Public Charge

It’s Impact on Survivors of Domestic Violence & Sexual Assault

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Roadmap

‣ What is public charge?
  • Where does public charge come up?
  • What has changed under the DHS final rule?
‣ How should we talk with survivors and their families about public charge?
‣ Questions:
  • Will try to address big picture questions—please put them in the chat box. If we cannot get to all the questions, we will be sending out a FAQ document as follow-up to those who’ve registered for the webinar.
What we are not covering today:

- We are NOT covering all of the ways that individuals obtain legal immigration status in the U.S.
  - Resource: [https://www.immi.org](https://www.immi.org)
- We will NOT be covering the specific immigration legal remedies that are available for victims of domestic violence and sexual assault
- We are assuming you have a basic understanding of domestic violence & sexual assault dynamics
  - Understanding of domestic violence as pattern of coercive, controlling behaviors not limited to physical violence, including economic coercion
  - Impact of non-consensual sexual activity or contact
  - Understanding of the traumatic and multiple effects of domestic violence and sexual assault

What Is Public Charge?
Longstanding Public Charge Test

- The “public charge” test has been a part of federal immigration law for over 100 years
- Has referred to a person who is considered likely to become primarily dependent on the government for support
- When making a public charge inadmissibility determination, the government looks at many factors -- called the **totality of the circumstances**
- The new rule makes several significant changes to public charge policy

When does the public charge test come up?

A public charge assessment is made when a person:
- Applies to enter the U.S.
- Applies to adjust status to become a Lawful Permanent Resident (LPR)
- A green card holder leaves the U.S. for more than 180 consecutive days (6 months) and reenters

Public charge assessment is **NOT** made when a person:
- Applies to become a U.S. citizen
- Falls under certain categories of immigrants (such as refugees/ VAWA Self Petitioners and others exempt from rule)
### When does the public charge test come up?

<table>
<thead>
<tr>
<th>Department of Homeland Security</th>
<th>State Department/Foreign Affairs Manual</th>
<th>Department of Justice</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Public Charge policies for immigrants applying for visas or green cards inside the US (including immigrants that leave the US 180 days or more and apply to reenter)</td>
<td>• Public charge policies for immigrants who have visas or applications processed outside the US, Done in consular offices around the world</td>
<td>• Public charge policies for immigrants lawfully present, who have already been admitted to the US</td>
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</table>

### Does this test apply to everyone?

The public charge ground of inadmissibility does **NOT** apply to everyone. Here are some examples of public charge does **NOT** apply to:

- Lawful Permanent Residents (“green card holders”) applying for citizenship
- Refugees and Asylees
- VAWA Self-petitioners
- Certain survivors of Domestic Violence, Trafficking, or Other Serious Crimes (U or T visa applicants/holders)**
  - Note about adjustment of status/trafficking victims with continued presence
- Special Immigrant Juveniles
- Several other categories of non-citizens
Public Charge Policies: Current Status

Public Charge: What’s happened?

- **January 2017**: Draft Executive Order leaked
- **January 2018**: Changes made to Foreign Affairs Manual
- **Oct-Dec 2018**: DHS published proposed rule for 60 day comment period, more than 260K comments submitted, the majority in opposition
- **Sept 22 2018**: Text of NPRM released on DHS website
- **Oct 2019**: Rule due to go into effect; 5 federal courts issue preliminary injunctions; DOS issues final rule
- **Dec 2019-Jan 2020**: Nationwide injunctions lifted
What does the Supreme Court Decision Mean?

▸ The specific issue considered by the Supreme Court is whether the Second Circuit Court of Appeals should have decided to grant a nationwide preliminary injunction

  ▪ SCOTUS issued a stay of the preliminary injunction, meaning that the DHS public charge rule can go into effect (except in Illinois) while the litigation moves forward.
  ▪ DHS announced that the rule will go into effect February 24

▸ Litigation in multiple federal courts continues, and is now moving to the legal challenges to the rule

▸ The judges’ rulings do NOT affect public charge determinations made by the Department of State

▸ FOR NOW, the DHS PUBLIC CHARGE RULE IS TAKING EFFECT, BUT THE LEGAL FIGHTS ARE NOT FINISHED

How does the public charge test change under the final rule?
Final Public Charge Rule: Overview

NEW DEFINITION
A dramatically different definition of public charge

TOTALITY OF CIRCUMSTANCES
New weighted factors of the totality of circumstances (TOC) test designed to make it harder for low and moderate income people to pass

ADDITIONAL BENEFITS
Additional public benefits programs can be considered by immigration officials.

Final Public Charge Rule: Definition

PREVIOUS DEFINITION
An immigrant “likely to become primarily dependent on the government for subsistence”

FINAL DEFINITION
A person who “receives one or more public benefits... for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months).”
Final Public Charge Rule: TOC Test

• Income and Financial Status
  • Under 125% FPL (negative); Over 250% FPL (heavy positive)

• Age
  • Under 18 or over 61 (negative)

• Education and Skills
  • includes proficiency in English

• Health
  • Medical condition likely to require extensive treatment, institutionalization or interfere with ability to care for self, attend school or work

• Family Status
  • Affidavit of Support

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Totality of the Circumstances

Heavily Weighted Positive Factors
- Private unsubsidized health insurance
- Income, assets, or support of at least 250% of FPL or above

Heavily Weighted Negative Factors
- Receipt of Public Benefits
- Health condition w/o private insurance or $ to pay for care
- Lack of job or job prospects
**Final Public Charge Rule: Benefits**

<table>
<thead>
<tr>
<th>Long-standing Policy</th>
<th>Newly Finalized Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>*Cash Assistance for Income Maintenance</td>
<td>Supplemental Nutrition Assistance Program (SNAP or Food Stamps)</td>
</tr>
<tr>
<td>Long Term Institutional Care at Government Expense</td>
<td><strong>Medicaid</strong> (with exceptions)</td>
</tr>
<tr>
<td></td>
<td>Federal, State, Local and Tribal Cash Assistance</td>
</tr>
<tr>
<td></td>
<td>Housing Assistance (Public Housing or Section 8 Housing Vouchers and Rental Assistance)</td>
</tr>
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</table>

* Included under current policy as well  
** Exceptions for emergency medical conditions, & coverage of children < 21 and pregnant women and new mothers.

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**Public benefits NOT included in the New Rule** *(if not listed in reg, will not be considered)*

- Benefits received by an immigrant’s family members  
- Benefits received by a person while in an exempt status  
- Emergency medical assistance  
- Disaster relief  
- Entirely state, local, or tribal programs (other than cash assistance)  
- Children’s Health Insurance Program (CHIP)  
- Subsidies under the ACA  
- Special Supplemental Nutrition for Women Infants and Children (WIC)  
- School Breakfast and Lunch  
- Energy Assistance (LIHEAP)  
- Transportation vouchers or non cash transportation services  
- Non-cash TANF benefits  
- Federal Earned Income Tax Credit and Child Tax Credit  
- Veteran specific benefits  
- Student Loans
Immigrants Who Receive Services Which May Count in a Public Charge Test

- All listed programs: LPRs who leave the U.S. for more than 180 days and seek to reenter.
- Medicaid/SNAP: A subset of people granted parole, withholding of removal, or Cuban/Haitian entrants IF they seek a green card through a pathway (like a family-based petition) where public charge applies.
- SNAP: Groups listed above and some Hmong and Laotian tribe members IF they seek a green card through a pathway (like a family-based petition) where public charge applies.
- Public Housing or Section 8: A subset of people granted parole or withholding of removal IF they seek a green card through, e.g. a family-based visa petition, where public charge applies.
- “COFA” migrants from Micronesia, the Marshall Islands or Palau IF they leave the U.S. and attempt to reenter, or if they seek a green card through a family-based visa petition or another pathway where public charge applies.

Things to Keep in Mind

- The rule is not retroactive
  - Applies only to applications submitted on or after February 24, 2020. Instructions for forms will require reporting on benefits received on or after February 24.
  - Newly named benefits used prior to that date will not be considered.
- Not everyone is subject to the rule.
  - Many immigrants are exempt from the public charge inadmissibility ground.
  - Benefits used by family members will not be counted.
- Positive factors can be weighed against negative factors in this forward-looking test.
- Every situation is different.
- Consult with an immigration attorney if you have questions about specific cases.
People applying to enter from outside the US

- US Consular Office use the Foreign Affairs Manual (FAM) to decide about granting permission to enter the US
- Affects those seeking to enter on non-immigrant visas as well as lawful permanent residents
- Also affects green card applicants required to leave the US to go through consular processing
- FAM guidance changed in January 2018,
- State Dept proposed rule mirroring DHS rule had been scheduled to take effect Oct 15
- DOS had delayed implementing State department rule pending litigation pending DHS rule litigation

Jan 2018 FAM guidance

- Did not change definition of public charge
- Affidavit of support no longer sufficient to overcome public charge determination
  - Must look at totality of circumstances, including age, health, financial resources, skills
  - May consider use of non-cash benefits
  - May consider use of benefits by sponsors, family members
- Impact: Public charge denials increased from 1033 in FY 2016, to 12,170 in (Oct 2018-July 2019)
- If implemented, interim State Department final rule will replace Jan 2018 Fam Guidance
Public Charge Ground of Deportability

- We know DOJ currently reviewing regulations, so we are preparing to analyze and respond
- Under current policy, an immigrant must:
  1. Have received cash welfare or long-term institutional care during the first 5 years after entering the U.S., and
  2. The need for this assistance must be based on circumstances that existed before entering the U.S., and
  3. The use of the cash welfare or long-term care must have created a legal debt for the immigrant or sponsor, and
  4. The immigrant or sponsor must have received a demand to repay the debt, failed to repay, and
  5. The government filed a lawsuit and won in court.

What is the DHS regulation likely to look like in practice?
What do we tell immigrant survivors and their families?

Questions from Immigrant Survivors

I have an approved VAWA self-petition & am waiting to be able to apply for a green card, now I'm worried that using cash benefits is going to stop me from getting permanent residence.

I'm pregnant and need help. I'm currently enrolled in Medicaid but I'm afraid it will be used against me.

My friend says public charge will apply to her. She disenrolled from SNAP. She said I should too.

I'm scared to sign up for WIC, I know that WIC is a public benefit.

Coverage under my Medicaid plan is the only option for health insurance for my children who are 12 and 19 years old.

My brother is applying for citizenship but uses Section 8 housing vouchers. Is he a public charge?
Responding to questions

I have an approved VAWA self-petition & am waiting to be able to apply for a green card, now I’m worried that using cash benefits is going to stop me from getting permanent residence.

The public charge test does not apply to VAWA Self-Petitioners. We encourage you to stay enrolled in the cash program if you need them – it will not impact your green card application.

I’m pregnant and need help. I’m currently enrolled in Medicaid but I’m afraid it will be used against me.

The public charge test will not consider non-emergency Medicaid used by pregnant women up until 60 days after they give birth. We encourage you to get the health care that you and your baby need.

My friend says public charge will apply to her and so she disenrolled from SNAP. She said I should too.

Everyone’s situation is different. What may be good advice for one person could be bad advice for another. We encourage you to learn more about your situation and speak to an immigration attorney.

I’m scared to sign up for WIC, I know that WIC is a public benefit.

You’re right – WIC is a public benefit. BUT it is not included in the public charge test. We encourage you to sign up for programs you are eligible for.

Coverage under my Medicaid plan is the only option for health insurance for my children who 12 and 19 years old.

The public charge test has a specific exception for children under the age of 21 that use Medicaid. Your kids fall under that exception - their use of Medicaid will not be considered in their public charge test.

My brother is applying for citizenship but uses Section 8 housing vouchers. Is he a public charge?

The public charge test does not come up when people apply for U.S. citizenship. Section 8 housing vouchers are considered for public charge, yes. But since your brother is applying for citizenship - public charge does not apply.
Talking Points

▶ The Supreme Court’s ruling allows the public charge regulation to take effect.
▶ Fear and confusion are the biggest threat, and information is survivors’ best protection
▶ We will continue to work to protect the right of all families to thrive isn’t over.

Conversations with Immigrant Survivors

Do you or your family members already have green cards?
The DHS public charge test does not apply to you. However, if you plan to leave the country for more than 6 months, it is a good idea to talk with an immigration attorney.
*The public charge test is not part of a US Citizenship application.

Do you have or have applied for one of the following statuses?

- U.S. Citizenship
- Green card renewal
- DACA renewal
- TPS
- U or T Visa
- Asylum or Refugee status
- Special Immigrant Juvenile Status

The public charge test does not apply to the categories listed here. If you already have or are in the process of applying for one of these immigration statuses, you can continue to use any government programs that you qualify for.
Conversations with Immigrant Survivors

Does your family plan to apply for a green card or visa from **inside** the United States?

If you aren’t sure whether or not this policy applies to you, we recommend that you seek advice from an attorney who understands the new changes. If you **are not subject to the public charge test**, we recommend that you continue to get the assistance that you and your family needs.

Does your family plan to apply for a green card or visa from **outside** the United States?

U.S. consular offices abroad use different rules in making this decision. You should talk with an expert for advice on your case before making any decisions.

For free or low-cost options near you, go to:  
[www.immigrationadvocates.org/nonprofit/legaldirectory](http://www.immigrationadvocates.org/nonprofit/legaldirectory)

Tools and Resources for Communities

- Protecting Immigrant Families Campaign  
  - [https://protectingimmigrantfamilies.org/know-your-rights/](https://protectingimmigrantfamilies.org/know-your-rights/)  
    - Includes Train the Trainer Materials  
    - Materials in various languages  
    - Campaign pages for CA, MI, OR, WA, WI, NY and other constituency groups
How can I get more involved in supporting immigrant survivors and their families?

Direct and Indirect Effects of the Public Charge Rule

• Directly affected individuals
  • The proposed threats could prevent immigrant survivors from using the programs that help them escape from and overcome abuse & trauma
• Broader population of people subject to “chilling effect”
  • Family members living with or sponsoring immigrants, particularly U.S. citizen children
  • Non-family sponsors, co-sponsors, and joint sponsors (community members, religious congregants, family friends, etc.)
• States and localities
• Providers and communities
• All of us
Document the Harm

- Be aware how our communications could add to this chilling effect.

**Documentation needs:**
- Declining to access benefits that would help survivors get safe, recover from abuse, including those not covered in final rule (rape kits/domestic violence transitional housing, crime victim benefits?)
- Disenrollment from Medicaid, SNAP, WIC, or other public benefits, including for children, even if not included in final rule
- Cases where immigrant survivors/immigrant families share fears about public charge (to advocates, doctors, attorneys, pastors, etc.)
- Advocates, report examples of chilling effects, and monitor your own administrative data for trends in decreased enrollment/utilization
- Document the amount of increased effort you are engaging in to help survivors determine access to benefits programs

Educate Policy Makers

- Educate offices about the impact of public charge on survivors
- Inform staff about availability of community resources, including those which don’t implicate public charge, and how to provide services to their constituents
State/Local Policies and Action

**Action #1:** Ensure that families have access to timely and accurate information about the public charge rules, through front-line staff trainings, community outreach, and inter-agency coordination.

**Action #2:** Ensure that benefits programs protect immigrant privacy and that people are aware of privacy protections.

**Action #3:** Ensure that people impacted or potentially impacted by new public charge rules have access to accurate legal guidance.

**Action #4:** Monitor state/local data for significant drops in enrollment for entitlement and safety-net programs to identify growing unmet needs in the community in real time.

Resources

- **Protect Immigrant Families:**
  - [Protectingimmigrantfamilies.org](https://protectingimmigrantfamilies.org)
- **Alliance for Immigrant Survivors:**
  - [https://www.immigrantsurvivors.org/resources-1](https://www.immigrantsurvivors.org/resources-1)
- **Public Charge Advisory on Impact on Survivors:**
- **USCIS webpage on final DHS public charge rule**
Questions & Answers

Please type your questions and comments into the chat box