

## Key Points for Assisters to Help Clients Understand the Proposed Public Charge Regulation – November 2018

This handout is for people working directly with clients to help explain specific aspects of the proposed public charge regulation. Background information is available here: <https://protectingimmigrantfamilies.org/resources/>

**This document is not intended to provide legal advice.**

### Talking points to share with clients

- This is a *proposed* rule change. The public charge rules in the U.S. have not yet changed.
- The final regulation could look different from the proposed regulation, or it may never be finalized.
- *If the rule is finalized, you will have time to act before the rule goes into effect.*
- Laws protect the privacy of people who apply for or receive help from public programs.
- Get help to decide what's best for your family. If you can, consult with an immigration attorney or BIA-accredited representative about your own situation.

### When is the public charge test applied?

When an individual applies for a visa to **enter the U.S.** temporarily or permanently



When an individual who is in the U.S. applies for an **adjustment of status** to Lawful Permanent Resident (i.e. "green card" holder)



### The proposed regulation does not apply to all immigrants or all public benefits

#### Immigration statuses *not* affected

- Lawful Permanent Residents applying for citizenship
- Refugees
- Asylees
- Survivors of domestic violence, trafficking, and other serious crimes (U and T visa holders)
- Special Immigrant Juveniles
- Violence Against Women Act (VAWA) self-petitioners
- Certain people paroled into the U.S.
- Benefits received by active duty service members, and by their spouses and children

#### Public benefits *not* included

- Women Infants and Children (WIC)
- Emergency Medicaid
- School-based Medicaid services (e.g. the Individuals with Disabilities Education Act)
- Child Health Plan *Plus* (CHP+)\*
- Energy Assistance (LEAP)
- Free/Reduced Price School meals
- Benefits received by immigrant's family members
- Transportation vouchers or non-cash transportation services
- Federal Earned Income Tax Credit and Child Tax Credit
- Disaster relief
- State/local/tribal programs not paid for with any federal dollars
- Student loans
- Advanced Premium Tax Credits
- Cost Sharing Reductions
- Medicare\*\*
- Social Security retirement benefits\*\*
- Veteran's benefits

\*The proposal asks whether the Children's Health Insurance Program (CHIP), CHP+ in Colorado, should be included in the final regulation.

\*\*Specific related programs are included: Medicare Part D Low-Income Subsidy and Social Security Income (SSI).



### What factors could be considered as part of the Public Charge test?

The public charge test considers many factors, and no one factor determines the outcome of the test. This determination is referred to as the “**totality of circumstances.**” The proposed rule requires immigration officials to assign positive or negative weights to each of the factors. Positive factors include being aged 18-60, in good health, small family size, higher education/skills, and higher income.

#### Current Considerations

- Age
- Health
- Family status
- Finances
- Education and skills
- Sponsorship/Affidavit of support
- Use of government funded cash assistance or institutionalization for long-term care

#### Proposed Additional Considerations

- Use of Medicaid (excludes emergency and school-based Medicaid)
- Use of Low-Income Subsidy (LIS) for Medicare Part D prescription drug coverage
- Use of federal housing assistance (Section 8 and public housing)
- Use of Supplemental Nutrition Assistance Program (SNAP, also called Food Stamps)



### How would use of public benefits be measured in the proposed rule?

The proposed rule identifies specific levels of use. If a person uses the identified benefits above the specific levels, it will count against the applicant for a green card. The applicable level depends on whether the benefit is a “monetizable” or “non-monetizable” benefit. Monetizable benefits are those that can be easily converted into a cash value.

Category	Type of Public Benefit	Negative factor if...
Monetizable (easily converted into a cash value)	<ul style="list-style-type: none"> <li>• State or federal Cash assistance (TANF, SSI, Old Age Pension)</li> <li>• SNAP</li> <li>• Public housing and rental assistance</li> </ul>	Cash value of benefits received in excess of 15% FPL for a household of one in a 12-month period.
Non-monetizable (not easily converted into a cash value)	<ul style="list-style-type: none"> <li>• Medicaid</li> <li>• Institutionalization for long term care</li> <li>• Low-Income Subsidy for Medicare Part D</li> <li>• Subsidized housing</li> </ul>	<p>Cumulative use of any benefits for 12 or more months, within a 36-month period.</p> <p>If both a monetizable benefit and non-monetizable benefit are used at the same time, a cumulative 9 months or more of non-monetizable benefit use will count as a negative factor</p>



### Will using benefits now impact my client’s ability to adjust their status later?

No. Using the additional benefits listed in the proposed regulation (i.e. Medicaid, SNAP, Low-Income Subsidy Medicare Part D, federal housing assistance) now will not factor into a public charge determination now or if the rule is finalized. If the rule is finalized as written, people will have time to act before the rule goes into effect. After that time, staying enrolled in the programs could impact an individual’s ability to adjust immigration status.

## What happens if a person is determined likely to become a public charge?

Under current rule, and the proposed rule, if immigration officials determine an individual is likely to become a public charge at any time in the future, the individual's application for admission or adjustment of status may be denied. The public charge determination does not impact the individual's current status but could impact his or her ability to enter or remain in the U.S. legally once their visa status expires.

## When will this proposal go into effect?

Unknown. Comments on the proposal are due on or before December 10, 2018. The Department of Homeland Security must read and respond to all comments submitted to them. Once they have done this (which is likely to take many months), a finalized rule may be published. The earliest effective date would be 60 days after the final rule is published in the Federal Register. The existing 1999 public charge guidance is still in place until a new rule is finalized.

## How does the proposal change the definition of public charge?

The current definition of "public charge" is an immigrant who is "likely to become primarily dependent on the government for subsistence." The new definition would be a non-citizen "who receives one or more public benefits." "Public benefits" as used in the proposed definition would only refer to those programs explicitly included in the rule (i.e. cash assistance, institutionalization for long term care, federal housing assistance, Medicaid Part D LIS, SNAP, and Medicaid) and use at the levels described for monetizable and non-monetizable.

## Is there a list of immigration lawyers in Colorado?

Yes, you can find Colorado immigration lawyers listed here:

<https://www.immigrationlawhelp.org/search?state=CO>

## Where can I go for additional resources?

- Covering Kids and Families is posting resources **for assisters** here: [ckf.cchn.org/resources-on-the-proposed-public-charge-rule/](http://ckf.cchn.org/resources-on-the-proposed-public-charge-rule/)
- Colorado Center on Law and Policy is posting resources to **submit comments** here: <https://cclponline.org/publiccharge/>
- Center for Health Progress is leading the Colorado Immigrant Health Coalition with outreach **resources** here: <http://cohealth.co/publiccharge>
- Protecting Immigrant Families **national campaign** resources available here: <https://protectingimmigrantfamilies.org/faqs/>

This handout was created by Colorado Covering Kids and Families in collaboration with the Colorado Center on Law and Policy and Center for Health Progress.



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