



“Public Charge” Ground of Inadmissibility: What You Need to Know About the Proposed Rule and Its Impact on Legal Immigrants and their Families

Overview:

There are a number of eligibility requirements (known as grounds of inadmissibility) that the federal government considers when determining whether to admit an individual into the United States or allow an immigrant to adjust status and become a lawful permanent resident (LPR) or to receive a Green Card. One such factor is whether the individual is or is likely to become a “[public charge](#).”ⁱⁱ

For many years, the public charge analysis undertaken by the federal government focused on the likelihood that an immigrant will become financially dependent on (likely to receive over 50% of their income or support from) the government through: (1) the receipt of public cash assistance, or (2) long-term hospitalization or similar care at the government’s expense. In making the public charge determination, the federal government considers several factors including: age, health, family status, assets, resources, financial status, and education/skills. The government may (and at times must) also consider whether an “affidavit of support,”ⁱⁱⁱ has been filed by a relative (or other individual) in the U.S.

Proposed Changes:

The Administration is proposing to drastically revise the public charge analysis.ⁱⁱⁱ According to its [Notice of Proposed Rulemaking](#), the Administration is seeking to significantly expand the public benefits—and number of immigrants—considered in its public charge analysis. The proposed list of benefits would include not only those programs already considered (in red) but also many new programs (in blue):

- [Supplemental Security Income \(SSI\)](#)^{iv}
- [Long-term institutionalization at the government’s expense](#)^{vii}
- [Supplemental Nutrition Assistance Program \(SNAP\)](#)^x
- [Public Housing](#)^{xiii}
- [Temporary Assistance for Needy Families \(TANF\)](#)^v
- [Medicare Part D](#)^{viii}
- [Section 8 Housing Choice Voucher Program](#)^{xi}
- [General Assistance](#)^{vi}
- [Non-emergency Medicaid](#)^{ix}
- [Section 8 Project-Based Rental Assistance](#)^{xii}

The proposed rule notes that DHS is also considering adding the [Children’s Health Insurance Program \(CHIP\)](#)^{xiv} to the list of expanded benefits to be considered.

Fortunately, unlike the previously leaked version, the proposed rule does not directly consider the use of benefits by the applicant’s citizen dependents in the analysis. The rule does, however, consider household size as part of the “family status” factor of the analysis. We fear that even under the new proposal,

children living in immigrant or mixed-status families (families whose members have different citizenship or immigration statuses) will be negatively impacted by the rule.

Why Does the “Public Charge” Rule Matter to Catholics?

*“Amen, I say to you, whatever you did for one of the least of these brothers of mine, you did for me.”
(Matthew 25:40, 45).*

1. **The Proposed Rule Harms Families.** The proposed changes to the public charge analysis are deeply concerning as they will undermine the health, wellbeing, and unity of lawful immigrants and mixed-status families. The new rule will prevent family reunification for many individuals seeking lawful admission to the United States, as many more individuals will be denied entry on the public charge ground. Further, it will likely force certain mixed-status families lawfully present in the U.S. to choose between family unity and physical wellbeing, as applying for or receiving vital public benefits by individuals who are in the U.S. on visas or looking to adjust their status may endanger their ability to stay in the United States and provide care for their children. This is a choice no family should be forced to make.
2. **The Proposed Rule Targets Lawful Immigrants.** As noted above, this proposed rule targets individuals who are in the country legally or seeking to come to the U.S. lawfully. It will undoubtedly deter such individuals from enrolling for programs for which they otherwise qualify. In fact, the mere proposal of this rule has already had a chilling effect on families’ willingness to access critical benefits and services.
3. **The Proposed Rule Could Prevent Families from Receiving Vital Nutrition and Housing Assistance.** We know the critical importance of these programs and services, and the role they play in helping families get back on their feet and maintaining self-sufficiency.

Who Is Impacted by the Proposed Rule:

- Most noncitizens who are living in the United States lawfully and seeking lawful permanent resident (LPR) status or seeking to extend their current legal status; and
- Individuals overseas who are applying for admission (seeking to legally enter) into the U.S. as immigrants or non-immigrants.

As noted above, these applicants’ families, including U.S. citizen children, could be indirectly harmed by the proposed rule.

The Chilling Effect on Family Food Programs: Catholic Charities of Orange County, CA,

“A challenge [to Catholic Charities of Orange County] is how to help our potential CalFresh (food program) clients overcome the fear of being considered “public charge”. Due to fear of legal repercussions on their immigration and citizenship status, many CalFresh clients are now afraid to come out in the open to apply for this benefit. Some who are already receiving CalFresh benefits have even opted out or discontinued their benefits so as not to be considered “public charge”. We have engaged the help of an immigration lawyer to explain their residency status to fearful and cautious clients. We are addressing this concern through a continuing education campaign on this subject of “public charge”, and hope that the current “public charge” ruling will not be reversed.”—Executive Leadership Catholic Charities of Orange County, CA

Who Is Excluded from the Proposed Changes:

Certain groups are, by law, excluded from or may obtain waivers of the public charge ground of inadmissibility, including:

- Refugees; asylees; qualifying victims of trafficking, domestic violence, or certain other serious crimes; VAWA self-petitioners; special immigrant juveniles; Afghan and Iraqi special immigrants; and certain people paroled into the U.S.
- Additionally, public charge does not apply in naturalization proceedings.^{xv}

What You Can Do to Protect Immigrant Families:

1. **Learn More about Public Charge.** Public Charge is a very technical issue. The proposed rule will have significant consequences for immigrant families and service providers. It is necessary to educate yourself. Please read and share this backgrounder with your network and view the [webinar](#) to learn more. Also, please stay tuned for updates on this issue.
2. **Share Stories.** It is vital that we document how this proposed rule will impact families. If you work with or know of affected individuals who would be willing to share their stories, please contact jfi@uscis.gov. Identifying information can be redacted to protect individuals' privacy.
3. **Comment on the Proposed Rule.** CCUSA and USCCB will share our concerns on the proposed rule via public comment. We encourage you to also consider submitting comments at: <https://www.regulations.gov/>. Comments are due by Monday, December 10th.
4. **Voice Your Concern with Your Lawmaker.** Please meet with your Senators and Representative to let them know about your concerns with the proposed changes to the rule. You can encourage them to file comments or otherwise engage the Administration on this issue.

ⁱ Immigration and Nationality Act (INA) § 212(a)(4).

ⁱⁱ An affidavit of support refers to a document that is submitted by a relative or sponsor of the immigrant applicant that accepts formal financial responsibility for the applicant.

ⁱⁱⁱ Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51,114 (proposed Oct. 10, 2018), *available at* <https://www.govinfo.gov/content/pkg/FR-2018-10-10/html/2018-21106.htm>.

^{iv} *Supplemental Security Income- 2018*, SOCIAL SECURITY ADMINISTRATION, <https://www.ssa.gov/ssi/> (last visited Oct. 10, 2018).

^v *TANF*, ADMINISTRATION FOR CHILDREN AND FAMILIES, <https://www.acf.hhs.gov/ofa/programs/tanf/about> (last visited Oct. 10, 2018).

^{vi} This would be federal, state, local, or tribal cash benefits programs for income maintenance.

^{vii} This includes things like hospital services, nursing facilities, inpatient psychiatric services, etc. that are paid for by the government (e.g., under Medicaid or the Social Security Act).

^{viii} *Drug Coverage (Part D)*, MEDICARE.GOV, <https://www.medicare.gov/drug-coverage-part-d> (last visited Oct. 10, 2018).

^{ix} *Medicaid*, MEDICAID.GOV, <https://www.medicaid.gov/medicaid/index.html> (last visited Sept. 22, 2018). The proposed rule includes exceptions for Medicaid benefits: (i) addressing an "emergency medical condition;" (ii) used for certain disability services; and (iii) received by children of U.S. citizens who will be automatically eligible to become citizens.

^x *Supplemental Nutrition Assistance Program (SNAP)*, U.S. DEPT. OF AGRICULTURE (USDA) (April 25, 2018), <https://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap>.

^{xi} *Housing Choice Vouchers Fact Sheet*, U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT (HUD), https://www.hud.gov/topics/housing_choice_voucher_program_section_8 (last visited Sept. 17, 2018).

^{xii} *Renewal of Section 8 Project-Based Rental Assistance*, HUD, <https://www.hud.gov/hudprograms/rs8pbra> (last visited Sept. 22, 2018).

^{xiii} *Public Housing*, HUD, https://www.hud.gov/program_offices/public_indian_housing/programs/ph (last visited Oct. 10, 2018).

^{xiv} *Children's Health Insurance Program*, MEDICAID.GOV, <https://www.medicaid.gov/CHIP/index.html> (last visited Sept. 17, 2018).

^{xv} See INA § 316; Public Charge, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (June 26, 2017), <https://www.uscis.gov/greencard/public-charge>.