



# Proposed Rule: Inadmissibility on Public Charge Grounds

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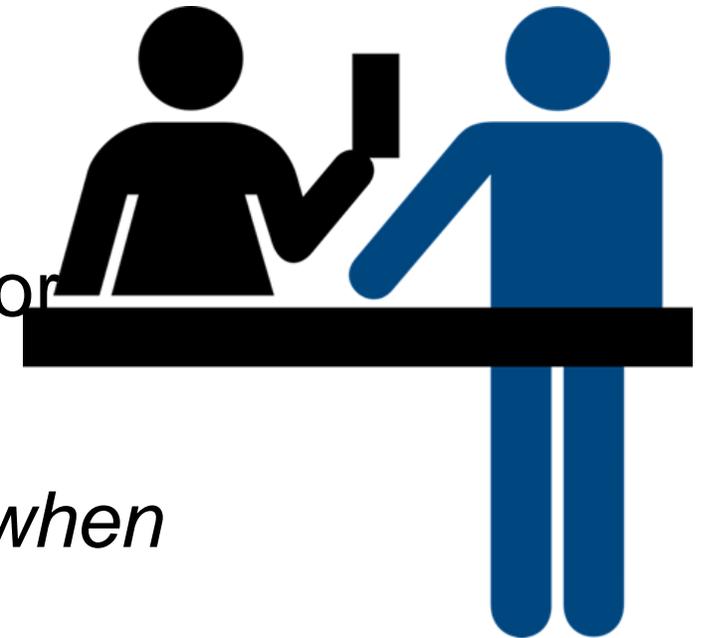
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## Background: Public Charge

“**Public Charge**” is a term used in immigration law to refer to a person who is likely to become **primarily dependent** on the government for support.

A public charge assessment is made:

- When a person **applies to enter** the U.S. or
- **Applies to adjust status** to become a Lawful Permanent Resident (LPR), *NOT when applying to become a U.S. citizen.*



+ *LPR returns to U.S. following trip outside country lasting more than 180 days.*



## Background: Public Charge

Under current policy, only two types of public benefits may be considered:

1. **Cash assistance** for income maintenance
2. **Institutionalization for long-term care** at government expense

## Public Charge Factors

Officer to look at applicant's:

- Age
- Health
- Family status
- Financial status
- Education and skills
- Affidavit of support
  - Legally enforceable contract that one signs to accept financial responsibility for another person, usually a relative, who is coming to the U.S. to live permanently



# RECENT CHANGES: FOREIGN AFFAIRS MANUAL (FAM)

Officials in consulates abroad use the Department of State's FAM to make decisions about whether to grant permission to enter the U.S.



- **NOTE:** Affects only decisions made by consular officials **abroad**



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# PUBLIC CHARGE: Proposed Changes



## Proposed NEW Definition of Public Charge

A “public charge” is an immigrant who receives one or more public benefits.



# Proposed Changes

## Public Benefit Defined As:

- Cash Assistance for income maintenance (SSI, GA, TANF)
- Long-term Institutionalization
- Non-Emergency Medicaid\*
- SNAP
- Medicare Part D Low Income Subsidy
- Housing Assistance (public housing or Section 8 housing vouchers and rental assistance)

\* Note: Exception for certain disability services offered in school, and for Medicaid benefits received by children of U.S. citizens who will be automatically eligible to become U.S. citizens

## Required Factors:

- Age (under 18 or over 61 negative)
- Health
- Family status
- Assets, resources
- Financial status (Credit Score)
- Education and Skills
- English language proficiency
- Affidavit of support



## Changes NOT Retroactive

Other than cash or long-term care at government expense, benefits used *before* rule final and effective will not be considered in the public charge determination.

## Children's Use of Benefits

- ⑩ The receipt of public benefits by U.S. citizen children will not directly be a factor in a parents' public charge test.
- ⑩ If a child is an immigrant, his/her own use of benefits counts toward his/her own public charge determination.



## Proposed Income Considerations

- New income threshold for households that hope to overcome a “public charge” test.
- Requires that the immigrant (not just the sponsor) earn at least 125 % of FPL
- Weighs as “heavily positive” a household income of 250% of FPL
  - To avoid scrutiny under the public charge test, a family of 4 would need to earn nearly \$63,000 annually.



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# WHAT HAPPENS NEXT

## How the rule will move forward

- 1 Proposed rule published in Federal Register for public inspection
- 2 Proposed rule published for public comment on Regulations.gov
- 3 60 day opportunity for Public Comment
- 4 DHS reads and considers all comments
- 5 Final rule published in the Federal Register



## Key Messages for Families

The policy on public charge decisions made within the U.S. has not yet changed.

- The federal agency must respond to comments. It will not take effect until after it becomes final, which will take additional time.
- Not all immigrants are subject to the public charge test.
- The test looks at all the person's circumstances, weighing positive factors against any negative ones.
- Get help deciding what's best for your family and, if you can, consult with an immigration attorney or a Board of Immigration Appeals–accredited representative about your own situation.

# Resources

- Get Trained** to disseminate accurate information
- [pifillinois@povertylaw.org](mailto:pifillinois@povertylaw.org)
- [www.protectingimmigrantfamilies.org](http://www.protectingimmigrantfamilies.org)

