

Public Charge: Facts and Information



we are one family under God

Agenda & Speakers

What is “Public Charge”?

- Current Standard

Overview of the Proposed Rule

- Individuals Impacted
- Benefits Considered
- Threshold Levels for Use
- Factors in the Analysis

What is the Impact?

- CST
- Family, Life, Children, Working Class, Social Services

What Can You Do?

Q&A

- Melissa Hastings, USCCB/MRS

- Michael O’Rourke, USCCB/DSD

- Lucas Swanepoel, Catholic Charities USA

- Andrew Bostjancic, Catholic Charities USA

What is “Public Charge”?

Ground of Inadmissibility & Deportability

Inadmissibility: INA 212(a)(4)

Focus - DHS rulemaking:

- <https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds>

DOJ is expected to issue a parallel rule in the future



(Photo by Drew Angerer/Getty Images)

Current Standard

Totality of the Circumstances Test:

- Age
- Health
- Family Status
- Assets, Resources, and Financial Status
- Education and Skills
- Affidavit of Support*

- 1999 INS Interim Field Guidance
- Someone who is likely to become primarily dependent on the government for subsistence, based on use of:
 - Cash Assistance
 - Temporary Assistance for Needy Families (TANF),
 - Supplemental Security Income (SSI),
 - General Assistance
- Long-term institutionalization at the government's expense.

Proposed Rule

Published in the Federal Register on Oct.
10th

- NOT a final rule – no immediate impacts
- NOT retroactive

Significantly expands public charge analysis

BUT different from version we saw leaked in
spring 2018

- Key Changes:

- Specific Benefits Considered
- Level of Use Considered
- Factors for Analysis (Heavily Weighted Factors, both positive and negative)

Individuals Impacted

Individuals:

- Applying for admission to the U.S. (both as immigrants and non-immigrants)
 - In the U.S. seeking to adjust status (i.e., get a green card)
 - In the U.S. seeking to extend or change their status.
- Several groups that are exempt or eligible for waivers, including:
 - Refugees
 - Asylees
 - Cuban Haitian Entrants
 - U visa applicants
 - T visa applicants
 - TPS applicants
 - Special Immigrant Juveniles
 - Exception for those in the U.S. Armed Forces (or their spouse/children)
 - NOT part of the naturalization application analysis

Benefits Considered

Monetizable

Cash Assistance

- Supplemental Security Income (SSI)
- Temporary Assistance for Needy Families (TANF)
- General Assistance

If a benefit is not enumerated in the rule, it will not be considered

Limitations on which immigrants are eligible to receive these benefits already

USC child's use of benefits is no longer counted against the applicant (as in leaked version)

Supplemental Nutrition Assistance Program (food stamps)

Section 8 - Housing Choice Voucher Program and Project-Based Rental Assistance

Non-Monetizable

Long-term institutionalization at government expense

Non-emergency Medicaid (with limited exceptions)

Medicare Part D

Public Housing

Threshold Levels of Use

Monetized Benefits

- 15 percent of the Federal Poverty Guidelines (FPG) within any period of 12 consecutive months
- FY 2018 = \$1,821

Non-Monetized Benefits

- Receipt of such benefits for more than 12 months in the aggregate within a 36-month period
- Receipt of two benefits in one month counts as two months

Combination of Both

- Receipt a monetizable benefit below the threshold, plus one or more non-monetizable benefits
- Use of non-monetizable benefits for longer than 9 months in the aggregate within a 36-month period

Factors in the Analysis

Heavily Weighted Factors

- Age
 - Health
 - Family status
 - Assets, Resources, Financial Status
 - Education and skills
 - Affidavit of Support*
- Negative
 - Lack of employment/employment history for non-students;
 - Currently receiving or approved for (or in last 36 months received/approved for) public benefits above the threshold;
 - Serious medical condition and individual is uninsured;
 - Previously found to be a public charge.
 - Positive
 - Resources/assets \geq 250% FPG
 - Authorized to work & Income \geq 250% FPG

Pope Francis on History of Immigration in the United States

In recent centuries, millions of people came to this land to pursue their dream of building a future in freedom. We, the people of this continent, are not fearful of foreigners, because most of us were once foreigners. I say this to you as the son of immigrants, knowing that so many of you are also descended from immigrants. . . . when the stranger in our midst appeals to us, we must not repeat the sins and the errors of the past. We must resolve now to live as nobly and as justly as possible, as we educate new generations not to turn their back on our 'neighbors' and everything around us.

Pope Francis, Address to U.S. Congress, Sept. 24, 2015.

Scope of Programs Affected

Disability and Poverty Assistance

SSI, TANF, state and local cash assistance

Health Care

Non-emergency Medicaid, Medicare Part D Low Income Subsidy, CHIP

Nutrition

SNAP (food stamps)

Housing

Section 8 housing, public housing

<http://www.usccb.org/about/domestic-social-development/index.cfm>

Common Good As Goal of Society

A society that wishes and intends to remain at the service of the human being at every level is a society that has the common good—the good of all people and of the whole person—as its primary goal.

...

The demands of the common good are dependent on the social conditions of each historical period and are strictly connected to respect for and the integral promotion of the person and his fundamental rights. These demands concern above all the commitment to peace, the organization of the State's powers, a sound juridical system, the protection of the environment, **and the provision of essential services to all, some of which are at the same time human rights: food, housing, work, education and access to culture, transportation, basic health care, the freedom of communication and expression, and the protection of religious freedom.**

Compendium, 165-166 (citations omitted).

Church on Assistance for the Poor and Persons with Disabilities

On Social Security, Medicare, and Medicaid:

“These and other successful social welfare programs are evidence of our nation’s commitment to social justice and a decent life for everyone. They also indicate that we have the capacity to design programs that are effective and provide necessary assistance to the needy in a way that respects their dignity.”

Economic Justice for All, 192.

“Persons with disabilities are fully human subjects, with rights and duties: ‘in spite of the limitation and sufferings affecting their bodies and faculties, they point up more clearly the dignity and greatness of man.’ **Since persons with disabilities are subjects with all their rights they are to be helped to participate in every dimension of family and social life at every level accessible to them and according to their possibilities.**”

Compendium, 148 (quoting *Laborem Exercens*, 22).

Church on Health Care

Health “is not a consumer good, but rather a universal right, and therefore access to healthcare services cannot be a privilege.”

Pope Francis, “Health is a universal right, and access to healthcare services cannot be a privilege, says the Pope to the members of Doctors with Africa (CUAMM),” Holy See Press Office Daily Bulletin, July 5, 2016.

Church on Nutrition

“... I hope that. . . States may be inspired by the conviction that **the right to nutrition can be guaranteed only if we care about the actual subject, that is, the person who suffers the effects of hunger and malnutrition:** the true subject!

...

“If we believe in the principle of the unity of the human family, based on the common paternity of God the Creator, and on the fraternity of human beings, **no form of political or economic pressure which exploits the availability of foodstuffs can be considered acceptable.**”

Pope Francis, Address for the Visit of the Food and Agriculture Organization of the United Nations on the Occasion of the Second International Conference on Nutrition (Nov. 20, 2014).

Church on Housing

"The Church has traditionally viewed housing, not as a commodity, but as a basic human right. This conviction is grounded in our view of the human person and the responsibility of society to protect the life and dignity of every person We believe society has the responsibility to protect these rights, and the denial of housing to so many constitutes a terrible injustice. "

Homelessness and Housing: a Human Tragedy, A Moral Challenge, 5.

"I want to be very clear. There is no social or moral justification, no justification whatsoever, for lack of housing."

Pope Francis, Visit to the Charitable Center of St Patrick Parish and Meeting with the Homeless (Sept. 24, 2015).

Charter of the Rights of the Family

Article 9

Families have the right to be able to rely on **an adequate family policy on the part of public authorities** in the juridical, economic, social and fiscal domains, without any discrimination whatsoever.

a) Families have the right to economic conditions which assure them a **standard of living appropriate to their dignity and full development**. . . .

b) Families have the right to measures in the social domain which take into account their needs, especially in the event of the premature death of one or both parents, of the abandonment of one of the spouses, of **accident**, or **sickness** or invalidity, in the case of **unemployment**, or **whenever the family has to bear extra burdens** on behalf of its members for reasons of **old age**, **physical or mental handicaps** or **the education of children**.

Charter of the Rights of the Family

Article 11

The family has **the right to decent housing**, fitting for family life and commensurate to the number of members, in a physical environment that provides the basic services for the life of the family and the community.

Article 12

The families of migrants have the right to the same protection as that accorded other families.

...

b) Emigrant workers have **the right to see their family united** as soon as possible.

Impact: Confusion

- **Rule** sets up series of “highly negative” “negative” “positive” and “highly negative” factors for weighing whether person is likely to become a public charge at any point in the future:
- **Impact**
 - Consular officials have broad discretion to determine whether person passes test
 - For example: how many positives to outweigh a heavily negative, are some positives more or less than some negatives
 - Migrants and their families will face great uncertainty as to impact of up to 15 different factors
 - Denies human dignity as rule makes a judgement on person's entire future earning ability and contribution to society

Impact: Family

- **Rule:** Establishes having “no history of employment” and “size of family” to be considered “negative” factor when weighing whether a person is likely to become a public charge at any point in the future:
- **Impact**
 - Stay at home parents would likely receive a “negative” factor in decision
 - Punishes families for having children or choosing to have larger families
 - Caring for elderly parents or family members would count toward household size making it more likely to be considered a “negative”

Impact: Life

- **Rule:** Includes receipt of “Medicaid” as a “highly negative” factor and long-term institutionalization as negative factor
- Proposes including the Children’s Health Insurance Program (CHIP) as a negative factor for the rule
- **Impact**
 - Parents and their children without health insurance likely to go without health care
 - Hospitals and general public forced to cover uncompensated care
 - Pregnant women without health insurance to face decision of paying for birth out of pocket (\$9,000 to more than \$30,000) or taking benefit and facing possible negative public charge determination
 - CHIP inclusion would mean parents have to choose to insure their children or face possible negative public charge determination

Impact: the Poor and Marginalized

- **Rule:** Receipt of most forms of cash and non cash public assistance will be considered “highly negative” factor and income below 125% of FPG a negative factor.
- **Impact**
 - Migrants from poorer regions of the world likely to be disadvantaged
 - Will hurt self-sufficiency, child health and lead to increased obesity, heart disease and diabetes* Source: <https://www.fns.usda.gov/pressrelease/2015/wh-120815>

Median Family Income of Recent Immigrant Arrivals

TABLE 3.6

Median Family Income of Recent Immigrant Arrivals

Median adjusted family income (in 2013 dollars)

	1970	1980	1990	2000	2007	2013
Mexico	\$26,700	\$27,500	\$26,100	\$30,800	\$32,000	\$31,100
Other Central/South America	\$37,600	\$33,200	\$33,000	\$37,900	\$40,800	\$37,400
Asia	\$41,600	\$39,200	\$41,600	\$51,500	\$55,400	\$46,000
Europe	\$48,900	\$47,600	\$49,800	\$53,400	\$60,000	\$66,600
Caribbean	\$36,200	\$33,300	\$36,200	\$38,700	\$38,000	\$31,100
Africa	\$37,600	\$33,300	\$41,500	\$43,000	\$36,800	\$34,800

Note: Recent arrivals refer to the foreign born who arrived within five years of the census or survey date. Based on family income in the calendar year preceding the census. Income standardized to a family size of three. For details, see <http://www.pewsocialtrends.org/2011/11/07/appendix-e-data-sources-and-methodology/>.

Source: Pew Research Center tabulations of 1970-2000 U.S. decennial census data and 2007 and 2013 American Community Survey (IPUMS)

PEW RESEARCH CENTER

Source:

http://www.pewhispanic.org/2015/09/28/modern-immigration-wave-brings-59-million-to-u-s-driving-population-growth-and-change-through-2065/ph_2015-09-28_immigration-through-2065-37/

Impact: Hurts Economic Self-Sufficiency

- **Rule:** Says “economic self sufficiency” is driving goal of the regulation
- **Impact:**
 - Rule defines “public charge” to mean anyone who uses more than 15 percent of the poverty line in public benefits—\$2.50 per person daily for a family of four. This absolute standard overlooks the extent to which the person is supporting themselves.
 - For example, a family of four making 175 percent of the poverty line, or \$43,925 annually in private income, but which received \$2.50 per day per person in government aid would be **receiving just 8.6 percent of their income from the government**, meaning that they are 91.4 percent self-sufficient. Yet the rule could still consider a member of this family a “public charge” and deport them from the United States.
 - The current DHS standard for public charge of “primarily dependent” on government—i.e. 51 percent of a person’s income or greater—appropriately considers both aspects of public charge and protects taxpayers from losing billions in tax revenue from immigrants who are largely self-reliant.
 - Source: [CATO](#)

Impact: Social Service Providers

- **Rule:** Impact of forgoing public assistance means migrants are likely to increase reliance on charitable services to supplement lack of federal support

- **Impact**

For the proposed rule, DHS estimates that the total reduction in transfer payments from the federal and state governments would be approximately \$2.27 billion annually due to disenrollment or foregone enrollment in public benefits programs by migrants who may be receiving public benefits (based on 2-7% disenrollment rate).

However, previous studies (1994-98) showed that *just for SNAP* enrollment by US Citizen children in families with noncitizen parent fell by 53% after changes to public welfare programs for fear of jeopardizing immigration status.* That would leave 2,385,000 people looking for food assistance.

Catholic Charities agencies serve approximately 1 in 9 of all people (11%) receiving food assistance in the US and spend on average \$91.47 per person for food service.** That means **an estimated \$24,000,000 per year to meet additional nutritional needs of people disenrolling.**

*Jenny Genser, Who Is Leaving the Food Stamp Program: An Analysis of Caseload Changes from 1994 to 1997 (Washington, DC: U.S. Department of Agriculture, Food and Nutrition Service, Office of Analysis, Nutrition, and Evaluation, 1999), <https://fns-prod.azureedge.net/sites/default/files/cdr.pdf>

**Catholic Charities USA 2017 Annual Survey and internal analysis

Impact: Undocumented Immigrants

- **Rule:** Rule identifies over 382,000 people in FY16 who would be subject to public charge review for inadmissibility.
- **Impact**
 - People who have received benefits out of necessity decide to avoid adjustment of status meetings for fear of denial.
 - Instead of leaving spouses, children, communities decide to become an undocumented immigrant
 - Now immigrant families who were working toward self-sufficiency with tax paying jobs forced to under the table work decreasing taxes paid

Impact: In their own words

The rule itself predicts the following possible negative consequences:

1. Worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence;
2. Increased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment;
3. Increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated;
4. Increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient;
5. Increased rates of poverty and housing instability; and
6. Reduced productivity and educational attainment.

WHAT YOU CAN DO:

Review Current Public Statements

United States Conference of Catholic Bishops: [Statement in Response to Notice of Proposed Rulemaking on Immigrants and Public Benefits](#)

Justice for Immigrants: [Statement in Response to Notice of Proposed Rulemaking on Immigrants and Public Benefits](#)

Catholic Charities USA CEO [Responds to Notice of Proposed Rulemaking on Immigrants and Public Benefits](#)

WHAT YOU CAN DO:

Next Steps

- [File Comments](#): Reminder deadline is 60 days from today
- [CCUSA: Share Your Stories](#)
- Follow us on social media for updates
 - Twitter: [@CCharitiesUSA](#), [@USCCB](#), [@USCCBJFI](#)
- Signup for Alerts
 - USCCB- [Action Center](#)
 - Justice for Immigrants- [Action Alert Signup](#)
 - Catholic Charities USA- [Washington Weekly](#)
- Join JFI's Webinar on Federal Rulemaking next Thursday, Oct. 17th
- Additional Resource: CLINIC [Webinar](#): Understanding DHS' Proposed Changes to Public Charge Definition: What you need to know.

Questions?

