

Talking to Clients and the Community about Public Charge

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Reproductive Health Coordinators Meeting
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The Oregon Law Center and Legal Aid Services of Oregon

Missions: to achieve justice for the low-income communities of Oregon by providing the full range of the highest quality civil legal services.

- Types of cases we take:
 - Family law
 - Housing
 - Employment Law
 - Administrative law and Public Benefits
- Statewide Public Benefits Telephone Hotline **1-800-520-5292**
 - Advice, referral and possible representation

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1-800-520-5292

Public Charge Issue - Context

Intentional climate of fear and efforts to make immigrants feel unsafe and unwelcome.

OLC and Legal Aid's Communication Goal on Public Charge

To reduce fear about public charge, increase accurate, fact based information in the community, so that people can make good, informed decisions for themselves.

Goals for today:

- Understand the Public Charge Rule – what it was, is, and might be;
- Be clear about the state of the law now, which benefits currently trigger a Public Charge inquiry, AND which immigrants are exempt from Public Charge; and
- Think about how to carefully and accurately talk to immigrants and their families about this topic.

Public Charge

An immigration concept that has been around for hundreds of years.

Public Charge Now – Current Rule

Currently:

Someone who is **likely to become primarily dependent on the government for subsistence**, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long term care at government expense.

Based on 8 USC 1182(a)(4) in the INA, interpreted by USCIS in Federal Guidance in 1999, 64 FR 28689.

Public Charge – Current Rule

Currently, Public Charge only applies to

- **SSI** (Supplemental Security Income from Social Security)
 - **TANF** (Temporary Assistance to Needy Families)
- **Long Term Care** in an Institution (paid for by Medicaid)

USCIS and DOJ, “Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,” 64 FR 28689–93 (May 26, 1999)

Immigrants Who Are Exempt from Public Charge

- Refugees or persons granted asylum in the US
- Victims of trafficking
- Survivors of domestic violence who are VAWA petitioners, and "qualified" battered spouses or children
- U-visa applicants/holders
- Cuban, Nicaraguan, or Haitian entrants
- LPRs applying for Naturalization
- Lautenberg parolees
- Certain Indochinese, Polish, and Hungarian parolees applying for adjustment of status
- Registry applicants (in the US since before Jan. 1, 1972)
- Special immigrant juveniles.
- Amerasian immigrants (when they are first admitted to the US, See § 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988

When Does Public Charge Question Apply?

- Entry into the US
- Adjusting Status to be an LPR

Public Charge – Changes to the Rule

2017: Leaked memo about threat to expand "public charge" definition but no action taken.

Early 2018: Changed the Foreign Affairs Manual regulation to include an expanded definition of "public charge", and makes a sponsor's affidavit of support (I-864) not sufficient to satisfy public charge inquiry, and encourages review of receipt of any public benefit. Impacts entry into the US.

Spring 2018: Federal Dept. of Homeland Security leaked draft rule, began the first steps of federal rulemaking on March 29th, 2018. Drafted rule proposes to vastly expand the definition and application of "public charge".

Public Charge – Changes to the Rule

- **September 22, 2018:** Federal Dept. of Homeland Security officially releases the rule they plan to propose, vastly expanding the public charge doctrine.
- **October 10, 2018:** The federal Dept. of Homeland Security officially “proposes” the rule by publishing it in the Federal Register and opening it up for public comment.

Proposed Public Charge Rule – What is Changing?

- 1. Expansion of the definition of “Public Charge”. Currently is “likely to be primarily dependent for subsistence on cash benefits”, changing to anyone who “uses or receives one or more public benefits”.**
- 2. Expansion of the “Totality of the Circumstances” evaluation to add many negative factors to be considered, including heavily weighted negative factors, to make it easier to find someone a public charge.**
- 3. Expansion of the benefits that would be considered in the Public Charge inquiry.**

Proposed Rule – Expanded Definition of Public Charge

Current Definition:

Someone who is likely to become “**primarily dependent on the government for subsistence**, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long term care at government expense”.

Proposed Rule Definition:

An alien “who uses or receives one or more public benefits as defined in [this rule].”

Proposed Rule – Expanded Definition of “Public Benefits”

- SSI - TANF - Long Term Care in institution paid for by Medicaid,
- Any other state or federal public benefits for purposes of maintaining the applicant’s income (cash or monetizable).
- Medicaid (Non Emergency benefits) - SNAP - CHIP (maybe)
- Section 8 vouchers, Section 8 project based rental asst, and Public Housing
- Medicare Part D subsidies
- - Monetizable benefits above 15% fpl in 12 consecutive months
- Non monetizable benefits for more than 12 months in 36
- - A combination of monetizable and non monetizable, with monetizable for more than 9 months within 36 months.

Proposed Rule – Exclusions from “Public Benefits”

- Social Security Retirement - Veterans Benefits - Pensions Unemployment benefits - Workers Comp - Medicare (Parts A, B, and C)
- Loans that require repayment - In-state college tuition
- Elementary and secondary education - IDEA benefits (Special Ed) - School Lunch
- Emergency Medicaid - WIC (supplemental nutrition for pregnant women, infants, and children)
- Fully state-funded health insurance (Cover all Kids) - Homelessness Assistance Program
- Subsidized ACA insurance
- Public health services including public assistance for immunizations and for testing and treatment of symptoms of communicable diseases; • use of health clinics; • emergency medical services; and • short-term rehabilitation.
- Anything not enumerated in rule
- Monetizable benefits less than 15% fpl (for 1) in any consecutive 12 month period (About \$150/month) (unless also receive non monetizable benefits)
- Non monetizable benefits received for less than 12 months in a 36 month period.

(not a complete list)

Proposed Weighing Factors for Public Charge

Still “totality of the circumstances”, but will weigh:

Negative Factors: Age, Health, Financial Resources, Work Skills, English proficiency, being under 125%fpl (\$31,375 for family of 4).

Heavily Weighted Negative Factors : Use of Public Benefits in the past 36 months

Positive Factor - 250% of fpl (62,000 for a family of 4)

Proposed Public Charge Rule – Public Charge Bond

The proposed rule describes a process where the federal government may accept a “public charge bond” to overcome a determination of public charge. The proposed rule establishes a new minimum bond amount of \$10,000 (adjusted annually for inflation).

Immigrants Who Are EXEMPT from the Proposed Public Charge Rule

- Refugees or persons granted asylum in the US
- Victims of trafficking
- Survivors of domestic violence who are VAWA petitioners, and "qualified" battered spouses or children
- U-visa applicants/holders
- Cuban, Nicaraguan, or Haitian entrants
- LPRs applying for Naturalization
- Special Immigrant Visa (SIV) holders
- Lautenberg parolees
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Proposed Rule vs. Draft Leaked Rule

The Proposed Rule does **NOT** include consideration of an immigrant's citizen child's use of public benefits.

The Draft rule proposed this, but it was taken out of the Proposed Rule.

This may be a source of fear/confusion for immigrant clients.

Timing and Application of the Public Charge Rule

- Federal Rulemaking Timeline
- Look Back Period – Draft rule is not retroactive

Reminder

The Rules Have Not Changed Yet

People will have time, once the final rule is published and we know exactly what the final rule says, to get off benefits they are worried will impact their immigration status.

Public Charge Rule and Reproductive Health

Need guidance from the State

In general:

State benefits, not monetizable or cash for income maintenance are NOT public charge benefits.

Emergency Medicaid is NOT a public charge benefit.

IMPACT OF THE LEAKED, DRAFT RULE

The Migration Policy Institute estimates that under this expanded definition, the percentage of noncitizens who could be considered public charge would increase from 3 percent to 47 percent

IMPACT OF THE LEAKED, DRAFT RULE

As the public has become more aware of both the proposed DHS policy and the increase in immigrant arrest rates, social service agencies in communities with large immigrant populations have reported a **spike in canceled appointments** and urgent requests for disenrollment in meanstested programs (Baumgaertner, 2018). **Nationwide, there was a 4% enrollment decline** in both the Supplemental Nutrition Assistance Program (SNAP, formerly known as food stamps) and the Supplemental Nutrition Program for Women, Infants, and Children (WIC) between 2016 and 2017. **In areas with large immigrant populations, SNAP and WIC enrollment declines were closer to 10%.**

Proposed Public Charge Rule

OLC AND LASO'S MESSAGING ON PUBLIC CHARGE

Public Charge Message

- **Public Charge applies narrowly, and doesn't affect everyone.**
- **Know the Facts about Public Charge, so that you can make an informed decision that is best for yourself and your family.**
- **Don't live without important benefits your family needs, like food and health care, just based on rumors or fear.**
- **The rule has not changed yet(unless you are outside the country seeking entry)**
- **Stay informed about changes to Public Charge (through PIF campaign, Causa, Latino Network)**
- **If the Public Charge rule does change, you will likely have time to act if you feel like you need to cancel benefits.**
- **You are not alone**
- **Get legal advice (Public Benefits Hotline number, Immigration Attorney lists)**

Public Charge Resources

Avoid giving legal Advice. Provide Resources.

OLC-LASO Public Benefits Hotline – 1-800-520-5292

Oregon Protecting Immigrant Families Campaign / Oregon Ready

<http://oregonimmigrationresource.org/>

Oregon Immigration Attorneys

<https://oregonimmigrationresource.org/resources/?tab=legal-help>

National Protecting Immigrant Families Campaign

<https://www.protectingimmigrantfamilies.org/resources/>