

COMMUNITY ACTION PUBLIC CHARGE FAQs

1. WHAT IS “PUBLIC CHARGE” AND WHEN DOES IT COME INTO PLAY?

“Public charge” is a concept under U.S. immigration law that currently refers to an immigrant who is likely to become “primarily dependent on the government for subsistence.”¹ Immigration officials can deny an individual’s application for a visa or legal permanent resident (LPR) status (i.e., a green card) if they determine that the individual is likely to become a public charge at any time.² In other words, someone deemed to be a “public charge” can be denied a visa or a green card, which could lead to the person falling out of legal immigration status and becoming deportable.

On October 10, 2018, the U.S. Department of Homeland Security (DHS) proposed [a new rule](#)³ for making “public charge” determinations, making it harder for immigrants to enter the United States and to apply for a green card.

2. DOES THE “PUBLIC CHARGE” RULE APPLY TO ALL IMMIGRANTS?

The public charge determination does not apply when a green card holder is applying for citizenship or to certain other categories of immigrants, including: refugees; asylees; and victims of domestic violence, trafficking, or other serious crimes.

3. WHAT IS THE CURRENT “PUBLIC CHARGE” RULE?

Under the current rule, “public charge” refers to a person who is considered “likely to become primarily dependent on the government for subsistence.” The only benefits that currently count towards the “public charge” test are cash assistance programs such as Temporary Assistance to Needy Families (TANF) and Supplemental Security Income (SSI), and long-term institutionalization at the government’s expense.

4. WHAT HAS CHANGED?

Nothing has changed yet. However, if DHS’s proposed rule goes into effect, it would broaden the definition of “public charge” from a person “likely to become primarily dependent on the government for subsistence” to a person “likely at any time in the future to receive one or more public benefit.” The fact that an individual has applied for, is currently receiving, or has been certified or approved to receive, one or more of the public benefits specified in the proposed rule, will be considered a significant strike against that person in the “public charge” determination.

The proposed rule also expands the list of public benefits that count as negative factors against an immigrant applicant to include use of:

- Supplemental Nutrition Assistance Program (SNAP, or food stamps);
- Medicaid (other than emergency medical services and certain disability services provided by schools);
- Section 8 housing vouchers and Section 8 project-based rental assistance;
- Subsidized housing assistance under the Housing Act of 1937; and
- Medicare Part D premium and cost sharing subsidies.

¹ 64 Fed. Reg. 28689 (May 26, 1999).

² 8 U.S.C. § 1182(a)(4).

³ 83 Fed. Reg. 51114 (October 10, 2018).

DHS is also seeking public comment on whether to include use of the Children's Health Insurance Program (CHIP) in the list of public benefits used to make "public charge" determinations.

5. ARE ANY PUBLIC BENEFITS OFFERED BY CAAS INCLUDED IN THE PROPOSED RULE?

Possibly. CAAs that administer TANF, SNAP, or housing assistance programs will need be aware of the impact that the proposed rule could have on their clients. While a draft Executive Order that was leaked in February 2017 (but never issued) raised questions about whether programs such as the Low Income Home Energy Assistance Program (LIHEAP) and Women, Infants, and Children (WIC) would be used to make "public charge" determinations, these programs ultimately were not included in the proposed rule.

Any public benefit not specifically listed in the proposed rule would not be used in the "public charge" determination. These include:

- Community Services Block Grant (CSBG)
- Low Income Home Energy Assistance Program (LIHEAP)
- Head Start and Early Head Start
- Weatherization (WAP)
- Women, Infants, and Children (WIC)
- Employment or job-training
- School breakfast and lunch
- Transportation vouchers or non-cash transportation services
- Non-cash TANF benefits
- Federal Earned Income Tax Credit and Child Tax Credit
- Disaster relief
- Emergency medical assistance
- Entirely state, local, or tribal programs (other than cash)
- Children's Health Insurance Program (CHIP) (*though DHS requests input on whether to include CHIP, it is not included in proposed rule*)

6. HOW ARE STATE AND LOCAL PROGRAMS IMPACTED?

State and local programs (other than cash assistance programs funded by state or local agencies) are not included in the list of public benefits in the proposed rule. However, many immigrant clients may not be able to distinguish between public benefits, such as Medicaid, that have both federal and state-only components. There is concern that fear and confusion will impact a family's decision to remain enrolled in state-only coverage expansion programs.

7. HOW WOULD THE PROPOSED RULE, IF FINALIZED, IMPACT LOW-INCOME CHILDREN AND FAMILIES?

Based on estimates that one in four children have an immigrant parent,⁴ the proposed rule could have significant consequences. Immigrant families may be faced with an impossible choice: continue using public benefit programs that enable them to stay healthy and stable but risk jeopardizing their immigration application, or forgo vital services like preventive care and food assistance. The Fiscal Policy Institute also estimates that the chilling effect of the public charge proposed rule would extend to 24 million people in the United States, including 9 million children.⁵

⁴ Samantha Artiga and Anthony Damico, "Nearly 20 Million Children Live in Immigrant Families that Could Be Affected by Evolving Immigration Policies" Kaiser Family Foundation, 2018.

⁵ Fiscal Policy Institute, "FPI Estimates Human & Economic Impacts of Public Charge Rule: 24 Million Would Experience Chilling Effects," available at <http://fiscalpolicy.org/public-charge> (October 10, 2018).

8. HOW CAN CAAS WEIGH IN ON THE PROPOSED RULE?

From now until **December 10, 2018**, individuals and organizations have the opportunity to voice their concerns about the public charge proposed rule to DHS through an official process known as “notice and comment.”

Federal law requires that the government read and consider every unique comment before issuing a final rule. These comments can help slow the process down and shape the administration’s decisions. This notice and comment process is also important because it can later provide an opportunity to challenge the regulations in court if a concern with the regulation was raised in comments and not addressed in the final rule.

To make it easier for CAAs, state associations, and their partners to submit comments on the public charge proposed rule, CAPLAW, the National Community Action Partnership, and NASCSP have drafted template comments that organizations can customize with information about your communities and clients.

You are welcome to use text from our template comments, but we strongly encourage you to personalize your comments with your perspective, including sharing any stories or experiences the proposed rule could have, or has already had, on the communities and families served by your CAA. To maximize the impact of your comment, please make yours as specific and unique to your organization’s experience as possible.

To submit a comment, go directly to the page on the proposed rule on [Regulations.gov](#) (available [here](#)) and click the “Comment Now!” button in the top right-hand corner.

All comments are due by 11:59 PM ET on **December 10, 2018**.

9. ARE THERE ANY ADDITIONAL RESOURCES ON THE PUBLIC CHARGE PROPOSED RULE?

Here are a few additional resources:

- A [Resources](#) page about the proposed rule, including state-specific materials, compiled by [Protecting Immigrant Families](#), a coalition of organizations working with immigrant families.
- An [analysis](#) from the Kaiser Family Foundation on the estimated impacts of the proposed public charge rule on immigrants and Medicaid.
- A [data dashboard](#) from Manatt estimates the chilling effect of the proposed regulation by state and age group. You can use the tabs at the top of the page to navigate by age group, state and more.