



### What is a “public charge”?

Under federal immigration law, the term “public charge” is used to describe a person that is dependent on government. If it is determined that an individual is likely to become a “public charge,” their application to immigrate<sup>1</sup> to the U.S. or become a Lawful Permanent Resident (“LPR” or “green card holder”) may be denied.

### How is the public charge assessment applied under current law?

- ✓ Applies only when an individual is seeking to immigrate to the United States or get their “green card”
- ✓ Asks whether the individual is likely to become dependent on government in the future
- ✓ Must consider age, health, family status, financial status, education/skills, and sponsorship<sup>2</sup>
- ✓ May consider other relevant factors including the receipt of government-funded cash assistance or institutionalization for long-term care – consideration of receipt of other public benefits is prohibited
- ✓ Receipt of public benefits by dependents is not considered
- ✓ Must consider the totality of the factors, meaning no single factor is determinative

### Statutory requirements: These things cannot be modified through regulation

- Refugees, asylees, survivors of domestic violence and other serious crimes, and certain others are not subject to the public charge test<sup>3</sup>
- The test does not apply when an individual is applying for citizenship
- The test is forward-looking, meaning it looks at whether the individual is likely to become dependent on government in the future
- Agents must consider age, health, family status, financial status, education and skills, and sponsorship
- Agents must consider the totality of the factors

### How is the federal administration proposing to change the “public charge” test?

The administration is seeking to pass a regulation that changes the public charge test to –

- ✓ Allow agents to consider participation in a broader range of public programs, including Medicaid, CHIP, ACA private insurance subsidies, SNAP, WIC, housing assistance, energy assistance, and EITC<sup>4</sup>
- ✓ Allow agents to consider public benefits received by dependents – including citizen children
- ✓ Require agents to weigh certain factors more heavily (i.e. extra positive weight if the individual has income and assets of at least 250 FPL and extra negative weight if the individual – or her dependents – has received means-tested public benefits in the past 36 months)
- ✓ Apply the test to individuals seeking to renew a visa or adjust from one nonimmigrant status to another

<sup>1</sup> In federal immigration law, the term “immigrate” is used when the individual seeking entry intends to move to the U.S. permanently. The public charge test does not apply to “nonimmigrants” – individuals seeking to enter the U.S. for a temporary period to, for example, attend school, work for a temporary period, or visit.

<sup>2</sup> In order to be granted permanent status, most immigrants must be sponsored by a family member or employer. Sponsors must sign an affidavit attesting to the ability to support the immigrant.

<sup>3</sup> Immigrant statuses that are exempt are generally those granted based on likelihood of persecution in the home country.

<sup>4</sup> The proposed rule still prohibits agents from considering benefits connected to work or military service, Medicare, emergency and disaster assistance, government student loans, and k-12 education, including Head Start

## Talking Points for Policymakers from the Protecting Immigrant Families Campaign

- Trump is trying to do through the back door what he hasn't been able to sell in Congress: restrict family immigration
- The high level of detail in this latest draft signals that he may soon launch the next attack on immigrant families
- This proposal targets families who have immigrated lawfully, as well as U.S. citizens
- The proposed rule would force families to choose between getting the help they and their children, including citizen children, need – like EITC, SNAP, WIC, medical care, and housing assistance – and reuniting with those they love or keeping their families together
- Family-based immigrants are disproportionately people of color; this is yet another example of the white supremacist agenda
- This is part of a sweeping attack by the Trump Administration on low-income families working hard to get by
- Immigrants are part of our national DNA; they're our families and our classmates and our neighbors
- Trump's proposal is about more than immigration policy. It's about a fight for the soul of our country. Will we continue to be a beacon of hope for those beckoned by the Emma Lazarus poem on the Statue of Liberty? Or will America's doors be open only to the highest bidder?
- If we want our communities to thrive, all families have to be able to get the care and services they need to thrive.
- The Administration's extremist immigration policy and practices are already forcing families to forego basic needs like food and health care. This proposal would cause even more children go hungry and lose access to basic health care, driving up poverty among families with young children who are vital to our country's future prosperity.
- The law gives Congress the responsibility to rein agencies in when their regulations spin out of control and when a government agency makes feeding your kids grounds for punishment, that agency is out of control.
- We can't let the Trump administration to force families to choose between the food, housing and health care they need and the people they love

Full talking points document from the Protecting Immigrant Families Campaign here:

<https://www.clasp.org/sites/default/files/publications/2018/03/PIF%20TPs%20for%20Policymakers%20and%20Press%20-%2003-29-18.pdf>

## Messaging to families

- The rules for immigrants who apply for a green card in the U.S. **have not changed.** If you are in the U.S. and are currently applying for a green card, receipt of cash assistance and institutionalization are the only public benefits that can be considered when immigration agents consider whether you are likely to become a public charge. Receipt of other public benefits like Medicaid, SNAP, WIC and housing assistance cannot be considered under current law.
- Many families are not subject to the public charge test (i.e. families applying for citizenship, refugees, asylees, etc.)
- The public charge test considers the totality of the circumstances
  - Families need to make *individual determinations* based on their situation
  - Using health care and nutrition benefits can help you be stronger, healthier and less likely to be dependent on the government
- For individuals currently receiving public benefits, there may be no advantages to terminating benefits at this time

## Timeline

Proposed rule submitted to OMB (reviews multiple factors including consistency with law) → March 29, 2018

Notice of Proposed Rule Making (NPRM) published in Federal Register → OMB draft says July 2018 (could be sooner)

Sixty-day public comment period → clock starts on the date NPRM is published in the Federal Register