



Policy Update and Introduction to Public Charge

Gabrielle Lessard, Senior Policy Attorney
Lessard@nilc.org

Who We Are

National Immigration Law Center (NILC)

- ▶ Our mission is to defend & advance the rights & opportunities of **low-income** immigrants and their family members.
- ▶ We combine policy analysis and advocacy, impact litigation and strategic communications to protect immigrants' rights and to advance their access to health care, education and economic opportunity.



Disclaimers

- ▶ Things are changing fast!
 - ▶ There are a lot of unknowns.
 - ▶ We are sharing the information we have at this time.
- ▶ We are providing general information, not legal advice

Context



Context: The Current Environment

- ▶ The Administration's policy decisions have created a climate of fear in immigrant communities
- ▶ Simply being undocumented makes people a priority for deportation
- ▶ People with status worry about their status being revoked
- ▶ Implications - Chilling effect in accessing needed services
 - People are afraid to leave their homes
 - People asking to be dis-enrolled from Medicaid and other programs

Immigration



The United States must adopt an immigration system that serves the national interest. To restore the rule of law and secure our border, President Trump is committed to constructing a border wall and ensuring the swift removal of unlawful entrants. To protect American workers, the President supports ending chain migration, eliminating the Visa Lottery, and moving the country to a merit-based entry system. These reforms will advance the safety and prosperity of all Americans while helping new citizens assimilate and flourish.

Administration Policy Levers

- ▶ Executive Orders
 - ▶ Must be Constitutional, cannot conflict with law
 - ▶ Examples: interior/border enforcement orders, Travel Bans
- ▶ Regulations
 - ▶ Implement laws, cannot conflict with them
 - ▶ Examples: Flores (conditions for holding children), Public Charge
- ▶ Policy
 - ▶ Implement laws and regulations, decisions about allocation of resources
 - ▶ Examples: zero tolerance, DACA termination

Update - DACA



- ▶ Fed District Courts in DC, NY and CA have enjoined the termination of DACA
- ▶ DOJ has asked US SCt to rule on the combined cases, skipping over the Courts of Appeal (Circuit courts)
- ▶ SCt has not ruled on gov't motion and is unlikely to take up the case before October
 - ▶ **DACA renewals remain in effect**
 - ▶ Anyone who has or has had DACA should renew as soon as possible

Updates

- ▶ Family Separation – the DoJ adopted a ‘zero tolerance’ policy requiring that adults crossing the border be criminally charged and placed into custody -
 - ▶ Children separated from parents; transferred to HHS with unaccompanied kids
 - ▶ Background check requirement deterred family sponsors
 - ▶ About 150 children still separated
 - ▶ About 10,000 children remain in custody



Update – Wall Funding

- ▶ Trump has stated that he will not sign any government funding proposal unless it includes \$5.7 Billion for a wall
- ▶ House Dems will not support wall money
- ▶ Trump presented 'compromise' that included wall funding, provided 3 year extension to DACA and to TPS from certain countries
 - ▶ Placed significant restrictions on asylum, limits on future grants of DACA and TPS



Public Charge



11

**WOULD YOUR IMMIGRANT
ANCESTORS BE DENIED
ENTRY TO THE USA TODAY?**

Public Charge: Background

- A Public Charge is a person dependent on the government for financial and material support
- The **likelihood** that a person will become a public charge is assessed:
 - when they apply to enter the US and
 - when they apply to become a lawful permanent resident (LPR)
 - ▶ There is no public charge test when an LPR applies for citizenship

Who is Subject to Public Charge?

- ▶ People applying to enter the U.S.
- ▶ People whose **status** allows them to become LPRs
- ▶ Many immigrants are **exempt from Public Charge**, including:
 - ▶ Refugees and asylees;
 - ▶ survivors of trafficking and other serious crimes;
 - ▶ self-petitioners under the Violence Against Women Act; and
 - ▶ special immigrant juveniles

Statutory Public Charge Test

- ▶ Whether a person is likely to become a public charge is based on **all of the facts** relevant to their ability to support themselves.
- ▶ Immigration agents are **required by statute** to consider:
 - ▶ age
 - ▶ health,
 - ▶ financial resources,
 - ▶ dependents,
 - ▶ skills and work experience
- ▶ Other relevant factors may be considered



Public Charge - Benefits



- Other factors relevant in a public charge test include receipt of public benefits
- Under rules in effect since 1999, only two benefits can be considered:
 - Cash assistance for income maintenance
 - Institutionalization for long-term care at government expense
- USCIS has published proposed [Public Charge regulations](#)
 - Drafts leaked to the press indicate a **substantial expansion of the factors considered**
- The State Department has already revised the public charge provisions of the Foreign Affairs Manual

Foreign Affairs Manual

- A public charge assessment is conducted when a person applies for permission to enter the U.S. at a consulate abroad
 - refugees and other humanitarian entrants are **exempt** from public charge
- The Foreign Affairs Manual (FAM), published by the State Department, provides guidance to consular officials
- The public charge section of the FAM was revised in January, 2018
 - Forms for applicants and sponsors have not changed

FAM – What Changed?



- Affidavit of support is not enough on its own
 - Consider age, health, family status, financial resources, skills
 - Use of **benefits** may be considered
 - Inquire into sponsor's ability and willingness to support
 - Look at relationship - family member?
 - May consider benefits used by sponsors or their family members
 - **We have not yet seen denials based on sponsors' use of benefits**

We are monitoring this issue – [please let us know what you hear!](#)

The Proposed Regulations

Proposed Regulations



- ▶ Add multiple factors including income and age thresholds; consideration of insurance status and English proficiency
 - ▶ Adds 'heavily weighed factors'
- ▶ Change the **definition** of Public Charge to a person who uses or receives one or more specified public benefits
 - ▶ A person does not have to use benefits to be deemed **likely** to become a public charge

Who is Subject to the Public Charge Test

- ▶ Currently: People applying to enter the US and people applying to become permanent residents (LPRs)
 - ▶ Unless exempt
- ▶ The proposed regulations:
 - ▶ Apply public charge assessment to people applying to extend **non-immigrant** visas and people applying to change the category of their non-immigrant visa.
- ▶ Exempt from public charge:
 - ▶ Members of the military, Ready Reserve, and their spouses and children
 - ▶ Children who obtain citizenship through their parents after entering the U.S.

Statutory factors

- **Age:** defines working age as 18 - 62
 - Being a child or a young senior is a negative!
- **Health:** whether diagnosed with medical condition that could affect ability to work/study or require extensive care/institutionalization in the future
- **Family:** household size
- **Financial resources:**
 - income at least 125% FPL (or assets equal to 5x the gap);
 - has *applied for* any benefit or immigration fee waiver;
 - has private insurance or resources to pay for medical expenses
- **Skills and work experience** – includes assessment of proficiency in English

Adds Heavily Weighted Factors



Negative:

- ▶ Authorized to work but not working and not a full-time student
- ▶ Currently receiving a public benefit/Has used a public benefit within last 36 months
- ▶ Medical condition that could interfere with work or require expensive treatment
- ▶ Uninsured without the prospect of receiving private insurance/paying for care
- ▶ Previously determined to be a public charge

Positive:

- ▶ Income or resources over 250% of Federal Poverty Level (>\$62,000 for family of four)

Which benefits are considered?

- ▶ Federal, state, local or tribal **cash assistance** for income maintenance, and
- ▶ certain **noncash** medical, housing and food benefits:
 - ▶ Medicaid
 - ▶ SNAP
 - ▶ Section 8
 - ▶ Public housing



Excluded Benefits

Everything not listed!

- ▶ Emergency and disaster relief
- ▶ Services available to the community as a whole
- ▶ School-based nutrition services
- ▶ Public education, including Head Start
- ▶ WIC
- ▶ ACA tax credits
- ▶ EITC

Benefits received by dependents



PROPOSED RULE: TIMELINE

1

Notice of proposed rulemaking (NPRM) posted for public inspection

2

NPRM published in Federal Register

3

Opportunity for public comment ended December 10th

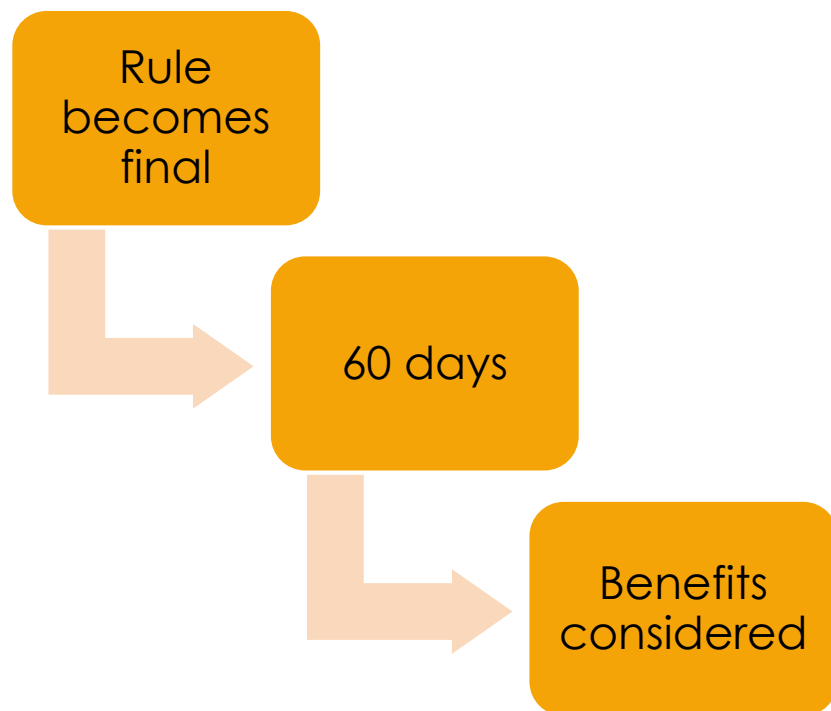
4

Agency must read and respond to comments

5

Final rule published

Not retroactive!



- ▶ Only cash assistance and long-term care can be considered until after:
 - ▶ The rule becomes final
 - ▶ Plus 60 days

Remember

- ▶ Important statutory factors cannot be changed by regulation:
 - ▶ Public charge is assessed when a person applies to enter the US and to become a permanent resident
 - ▶ The **balance** of factors must be considered
 - ▶ Negative factors can be outweighed by positives
 - ▶ Many categories of immigrants are **exempt**



Get Involved!

- ▶ Protecting Immigrant Families Campaign
 - ▶ Co-chaired by NILC and CLASP
 - ▶ Over 300 organizational members
- ▶ Community education and other resources
- ▶ What's next:
 - ▶ OMB meetings
 - ▶ Congressional engagement
 - ▶ Resources for states
- ▶ [Sign up at this link](#) or on protectingimmigrantfamilies.org

Stop Trump's Cruel Attack on Immigrant Families

The comment period to fight the proposed "public charge" regulation has ended. Tens of thousands of comments were delivered to the Department of Homeland Security opposing this cruel and harmful policy. We will continue to engage in advocacy to stop this rule. NOTE: This regulation has not gone into effect. DHS must review every single unique comment submitted before publishing a final rule. If and when a final rule is published, there will be at least 60 days before it takes effect.



Resources

- [How to Talk About Public Charge With Immigrants and Their Families](#)
- [Top Five Things to Know about Public Charge](#)
- [Changes to Public Charge in the U.S. State Department Manual](#)
- [Public Charge: A New Threat to Immigrant Families](#)
- [PIF Campaign: ProtectingImmigrantFamilies.org](#)
- Free and Low-Cost Immigration Services:
<https://www.immigrationlawhelp.org/>