps, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the National School Lunch and Breakfast programs, and other supplementary and emergency food assistance programs. Access to these benefits is extremely important for legal immigrant children. Recent studies by the United States Department of Agriculture (USDA) and the Census Bureau indicate that Hispanic families with children have among the lowest food security rates (70 percent), placing them at risk for malnutrition.

- *Other supports for families.* These regulations also make it possible for eligible legal immigrants to also access important social supports for working families, such as child care services, housing assistance, energy assistance, emergency disaster relief, foster care and adoption assistance, transportation vouchers, educational assistance, and job training programs.

The Vice President also directed all Federal agencies that oversee these programs, including the Department of Health and Human Services, USDA, the Department of Justice, the Social Security Administration, and the State Department, to send guidance to their field offices, program grantees and to work with community organizations to educate Americans about this new policy.

CLINTON-GORE ADMINISTRATION'S STRONG COMMITMENT TO INSURING LOW INCOME FAMILIES AND PROMOTING THE PUBLIC HEALTH.

The new regulations the Vice President unveiled today are part of a comprehensive effort by the Clinton/Gore Administration to help families obtain health care, which includes:

- *Providing health insurance to legal immigrant children, pregnant women, and individuals with disabilities.* The Administration's budget proposes to provide health coverage to low-income legal immigrant children and pregnant women who entered the country after August 22, 1996 and to legal immigrants who entered the country after August 22, 1996 and became disabled after entering the country, providing health insurance for over 100,000 legal immigrants. This builds on the Administration's success in restoring eligibility for Medicaid, SSI, and Food Stamps to hundreds of thousands of legal immigrants including restoring disability and health benefits to 380,000 legal immigrants in the Balanced Budget Act and providing Food Stamps for 225,000 legal immigrant children, senior citizens, and people with disabilities in the Agricultural Research Act of 1998

- *Launching the Children's Health Insurance Program (CHIP).* The President, with bipartisan support from the Congress, created CHIP, which allocates $24 billion over five years to extend health care coverage to uninsured children through State-designed programs. He also launched the Insure Kids Now Campaign, which engages a broad-based, bipartisan, public-private coalition to use a variety of means to educate and assist families in insuring their children. This campaign specifically designed for minority populations and encourages outreach to children in non-traditional settings, such as churches and community centers, where legal immigrant children frequently.

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State-by-State Population Distribution of Noncitizens

	Total Non-Citizens	Percent
TOTAL	16,542,147	100.0%
AK	14,989	0.1%
AL	75,903	0.5%
AR	34,311	0.2%
AZ	470,053	2.8%
CA	5,378,251	32.5%
CO	159,956	1.0%
CT	130,932	0.8%
DC	34,767	0.2%
DE	11,987	0.1%
FL	1,298,554	7.8%
GA	145,018	0.9%
HI	103,669	0.6%
IA	49,035	0.3%
ID	69,130	0.4%
IL	757,856	4.6%
IN	41,075	0.2%
KS	65,615	0.4%
KY	49,020	0.3%
LA	56,605	0.3%
MA	386,972	2.3%
MD	282,653	1.7%
ME	11,816	0.1%
MI	295,095	1.8%
MN	136,214	0.8%
MO	30,552	0.2%
MS	10,822	0.1%
MT	5,886	0.0%
NC	153,261	0.9%
ND	3,336	0.0%
NE	37,549	0.2%
NH	26,874	0.2%
NJ	683,091	4.1%
NM	73,628	0.4%
NV	127,429	0.8%
NY	2,178,581	13.2%
OH	156,082	0.9%
OK	41,416	0.3%
OR	234,996	1.4%
PA	273,210	1.7%
RI	47,130	0.3%
SC	26,916	0.2%
SD	3,400	0.0%
TN	58,519	0.4%
TX	1,622,264	9.8%
UT	93,393	0.6%
VA	242,281	1.5%
VT	8,717	0.1%
WA	235,696	1.4%
WI	99,061	0.6%
WV	6,210	0.0%
WY	2,369	0.0%

Data source: March Supplement to the 1998 CPS Survey.
Note: Figures are rounded to the nearest one-tenth of one percentage point. In states where there is a 0%, the actual figures are less than .1% and are rounded to 0%.

State-by-State Population Distribution of Noncitizen Children & Women of Child Bearing Age

	Total Non-Citizens	Percent	Non-Citizen Children	Percent	Non-Citizen Women Age 15-44	Percent
TOTAL	16,542,147	100.0%	2,461,553	100.0%	5,115,846	100.0%
AK	14,989	0.1%	2,342	0.1%	4,704	0.1%
AL	75,903	0.5%	11,584	0.5%	28,240	0.6%
AR	34,311	0.2%	4,531	0.2%	9,880	0.2%
AZ	470,053	2.8%	83,421	3.4%	159,133	3.1%
CA	5,378,251	32.5%	780,595	31.7%	1,720,921	33.6%
CO	159,956	1.0%	38,086	1.5%	54,937	1.1%
CT	130,932	0.8%	5,012	0.2%	26,305	0.5%
DC	34,767	0.2%	2,473	0.1%	10,059	0.2%
DE	11,987	0.1%	1,989	0.1%	4,454	0.1%
FL	1,298,554	7.8%	194,440	7.9%	385,599	7.5%
GA	145,018	0.9%	16,855	0.7%	60,594	1.2%
HI	103,669	0.6%	9,847	0.4%	28,746	0.6%
IA	49,035	0.3%	12,944	0.5%	15,522	0.3%
ID	69,130	0.4%	15,832	0.6%	21,827	0.4%
IL	757,856	4.6%	129,407	5.3%	203,408	4.0%
IN	41,075	0.2%	3,927	0.2%	16,726	0.3%
KS	65,615	0.4%	14,432	0.6%	20,369	0.4%
KY	49,020	0.3%	13,924	0.6%	19,626	0.4%
LA	56,605	0.3%	9,304	0.4%	19,947	0.4%
MA	386,972	2.3%	62,667	2.5%	112,606	2.2%
MD	282,653	1.7%	45,730	1.9%	78,486	1.5%
ME	11,816	0.1%	1,807	0.1%	4,852	0.1%
MI	295,095	1.8%	37,383	1.5%	92,127	1.8%
MN	136,214	0.8%	25,040	1.0%	52,336	1.0%
MO	30,552	0.2%	0	0.0%	5,740	0.1%
MS	10,822	0.1%	0	0.0%	4,987	0.1%
MT	5,886	0.0%	0	0.0%	2,027	0.0%
NC	153,261	0.9%	33,362	1.4%	56,618	1.1%
ND	3,336	0.0%	410	0.0%	1,998	0.0%
NE	37,549	0.2%	6,110	0.2%	14,554	0.3%
NH	26,874	0.2%	2,618	0.1%	5,822	0.1%
NJ	683,091	4.1%	101,934	4.1%	182,323	3.6%
NM	73,628	0.4%	12,704	0.5%	19,832	0.4%
NV	127,429	0.8%	19,590	0.8%	39,934	0.8%
NY	2,178,581	13.2%	314,639	12.8%	644,499	12.6%
OH	156,082	0.9%	6,312	0.3%	29,476	0.6%
OK	41,416	0.3%	6,228	0.3%	15,254	0.3%
OR	234,996	1.4%	42,796	1.7%	67,352	1.3%
PA	273,210	1.7%	34,634	1.4%	80,559	1.6%
RI	47,130	0.3%	5,014	0.2%	18,318	0.4%
SC	26,916	0.2%	0	0.0%	7,678	0.2%
SD	3,400	0.0%	781	0.0%	1,360	0.0%
TN	58,519	0.4%	0	0.0%	19,190	0.4%
TX	1,622,264	9.8%	242,716	9.9%	516,339	10.1%
UT	93,393	0.6%	19,069	0.8%	25,620	0.5%
VA	242,281	1.5%	33,289	1.4%	96,862	1.9%
VT	8,717	0.1%	1,109	0.0%	2,333	0.0%
WA	235,696	1.4%	44,245	1.8%	80,652	1.6%
WI	99,061	0.6%	10,267	0.4%	22,122	0.4%
WV	6,210	0.0%	0	0.0%	2,117	0.0%
WY	2,369	0.0%	148	0.0%	876	0.0%

Data source: March Supplement to the 1998 CPS Survey.
Note: Figures are rounded to the nearest one-tenth of one percentage point. In states where there is a 0%, the actual figures are less than .1% and are rounded to 0%.

President Clinton and Vice President Gore: Fighting for Fairness for Legal Immigrants

New Proposals in the Administration's FY 2000 Budget

President Clinton and Vice President Gore believe that legal immigrants should have the same opportunity, and bear the same responsibility, as other members of society. Upon signing the 1996 welfare law, the President vowed to reverse unnecessary cuts in benefits to legal immigrants that had nothing to do with the goal of moving people from welfare to work. Because of the Administration's leadership, the Balanced Budget Act and the Agricultural Research Act restored eligibility for Medicaid, SSI, and Food Stamps to hundreds of thousands of legal immigrants. The President's FY 2000 Budget would build on this progress by restoring important disability, health, and nutrition benefits to additional categories of legal immigrants, at a cost of $1.3 billion over five years.

Disability and Health

The Balanced Budget Act of 1997 and the Noncitizen Technical Amendments Act of 1998 restored disability and health benefits to 380,000 legal immigrants who were in this country before welfare reform became law (August 22, 1996), at an estimated cost of $11.5 billion. The Administration's new budget would restore eligibility for SSI and Medicaid to legal immigrants who enter the country after that date if they have been in the United States for five years and become disabled after entering the United States. This proposal would cost approximately $930 million and assist an estimated 54,000 legal immigrants by 2004, about half of whom would be elderly.

Nutritional Assistance

The Agricultural Research Act of 1998 provided food stamps for 225,000 legal immigrant children, senior citizens, and people with disabilities who came to the United States by August 22, 1996. The President's Budget would extend this provision by allowing legal immigrants in the United States on August 22, 1996 who <u>subsequently</u> reach age 65 to be eligible for food stamps at cost of $60 million, restoring benefits to about 15,000 elderly legal immigrants by 2004.

Childrens' Health Care and Maternal Care for Pregnant Women

States currently can provide health coverage to immigrant children who entered the country before August 22, 1996. The President's FY 2000 Budget would give states the option to provide health coverage to legal immigrant children who entered the country after August 22, 1996. Under this proposal, states could provide health coverage to those children through Medicaid or their CHIP allotment. The proposal would cost $220 million and serve approximately 55,000 children by FY 2004. Furthermore, the budget proposes to give states the option to provide Medicaid coverage to pregnant legal immigrant women who entered the country after August 22, 1996. Such coverage would help reduce the number of high-risk pregnancies, ensure healthier children, and lower the cost of emergency Medicaid deliveries. This proposal would cost $105 million and serve approximately 23,000 women by FY 2004.

President Clinton and Vice President Gore:
A Record of Restoring Benefits to Legal Immigrants

Upon signing the 1996 welfare law, President Clinton vowed to reverse some of the unnecessary cuts in benefits to legal immigrants. The President and Vice President fought for three laws continuing or restoring SSI, Medicaid, and Food Stamps to certain groups of legal immigrants. The Balanced Budget Act of 1997 (BBA) "grandfathered" eligibility for SSI and Medicaid for legal immigrants, while the Agricultural Research Act addressed eligibility for Food Stamps. In addition, legislation making technical corrections to benefits for legal immigrants restored SSI and Medicaid eligibility of certain recipients not covered under the BBA.

<u>Balanced Budget Act of 1997 Restored Disability and Health Benefits</u>

The BBA restored SSI and Medicaid eligibility to about 375,000 legal immigrants. CBO estimated the cost of these provisions at $11.5 billion over five years ($9.5 billion for SSI, $2 billion for Medicaid). Briefly, the BBA:

- Continued SSI and related Medicaid for legal immigrants receiving benefits on August 22, 1996;
- Allowed SSI and Medicaid benefits for legal immigrants who were here on August 22, 1996 and who later become disabled;
- Extended the exemption from SSI and Medicaid restrictions for refugees and asylees from five to seven years after entry;
- Classified Cuban/Haitians and Amerasians as refugees, as they were prior to 1996;
- Exempted certain native Americans living along the Canadian and Mexican borders from SSI and Medicaid restrictions.

<u>Agricultural Research Act of 1998 Restored Food Stamp Eligibility</u>

The Agricultural Research, Extension, and Education Reform Act of 1998 restored Food Stamp eligibility to approximately 225,000 legal immigrants at a cost of $818 million over five years. Under the Act, the following groups became eligible for Food Stamps:

- Noncitizen children under age 18 who entered by August 22, 1996;
- Legal immigrants here by August 22, 1996, who were age 65 and over or disabled on that date, or who become disabled after that date;
- Refugees and asylees for seven years after entry as refugees or obtaining asylum status in the United States, as opposed to five years under the welfare law;
- Hmong refugees; and
- Certain Native Americans living along the Canadian and Mexican borders.

<u>Technical Amendments Act of 1998 Protected Those Receiving Assistance</u>

The Noncitizen Technical Amendments Act of 1998 ensured that individuals who were receiving disability and health benefits when welfare reform became law were able to continue receiving assistance, even if they were too disabled to prove their date of entry into the United States. This change protected an estimated 3,400 elderly and severely disabled recipients at a cost of $41 million over five years.

April 29, 1999

being sent out by HCFA/ACF

Dear State Health Official:

I am writing to inform you about new guidance from the Immigration and Naturalization Service (INS) that clarifies that the receipt of Medicaid or Children's Health Insurance Program (CHIP) benefits, except in the case of institutionalization for long term care, cannot be considered by INS and State Department officials when making public charge determinations. This guidance should remove a major perceived barrier to enrollment in Medicaid and CHIP, as well as other benefits, for otherwise eligible immigrants.

The INS has issued a Notice of Proposed Rulemaking ["NPRM"] and a corresponding memorandum to INS Regional Directors ["Memorandum"] regarding the receipt of Federal, State, and local public benefits in public charge determinations. Both documents were published in the *Federal Register* on May 26, 1999. The Memorandum states that effective immediately the INS will adopt the public charge definition described in the NPRM until a final rule is published. The definition referenced in the documents will also apply to State Department public charge determinations, per a State Department cable transmitted the same day.

Recent changes in the welfare and immigration laws, along with changes in the Medicaid program, have created some confusion about how Medicaid should be considered in the determination of whether an individual is a "public charge". There have been documented instances in which individuals have been denied re-entry to the United States because they received Medicaid. Moreover, individuals have been told that receipt of Medicaid or CHIP may have a negative effect on their immigration status. These cases have translated into widespread concern in the immigrant community about legal receipt of Medicaid or CHIP, even where the beneficiary is a citizen child.

Under current law, the determination that an alien may be or is likely to become a " public charge" may affect his or her immigration status. The issue arises when an alien seeks to obtain a visa to enter or reenter the United States, or seeks to adjust status from one immigration status to become a lawful permanent resident. Legal immigrants who already have their legal permanent residence status are only faced with public charge determinations if they travel outside of the United States for longer than 180 days (6 months). In rare cases, the issue may also arise in the context of deportation.

The NPRM and the Memorandum clarify that the receipt of Medicaid or CHIP benefits will not be considered in making a public charge determination, except in the case of an alien who is primarily dependent on the government for subsistence as demonstrated by institutionalization for long-term care at government expense. This exception will <u>not</u> include short-term rehabilitation stays in long-term care facilities. The INS guidance also states that receipt of Medicaid or CHIP benefits does not prevent immigrants from becoming sponsors under the new affidavit of support.

Since the receipt of Medicaid or CHIP benefits, with the one exception of institutionalization for long-term care, cannot be considered in making a public charge determination, a major barrier to enrollment of immigrant children and families in Medicaid and CHIP is removed. State efforts to enroll these eligible children and families should be greatly facilitated.

With respect to institutionalization for long-term care, these benefits may not be the sole factor in making a public charge determination. The NPRM and Memorandum state that INS and State Department officials must consider the totality of circumstances in determining whether the individual meets the public charge definition of someone who is likely to become primarily dependent on the government for subsistence. At a minimum, this includes consideration of the alien's age, health, family status, assets, resources, financial status, education and skills.

For cases where institutionalization for long-term care is considered in making a public charge determination, the policy announced by INS does not change the policy announced in my letter of December 17, 1997 to State Medicaid Directors regarding release of information to INS or the State Department regarding receipt of Medicaid benefits. In that letter, we indicated that Section 1902 (a)(7) of the Social Security Act requires States to safeguard information regarding applicants for and recipients of Medicaid benefits and prohibits disclosure of that information to an outside entity unless it is directly connected to the administration of the State plan. We have determined that the INS and State Department public charge determinations would not be connected to the administration of the State plan, unless such determinations will directly assist the State in recovering outstanding debts from an alien (most commonly involving overpayments or fraud). States are encouraged to adopt similar restrictions under separate CHIP programs.

We have enclosed copies of the Memorandum, the NPRM, and frequently asked questions and answers about public charge determinations. We strongly encourage you to use your existing children's health insurance outreach efforts to educate providers, eligibility and enrollment counselors, and other state workers who interact with low-income families about this new guidance and its significance for uninsured legal aliens who are potentially eligible for health insurance options.

If you have any questions, please contact your regional office.

Sincerely,

Sally K. Richardson
Director

being sent out by all oth HHS prog.

Sample letter to program grantees re: "public charge"-- Programs Not Affected

DATE:

SUBJECT: Guidance on definition of "public charge" in immigration laws

Dear Program Grantee/State Agency:

The Department of Justice (DoJ) published in the *Federal Register* on May 26, 1999 a Notice of Proposed Rulemaking (NPRM) that establishes clear standards governing whether an alien is inadmissible to the United States, ineligible to adjust immigration status, or has become deportable, on the grounds that he or she is likely to be or is a "public charge." The Immigration and Naturalization Service (INS) also published Field Guidance in the same *Federal Register*, and the Department of State (DoS) has issued a cable to all embassies, implementing immediately the policy set forth in the NPRM.

There has been some confusion among immigrant families, and service and benefit providers, regarding how the receipt of different benefits and services by immigrants and their family members will be treated for public charge purposes. The NPRM, along with the INS and DoS guidance, clarifies the limited number of benefits that may be considered by immigration officials in making public charge determinations.

The DoJ proposes to define public charge to mean an alien who has become (for purposes of deportation) or is likely to become (for purposes of admissibility or adjustment) " 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." Cash benefits for income maintenance include the following: (1) Supplemental Security Income (SSI); (2) Temporary Assistance for Needy Families (TANF), but not including supplemental cash benefits excluded from the term " assistance" under TANF program rules or any non-cash benefits and services provided by the TANF program; and (3) State and local cash benefit programs that are for the purpose of income maintenance (often called "General Assistance" but which may exist under other names). **The sole exception to the focus on cash assistance is an instance in which Medicaid or a related program would meet this definition by paying for the cost of a person's institutionalization for long-term care**. The NPRM and Guidance clarify that receipt of cash welfare assistance (SSI, TANF, or State/local equivalents) cannot automatically result in a public charge inadmissability determination. The INS and DoS officers must still apply a "totality of the circumstances" test which may include receipt of cash assistance for income maintenance purposes, but also must include several mandatory factors, including age, health, family status, assets and resources, financial status, education, and skills.

_______ is not one of the programs listed above, and it is not identified in the INS or DoJ guidance as providing a cash benefit for income maintenance purposes. Accordingly, an otherwise eligible noncitizen can receive _______ benefits/services under _______ and such

receipt will not be considered by immigration officials as part of the public charge determinations.

Because this policy area is complicated, we encourage grantees to become familiar with the NPRM and Field Guidance published in the *Federal Register*. We are also attaching a short summary of the new policy and a set of frequently asked questions and answers to help grantees/agencies better understand the details of these new public charge policies and which noncitizens may be affected.

If you need further clarification, please contact: **[Name of person in program office]**

Sincerely,

[Name and signature of the program director]

Attachments

Sample letter to program grantees re: "public charge" -- Program Affected (TANF)

DATE:

SUBJECT: Guidance on definition of "public charge" in immigration laws

Dear State TANF Agency Head:

The Department of Justice (DoJ) published in the *Federal Register* on May 26, 1999 a Notice of Proposed Rulemaking (NPRM) that establishes clear standards governing whether an alien is inadmissible to the United States, ineligible to adjust immigration status, or has become deportable, on the grounds that he or she is likely to be or is a "public charge." The Immigration and Naturalization Service (INS) also published Field Guidance in the same *Federal Register*, and the Department of State (DoS) has issued a cable to all embassies, implementing immediately the policy set forth in the NPRM

There has been some confusion among immigrant families, and service and benefit providers, regarding how the receipt of different benefits and services by immigrants and their family members will be treated for public charge purposes. The NPRM, along with the INS and DoS guidance, clarifies the limited number of benefits that may be considered by immigration officials in making public charge determinations.

The INS proposes to define public charge to mean an alien who has become (for purposes of deportation) or is likely to become (for purposes of admissibility or adjustment) " 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." Cash benefits for income maintenance include the following: (1) Supplemental Security Income (SSI); (2) Temporary Assistance for Needy Families (TANF), but not including supplemental cash benefits excluded from the term " assistance" under TANF program rules or any non-cash benefits and services provided by the TANF program; and (3) State and local cash benefit programs that are for the purpose of income maintenance (often called "General Assistance" but which may exist under other names). **The sole exception to the focus on cash assistance is an instance in which Medicaid or a related program would meet this definition by paying for the cost of a person's institutionalization for long-term care.**

TANF is one of the programs listed above. Accordingly, an otherwise eligible noncitizen who receives cash assistance under TANF may be at risk of being deemed likely to become a public charge. However, there are several reasons why most TANF-eligible noncitizens should not be affected by these public charge rules.

Under Federal law, most noncitizens who are eligible for TANF are legal permanent residents who do not need to adjust their status and are exempt from public charge determinations. For most of these immigrants, they may face public charge determinations (for purposes of admissibility) only in the limited circumstance of traveling outside of the United States for longer than 180 days (6 months). In addition, the NPRM and Guidance re-affirms that the possibility of being found deportable as a public charge due to receipt of cash welfare assistance has always been, and remains, extremely unlikely (see attachments for more details). However, States and/or localities may fund separate cash welfare assistance to noncitizens that still need to adjust their immigration status to legal permanent residence or are not otherwise exempt from public charge determinations. Receipt of these non-Federal TANF, or state/local cash welfare assistance by these immigrants may be considered by INS and DoS officers in determining whether these noncitizens are likely to become public charges.

Further, the NPRM and Guidance clarify that receipt of cash welfare assistance (SSI, TANF, or State/local equivalents) cannot automatically result in a public charge inadmissability determination. The INS and DoS officers must still apply a "totality of the circumstances" test which may include receipt of cash assistance for income maintenance purposes, but also must include several mandatory factors, including age, health, family status, assets and resources, financial status, education, and skills. For example, if a noncitizen received cash assistance in a past period of unemployment, but he or she is currently working and is self-supporting, a public charge determination is not likely to be made. Every admission and adjustment decision is made on a case-by-case basis carefully balancing the totality of the circumstances. The Guidance also clarifies that less significance will be accorded to the receipt of cash welfare assistance if the noncitizen received it in the past, or received or is receiving a small amount of cash assistance (perhaps supplemented by earned income).

Finally, it is important to emphasize that all persons, including all noncitizens, may apply for other benefits such as Medicaid or Food Stamps without having to apply for TANF or other state or local cash assistance. Applicants should be clearly informed regarding their application options, and the different application requirements under each option.

Because this policy area is complicated, we encourage grantees to become familiar with the NPRM and Field Guidance published in the *Federal Register*. We are also attaching a short summary of the new policy and a set of frequently asked questions and answers to help grantees/agencies better understand the details of these new public charge policies and which noncitizens may be affected.

If you need further clarification, please contact: **[Name of person in program office]**

Sincerely,

[Name and signature of the program director]

Attachments

DRAFT - 5/21

Public Charge
Q&As

GENERAL

Q1: Why are the Department of Justice (DOJ) and the Immigration and Naturalization Service (INS) issuing field guidance and a proposed regulation concerning public charge, and what is the effect of these documents?

A1: DOJ and INS are issuing this guidance and proposed regulation to alleviate growing public confusion over the meaning of the currently undefined term "public charge" in immigration law and its relationship to the receipt of Federal, State, or local public benefits. By defining "public charge," DOJ seeks to reduce the negative public health consequences generated by the existing confusion and to provide aliens with better guidance as to the types of public benefits that will and will not be considered in public charge determinations. The guidance defines "public charge" and gives examples of benefits that will and will not be considered by INS officials for public charge purposes. It also summarizes the existing law regarding public charge and explains how the INS will administer these provisions.

Q2: What does it mean to be a "public charge" under the immigration laws?

A2: An alien who is likely at any time to become a "public charge" is ineligible for admission to the U.S. and is ineligible to adjust status to become a lawful permanent resident. An alien who has become a public charge can also be deported from the U.S., although this very rarely happens. These provisions have been part of U.S. immigration law for over 100 years, and the recent immigration reform and welfare reform laws did not substantively change them. Both INS (in the U.S.) and the Department of State (State) (overseas) make public charge determinations.

Q3: How is "public charge" defined, and when will this definition be implemented?

A3: The INS is issuing guidance and a proposed regulation that define "public charge" for the first time. "Public charge" means an alien who has become (for deportation purposes) or who is likely to become (for admission/adjustment purposes) primarily dependent on the government for subsistence. This definition is effective immediately. As discussed below, INS and State will consider the receipt of cash benefits for income maintenance purposes and institutionalization for long-term care at government expense in determining dependence on the government for subsistence.

IMPLEMENTATION

Q4: How do INS and State decide whether someone is admissible or eligible for adjustment of status under the public charge rules?

A4: In deciding whether an alien is likely to become a public charge, the law requires that the INS (in the U.S.) or State (overseas) take certain factors into account, including the alien's age, health, family status, assets, resources, financial status, education and skills. The government official examines all of these factors, looking at the "totality of the circumstances" concerning the alien, to make a forward-looking decision. No single factor -- other than the lack of an Affidavit of Support, if required --will be used as the sole basis for finding that someone is likely to become a public charge, that is, likely to become primarily dependent on the government for subsistence. As described below, non-cash benefits and certain special-purpose cash benefits will not be taken into account under the totality of circumstances test.

Q5: How does INS decide whether someone is deportable as a public charge?

A5: Deportations on public charge grounds are very rare because the standards are very strict. Under the Immigration and Nationality Act, an alien is deportable if he or she becomes a public charge within 5 years after the date of entry into the U.S. for reasons not affirmatively shown to have arisen since entry. The mere receipt of a public benefit within 5 years of entry does not make an alien a public charge. An alien is deportable only if (1) the state or other government entity that provides the benefit has the legal right to seek repayment from the alien or another obligated party (for example, a sponsor), (2) the responsible program officials make a demand for repayment; and (3) the alien or other obligated party, such as the alien's sponsor, fails to repay. The benefit granting agency must seek repayment within 5 years of the alien's entry into the United States, obtain a final judgment, take all steps necessary to collect on that judgment, and be unsuccessful in those attempts. Even if these conditions are met, the alien has the opportunity to show that the reasons he or she became a public charge arose after the alien's entry to the U.S. An alien who can make such a showing is not deportable as a public charge.

Q6: What kind of benefits are considered in deciding whether someone is or is likely to become a public charge?

A6: Not all publicly funded benefits are relevant to deciding whether someone is or is likely to become a public charge. INS's guidance and proposed regulation clarify what kinds of benefits may and may not be considered in making a public charge determination. In order to decide whether an alien has become or is likely to become a public charge, INS and State will consider whether the alien is likely to become primarily dependent on the government for subsistence as demonstrated by either (1) the receipt of public cash assistance for income maintenance purposes, or (2) institutionalization for long-term care at government expense (other than imprisonment for conviction of a crime). Short-term institutionalization for rehabilitation is not taken into account for public charge purposes.

Public benefits considered to be public cash assistance for income maintenance include:

(1) Supplemental Security Income (SSI);
(2) Temporary Assistance for Needy Families (TANF), but not including supplementary cash benefits excluded from the term "assistance" under TANF program rules or any non-cash benefits and services provided by the TANF program;
(3) State and local cash assistance programs for income maintenance (often called state "General Assistance," but which may exist under other names.

In addition, the costs for institutionalization for long-term care, which may be provided under Medicaid or other programs, may be considered in making public charge determinations.

While the receipt of these benefits may be considered by INS and State for public charge purposes, having received them does not automatically make someone a public charge. As explained above, the totality of circumstances test applies for admission and adjustment. For deportation, all of the procedural requirements, described above, apply.

Q7: Are there public benefits that aliens can legally receive without worrying that the INS and State will consider them a public charge?

A7: Yes. Not all publicly funded benefits will be considered by the INS or the State Department in deciding whether someone is or is likely to become a public charge. The focus of public charge is on cash benefits for income maintenance and institutionalization for long-term care at government expense. Examples of benefits that will <u>not</u> be considered for public charge purposes include:

- Medicaid and other health insurance and health services (including public assistance for immunizations and for testing and treatment of symptoms of communicable diseases; use of health clinics, prenatal care, etc.) other than support for institutionalization for long-term care
- Children's Health Insurance Program (CHIP)
- Nutrition programs, including Food Stamps, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the National School Lunch and Breakfast programs, and other supplementary and emergency food assistance programs
- Housing assistance
- Child care services
- Energy assistance, such as the Low Income Home Energy Assistance Program (LIHEAP)
- Emergency disaster relief

- Foster care and adoption assistance
- Educational assistance, including benefits under the Head Start Act and aid for elementary, secondary, or higher education
- Job training programs
-
- In-kind, community-based programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter).

Note that not all categories of aliens are eligible to receive all of the types of benefits described above.

Q8: Do the INS and State consider all types of cash assistance in deciding whether someone is a public charge?

A8: No. INS and State only consider cash benefits intended for income maintenance purposes. Some programs provide cash benefits for special purposes, such as the Low Income Energy Assistance Program (LIHEAP), transportation or child care benefits provided in cash under TANF or the Child Care and Development Block Grant (CCDBG), and one-time emergency payments made under TANF to avoid the need for on-going cash assistance. These special-purpose cash benefits are not considered for public charge purposes.

Q9: Normally Food Stamp benefits are given in the form of paper coupons or an electronic benefit card that can be used at authorized stores to buy food. However, in a few areas Food Stamp benefits are given in the form of cash. If Food Stamp benefits are given in the form of cash, can those benefits be considered for public charge purposes?

A9: No. Food Stamp benefits will not be considered for public charge purposes regardless of the method of payment because they are not intended for income maintenance.

Q10: Are health care benefits and enrollment in health insurance programs like Medicaid and CHIP considered for public charge purposes?

A10: No, not unless an alien is primarily dependent on the government for subsistence as demonstrated by institutionalization for long-term care at government expense. In particular, INS and State will not consider participation in Medicaid or CHIP, or similar state-funded programs, for public charge purposes. This approach will help to safeguard public health, while still allowing INS and State to identify people who are primarily dependent on the government for subsistence by looking to the receipt of public cash assistance for income maintenance. In addition, short-term institutionalization for rehabilitation will not be considered for public charge purposes.

Q11: Do the public charge field guidance and regulation change the policy issued by the Food and Nutrition Service for the WIC Program in WIC Policy Memorandum #98-7, dated March 19, 1998, "Impacat of Participation in the WIC Program on Alien Status"?

A11: No. The new field guidance and regulation on public charge are consistent with the WIC policy memorandum issued in 1998. The WIC policy memorandum was developed based on agreements reached with the INS and State. The new field guidance and regulation merely restate and reinforce the agreement previously reached on the impact of participation in the WIC Program and alien status. As noted above, INS and State will not take WIC participation into account for public charge purposes.

AFFIDAVIT OF SUPPORT

Q12: What is an affidavit of support, and who is required to have one?

A12: The Personal Responsibilty and Work Opportunity Reconciliation Act and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Section 213A, created a new requirement for all family-sponsored immigrants and those employment-based immigrants who will work for a close relative or for a firm in which a U.S. citizen or lawful permanent resident relative holds a 5 percent or greater ownership interest. An alien who applies for an immigrant visa or adjustment of status in one of these categories on or after December 19, 1997, must have an affidavit of support (AOS), INS Form I-864, from a qualifying sponsor or he or she will be found inadmissible as a public charge. An AOS is a legally binding promise that the sponsor will provide support and assistance to the immigrant if necessary.

The AOS must be signed by a sponsor who meets certain statutory requirements. Sponsors must be able to demonstrate that they are able to maintain the sponsored alien(s) at an annual income of not less than 125 percent of the federal poverty level. (Currently, 125 percent of the poverty level for a family of four is $20,875.) If the family member who filed the visa petition does not have enough money to sponsor the alien(s), then another person can sign an AOS as a "joint sponsor," indicating that he or she is willing to support the immigrant in the future if needed. The sponsor's obligation under the AOS lasts until the immigrant has naturalized, has worked or can be credited with 40 quarters of work, leaves the U.S. permanently, or dies. The sponsor and joint sponsor (if any) must also agree to repay the government if the immigrant uses certain benefits during that time and if the government asks the sponsor for repayment.

Before IIRIRA, aliens were sometimes sponsored using INS Form I-134, but these affidavits of support were found by some courts not to be legally enforceable. Form I-134 may still be used for categories of aliens who are not required to use the new, enforceable affidavit of support, such as students, parolees, or diversity immigrants.

Q13: Can an affidavit of support help an alien demonstrate to the INS and State that he or she is not likely to become a public charge?

A13: Yes. Since many aliens who apply for an immigrant visa or adjustment of status after December 19, 1997, will have an affidavit of support, INS and State will take that into account in deciding whether the alien is likely to become a public charge in the future. Even though an AOS is necessary for some immigrants and helps to convince the government that they will not become dependent on the government for subsistence in the future, INS or State can still deny an immigrant admission or adjustment of status under the totality of circumstances test based on other factors such as age, health, employment, and education, as described above.

Q14: If lawful permanent residents want to sponsor a relative to come to the U.S., will it hurt their chances if they are receiving or have received public benefits in the past?

A14: Sponsors are not subject to public charge screening under the immigration laws; the question is whether the alien being sponsored is likely to become a public charge. Sponsors must satisfy a different test: they must be able to demonstrate that they are able to maintain the sponsored immigrant(s) at an annual income of not less than 125 percent of the federal poverty level.

Q15: Why does the new INS affidavit of support form ask about whether a sponsor or member of his or her household has received "means-tested public benefits" in the past 3 years?

A15: The purpose of this question is to ensure that the INS or State official making the decision has access to all facts that may be relevant in determining whether the 125 percent test, described above, is met. Any cash benefits received by the sponsor, such as SSI or cash TANF, cannot be counted toward meeting the 125 percent income threshold, but they are not held against the sponsor if he or she can meet the 125 percent test through other resources. The receipt of other means-tested public benefits – such as Food Stamps, Medicaid, or CHIP – have no effect on sponsorship.

Q16: What happens if a sponsor who has signed the new affidavit of support dies?

A16: The obligation to support the alien terminates with the sponsor's death, but the sponsor's estate would still be obligated to repay any obligations accrued before the sponsor's death. If there is a joint sponsor and only one of the sponsors dies, the remaining sponsor would remain liable under the affidavit of support.

For deportation purposes, if a sponsor has died and there is no joint sponsor, there is no legal obligation under the affidavit of support to repay any means-tested benefits. This means that the first prong of the test for deportation would not be met and the sponsored alien would not become deportable based on the affidavit of support.

EXAMPLE SITUATIONS

Q17: Are there categories of aliens who are not subject to public charge determinations?

A17: Yes. Refugees and asylees are not subject to public charge determinations for purposes of admission or adjustment of status. Amerasian immigrants are also exempt from the public charge ground of inadmissibility for their initial admission to the U.S. In addition, various statutes contain exceptions to the public charge ground of inadmissibility for aliens eligible for adjustment of status under their provisions, including the Cuban Adjustment Act, the Nicaraguan Adjustment and Central American Relief Act (NACARA) and the Haitian Refugee Immigration Fairness Act (HRIFA).

Q18: If an alien has received cash public benefits in the past, but has stopped, will INS or State find that he or she is likely to become a public charge?

A18: Past receipt of cash public benefits does not automatically make an alien inadmissible as likely to become a public charge. It is one factor that will be considered under the totality of the circumstances test to decide whether the alien is likely to become a public charge in the future. For example, if an alien received benefits in the past during a period of unemployment, but now has a job and is self-supporting, he or she would most likely not be found inadmissible as a public charge. The more time that has elapsed since the alien stopped receiving the benefit, the less weight it will be given. The length of time that an alien received benefits and the amount of benefits received are also relevant considerations.

Q19: If an alien has received public benefits in the past, does the alien have to repay them to avoid having INS or State find that he or she inadmissible as a public charge, or ineligible to adjust status and become a lawful permanent resident?

A19: No. INS and State do not have authority to request that aliens repay public benefits in connection with visa issuance, admission, or adjustment of status.

Q20: Who decides whether an alien must repay a public benefit he or she has received in the past?

A20: The requirements and procedures concerning any demand for repayment of a public benefit are governed by the specific program rules established by law and administered by the benefit granting agencies, or by state and local governments, not by INS or State. The public charge rules in the immigration law do not change these program requirements.

Q21: If a member of an alien's family is receiving or has received public benefits, but the individual alien haven't, will INS or State hold this against the alien for public charge purposes?

A21: In most cases, no. As a general rule, receipt of benefits by a member of an alien's family is not attributed to the alien who is applying to INS or State for admission or to INS for adjustment of status to determine whether he or she is likely to become a public charge. The only time this general rule would not apply would be if the family were reliant on their family member's cash public benefits as its sole means of support.

In particular, alien parents do not have to worry that the INS or State will consider them to be public charges if they enroll their children in programs for which they are eligible, unless these are cash programs which provide the sole financial support for the family. This is true whether the children are U.S. citizens or non-citizens.

Q22: If an alien receives public benefits, will it hurt his or her chances to become a U.S. citizen?

A22: No. There is no public charge test for naturalization purposes, so the receipt of benefits is not relevant, as long as they were legally received. Nor is there a requirement to repay benefits received in the past in order to qualify for citizenship.

Q23: Can a naturalized citizen lose his or her citizenship because of receiving public benefits?

A23: No. Nobody can lose his or her citizenship because of receiving public benefits. Once an immigrant becomes a citizen, he or she can receive benefits on the same basis as all other citizens. Citizens cannot be deported or barred from reentering the U.S. after an international trip based on the receipt of public benefits.

Q24: Does an alien have to stop participating in some benefit programs in order to adjust status and become a lawful permanent resident?

A24: No, but someone who is receiving a cash benefit for income maintenance at the same time that he or she applies to become a lawful permanent resident may be considered ineligible for adjustment as a public charge. An alien who has received a cash benefit in the past could reapply to the INS after he or she stops receiving the benefit, and might or might not be considered a public charge.

Someone who is receiving a non-cash benefit – for example, WIC, Food Stamps, Medicaid, or CHIP – would not have to stop participating in the program in order to be eligible to adjust to lawful permanent resident status.

As explained earlier, in all of these situations, the usual "totality of the circumstances" test would apply.

Q25: If a lawful permanent resident has received public benefits and leaves the country, will INS stop him or her from returning on public charge grounds?

A25: In general, a lawful permanent resident who has been outside the U.S. for 6 months or less is not screened for public charge purposes when he or she returns. This is because lawful permanent residents who leave for 6 months or less at a time are not considered applicants for admission when they return, and none of the grounds of inadmissibility, including public charge, apply to them.

There are exceptions to this general rule if (1) the alien has abandoned his or her status as a lawful permanent resident; (2) the alien has engaged in certain illegal activity; (3) the alien was in removal proceedings before he or she left the country; or (4) the alien attempts to enter other than at a port of entry. See INA section 101(a)(13)(C) for more details on these exceptions.

Q26: Can an LPR continue to receive benefits while he or she is out of the country?

A26: If an LPR plans to be out of the country for longer than a month, he should check with the agency providing the benefit to determine the rules. In general, people are not allowed to receive many benefits if they are absent from the country or state of residence for longer than 30 days. If an LPR receives benefits improperly, it can hurt his chances of re-entering the U.S. or becoming a citizen.

Q27: If a refugee has adjusted to LPR status and then leaves the country for more than 180 days – is he or she at risk of being found to be a public charge and denied reentry?

A27: As noted above, refugees are exempt from public charge determinations for their admission and adjustment to LPR status. Public charge has never been a problem for refugees who travel and return to the U.S., and nothing in the welfare reform law or immigration reform law has changed this.

Q28: When an LPR returns from an international trip, can the government make her pay back Medicaid or Food Stamps that she or her children used before?

A28: No. The government cannot ask immigrants to pay back these benefits unless they have received them improperly (e.g., if a person claims to be a resident of a state for purposes of eligibility when she is not a resident, or if she does not tell a caseworker about all of her income.) INS and other government agencies are not allowed to ask immigrants to repay benefits when they are entering at the airport or the border. The government agencies that have provided the benefit must (1) make formal determinations of fraud or overpayment before they can request repayment, and (2) ensure that people are notified of those determinations and their right to file appeals. These procedures cannot all be carried out at the airport or border. **[INS IS COMFORTABLE W/THIS ANSWER FOR US, BUT CAN'T ADDRESS THE AUTHORITY OF ALL OTHER GOV'T AGENCIES.]**

Q29: What if an alien has never used cash welfare and is not residing in a nursing home. Can the INS still deny him a green card because they think he might use cash welfare in the future?

A29: Yes, it is possible. INS and State officials must look at all of the factors listed above to determine if a person can support himself in the future. If an alien's current situation related to age, health, resources, and the other statutory factors does not satisfy them that the alien is likely to be able to be self-supporting in the future, then they can refuse to grant a visa or approve adjustment of status, even if he is not currently receiving public cash assistance.

Q30: What if a person is not receiving cash assistance but is very sick and needs an extended period of care in a nursing home or other long-term care institution? Will she have trouble getting her Permanent Resident Card ("green card")?

A30: Yes. If someone is living in a nursing home or has a serious long-term illness that requires institutionalization, she will probably have trouble getting a green card unless she can show that she can get the care she needs without using Medicaid or other government-funded health programs (e.g., county aid). However, a short-term stay in a nursing facility, for example, to physically rehabilitate after surgery, will not be used to deny a green card. The alien is not deportable on public charge grounds if the alien can show that she received benefits for causes that arose after entry into the U.S.

Q31: An alien who is primarily dependent on the government for subsistence as demonstrated by the institutionalization for long-term care at government expense can be found deportable as a public charge. Does this mean that INS will be conducting raids in nursing homes or other long-term care institutions?

A31: No. INS will not send investigators into nursing homes or other long-term care facilities to look for aliens who might be deportable as public charges. INS may use information concerning institutionalization if it comes to INS's attention through other avenues, but the only way an alien could be found deportable is if all the procedural requirements described above were met.

Q32: If I'm eligible to self-petition for adjustment of status under the Violence Against Women Act (VAWA), do I have to show that I'm not likely to become a public charge?

A32: The Administration is still considering the extent to which self-petitioners under VAWA are subject to the public charge requirements, and will address this in future guidance. The law does make clear that self-petitioners under VAWA do not need to submit an affidavit of support with their application, unlike other family-based immigrants.

Q33: Cuban/Haitian entrants are eligible to receive certain public benefits under welfare reform. If they receive such benefits, will they be barred from adjusting status because they will be considered public charges?

A33: The answer depends on how they become eligible to adjust status. There are statutory exceptions to the public charge ground of inadmissibility for those Cubans who are eligible to adjust to lawful permanent resident status under the Cuban Adjustment Act and NACARA and for those Haitians who are eligible to adjust status under the HRIFA. Cuban/Haitian entrants are subject to the usual public charge rules if they seek adjustment under other provisions of law that do not contain public charge exemptions.

Q34: Certain Amerasian entrants are eligible to receive public benefits under welfare reform. If they receive such benefits, will they be considered public charges?

A34: Amerasian entrants are admitted to the U.S. as lawful permanent residents (LPRs), and they are exempt from the public charge ground of inadmissibility at their initial admission. In most cases, the issue of public charge would never come up again, unless the alien leaves the U.S. for more than 6 months and seeks readmission. At that time, the exemption from public charge screening would no longer apply and the alien would be treated like any other LPR under the totality of the circumstances test.

Q35: If an alien has been in the U.S. since January 1, 1972, and wants to become a lawful permanent resident under the "registry" provision of the Immigration and Nationality Act, section 249, is there a public charge test?

A35: No. Public charge is not a factor for "registry" aliens under section 249.

Q36: Is it improper for an immigration or consular officer to ask non-citizens at an airport or in an interview whether they have received public benefits in the past, or whether someone in their family has?

A36: No. Immigration or consular officers can ask questions about whether a non-citizen or someone in his or her family is receiving or has received public benefits in the past. Non-citizens should answer such questions completely and truthfully. If an alien tells an immigration or consular officer that he or she has received a benefit that is exempt from consideration for public charge purposes, such as Food Stamps or Medicaid, the officer will not use that information in deciding whether the alien is likely to become a public charge.

Q37: INS is publishing this public charge definition as a proposed rule for notice and comment. What happens if an alien receives one of the "safe" benefits and the final rule is different from the proposed rule -- can aliens rely on the field guidance?

A37: Aliens may rely on INS's field guidance in determining the benefits that they may safely accept before the final rule is issued. If the final rule is different from the proposed rule, INS will issue additional guidance at that time designed to ensure that non-citizens who relied on the current guidance will not suffer harsher immigration consequences based on that reliance.

THE WHITE HOUSE

Office of the Vice President

For Immediate Release
Tuesday, May 25, 1999

Contact:
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VICE PRESIDENT GORE TAKES NEW ACTION TO ASSURE FAMILIES ACCESS TO HEALTH CARE AND OTHER BENEFITS

New Regulation Clarifies That Receiving Medicaid, CHIP, or Other Benefits Will Not Affect Immigration Status

McAllen, TX -- Vice President Gore announced today a new Department of Justice regulation to assure families that enrolling in Medicaid or the new Children's Health Insurance Program (CHIP) and receiving other critical benefits, such as school lunch and child care services, will not affect their immigration status.

The new regulation, effective immediately, clarifies a widespread misconception that has deterred eligible populations from enrolling in these programs and undermined the nation's public health. In addition, the Vice President directed Federal agencies to send guidance to their field offices, program grantees and to work with community organizations to educate Americans about this new policy.

"This new regulation will improve the health of our families by addressing widespread confusion that prevents legal immigrants from signing up for health insurance, school lunch, child care and other essential programs," said Vice President Gore.

WIDESPREAD CONFUSION ABOUT CURRENT POLICY DETERS LEGAL IMMIGRANTS FROM ACCESSING CRITICAL BENEFITS

Recent immigration and welfare reform laws have generated widespread public confusion about whether legal immigrants receiving certain publicly funded benefits can be deemed to be a "public charge," meaning they may be denied the ability to become a legal permanent resident and subject to deportation. This confusion and fear has deterred legal immigrant families from enrolling their children in Medicaid and CHIP, and prevented legal immigrants from receiving immunization and treatment for communicable diseases, which places the entire national public health at risk. It also reduces payment sources for hospitals and other health care providers serving this population, thus increasing their uncompensated care burden. A 1998 Urban Institute study found that in Los Angeles County the rate of legal immigrants applying for health insurance dropped by 21 percent from January 1996 to January 1998, suggesting that legal immigrants do not take full advantage of their eligibility for currently available programs.

NEW STEPS ENSURE THAT LEGAL IMMIGRANTS WILL HAVE ACCESS TO CRITICAL HEALTH CARE AND SOCIAL SERVICES WITHOUT FEAR.

These new regulations provide clear and consistent guidance that health care and other critical services cannot be used to deny individuals admission to the United States or to attain legal permanent resident status, or a request to remain in the country. Eligible legal immigrants can now receive the following benefits without fear of jeopardizing their immigration status:

- *Health insurance under Medicaid and CHIP.* There have been reports of individuals being told that receiving Medicaid or CHIP will negatively effect their immigration status leading to widespread concern in the immigrant community about enrolling in Medicaid or CHIP, even where the beneficiary is a child who is a United States citizen. These new regulations take a significant step towards eliminating that concern by clarifying that legal immigrants are eligible for these programs (with the exception of institutionalization for long term care).

- *Access to immunization, testing, and treatment for communicable disease.* After an outbreak of rubella in New York in 1997, public health officials learned that the major reason that people had not been vaccinated was the fear that using health department services would affect their immigration status. These new regulations take new steps to protect the health of all Americans by ensuring legal immigrants can access – without fear – free immunizations, testing, and treatment for communicable diseases, such as rubella or tuberculosis.

- *Access to essential nutrition programs.* These new regulations remove the perceived barriers to receiving critical nutrition benefits, including Food Stamps, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the National School Lunch and Breakfast programs, and other supplementary and emergency food assistance programs. Access to these benefits is extremely important for legal immigrant children. Recent studies by the United States Department of Agriculture (USDA) and the Census Bureau indicate that Hispanic families with children have among the lowest food security rates (70 percent), placing them at risk for malnutrition.

- *Other supports for families.* These regulations also make it possible for eligible legal immigrants to also access important social supports for working families, such as child care services, housing assistance, energy assistance, emergency disaster relief, foster care and adoption assistance, transportation vouchers, educational assistance, and job training programs.

The Vice President also directed all Federal agencies that oversee these programs, including the Department of Health and Human Services, USDA, the Department of Justice, the Social Security Administration, and the State Department, to send guidance to their field offices, program grantees and to work with community organizations to educate Americans about this new policy.

CLINTON-GORE ADMINISTRATION'S STRONG COMMITMENT TO INSURING LOW INCOME FAMILIES AND PROMOTING THE PUBLIC HEALTH.

The new regulations the Vice President unveiled today are part of a comprehensive effort by the Clinton/Gore Administration to help families obtain health care, which includes:

- *Providing health insurance to legal immigrant children, pregnant women, and individuals with disabilities.* The Administration's budget proposes to provide health coverage to low-income legal immigrant children and pregnant women who entered the country after August 22, 1996 and to legal immigrants who entered the country after August 22, 1996 and became disabled after entering the country, providing health insurance for over 100,000 legal immigrants. This builds on the Administration's success in restoring eligibility for Medicaid, SSI, and Food Stamps to hundreds of thousands of legal immigrants including restoring disability and health benefits to 380,000 legal immigrants in the Balanced Budget Act and providing Food Stamps for 225,000 legal immigrant children, senior citizens, and people with disabilities in the Agricultural Research Act of 1998

- *Launching the Children's Health Insurance Program (CHIP).* The President, with bipartisan support from the Congress, created CHIP, which allocates $24 billion over five years to extend health care coverage to uninsured children through State-designed programs. He also launched the Insure Kids Now Campaign, which engages a broad-based, bipartisan, public-private coalition to use a variety of means to educate and assist families in insuring their children. This campaign specifically designed for minority populations and encourages outreach to children in non-traditional settings, such as churches and community centers, where legal immigrant children frequently.

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