



*we are one family under God*

## Service Provider and Public Policy Practitioner Comment Guide: An Overview of USCCB and CCUSA's Comments on the Proposed Public Charge Rule

**COMMENTS ON THE PROPOSED RULE ARE DUE BY DECEMBER 10<sup>th</sup>.**

### **BACKGROUND INFORMATION**

#### How Can I File Comments?

You can submit comments in one of two ways: 1) *online via the Federal eRulemaking Portal* at <http://bit.ly/PublicChargecomment>; or 2) *by mail* addressed to: Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW, Washington, DC 20529-2140. If sending via mail, please reference DHS Docket No. USCIS-2010-0012 in your correspondence. Mailed submissions must be postmarked by December 10<sup>th</sup>.

#### What is the “Public Charge” Ground of Inadmissibility?

There are a number of eligibility requirements (known as grounds of inadmissibility) that the federal government considers when determining whether to admit an individual into the United States or allow an immigrant to adjust status and become a lawful permanent resident (LPR). One such factor is whether the individual is or is likely to become a “public charge.”<sup>1</sup>

For many years, the federal government’s public charge analysis focused on the likelihood of whether an immigrant would become financially dependent (likely to receive over 50% of their income or support from) on the government through: (1) the receipt of public cash assistance, or (2) long-term hospitalization, or similar care, provided at the government’s expense.

#### What Would the Proposed Public Charge Regulations Do?

The proposed rule<sup>2</sup> seeks to significantly expand the public benefits—and number of individuals—considered in the public charge analysis. The proposed list of benefits to be considered under the rule would include many new programs, including housing assistance programs, the Supplemental Nutrition Assistance Program (SNAP), Medicare Part D, and non-emergency Medicaid. The Administration is even considering adding the Children’s Health Insurance Program to this list. To learn more, please see our [backgrounder](#).<sup>3</sup>

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<sup>1</sup> 8 USC § 1182 (a)(4).

<sup>2</sup> Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51,114 (Oct. 10, 2018).

<sup>3</sup> *Public Charge Ground of Inadmissibility*, JUSTICE FOR IMMIGRANTS, <https://justiceforimmigrants.org/2016site/wp-content/uploads/2018/10/Public-Charge-Backgrounder-Final.pdf> (last visited Nov. 29, 2018).

## OVERVIEW OF USCCB/CCUSA's PUBLIC CHARGE COMMENT

### Six Key Reasons USCCB and CCUSA are Opposed to the Proposed Public Charge Rule:

1) The rule will undermine family unity and family stability. If implemented, the rule would deny many individuals a lawful means through which to reunify or remain with family in the U.S. This in turn would negatively impact not only the non-citizen applicants, but also their U.S. citizen and LPR family members. For example, it is estimated that the rule could cause nearly 200,000 couples per year to be denied their marriage-based permanent residency applications.<sup>4</sup> Additionally, many mixed-status families<sup>5</sup> would be forced to choose whether they access benefits for which they are eligible, (which could help ensure their entire family's stability), knowing that such use could eventually undermine their family unity by preventing them from adjusting status and staying in the U.S.

2) The rule will harm low-income and working-class families. Given the incredibly low thresholds proposed to define "public charge," many low-income and working-class families, including those with U.S. citizen children, will suffer from a lack of health care, nutrition, and adequate housing. The proposed rule even admits that it will increase poverty and decrease educational attainment and productivity.<sup>6</sup>

3) The rule will have a severely negative impact on the social safety net. The rule will – and is already – chilling families' willingness to access public benefits for which they are eligible. The rule projects that 2.5% of foreign-born non-citizens will be likely to forego enrollment in public benefits if implemented.<sup>7</sup> This projection is grossly inadequate - the last time an effort to revise the public charge rule was undertaken in the 1990s, the rate of reduction in enrollment in public benefits was between 21 to 54 percent.<sup>8</sup> The rule's chilling effect, which has already begun to take effect, will lead to a substantial increase in demand for private social services to meet basic needs and will greatly strain the already limited resources of service providers, such as local Catholic Charities organizations, churches, and other charitable organizations. For example, if disenrollment rates in SNAP reflect the rates seen in the previous public charge reforms, it will lead to an additional 2.3 million people seeking food assistance and a projected \$24 million per year impact on Catholic Charities agencies, alone, to meet the additional nutritional needs of people.<sup>9</sup> Moreover, this anticipated impact does not include the likely cost to Catholic Charities if similar rates of disenrollment are seen in housing, health, and other social welfare programs.

4) The rule will have severe consequences for public health and are detrimental to larger families. First, the proposed rule acknowledges that it will lead to worse health outcomes, including a greater prevalence of obesity and malnutrition, increased reliance on emergency rooms for primary care, and increased prevalence of communicable diseases.<sup>10</sup> Second, the rule will disadvantage larger families as DHS proposes to consider the size of the applicant's family when determining whether that individual is likely to become a public charge.<sup>11</sup> Such a

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<sup>4</sup> *Looming Immigration Directive Could Separate Nearly 200,000 Married Couples Each Year*, BOUNDLESS (Sept. 24, 2018), <https://www.boundless.com/blog/looming-immigration-directive-separate-nearly-200000-married-couples/>.

<sup>5</sup> Families comprised of members with different immigration statuses (e.g., both U.S. citizen and noncitizen members).

<sup>6</sup> See 83 Fed. Reg. at 51,270.

<sup>7</sup> *Id.* at 51, 361.

<sup>8</sup> *Id.* (citing J. Genser, U.S. Dep't of Agriculture, *Who is Leaving the Food Stamps Program: An Analysis of Caseload Changes from 1994 to 1997* (1999), available at <https://www.fns.usda.gov/snap/who-leaving-food-stamp-program-analysis-caseload-changes-1994-1997>).

<sup>9</sup> Internal analysis based on Catholic Charities USA 2017 Annual Survey, 2,385,000 (estimated number people needing food assistance as result of the rule) x .11 (percent of people needing food assistance served by Catholic Charities) = 262,350 (additional number of people Catholic Charities will need to provide food assistance to); 262,350 x 91.47 (average cost of food assistance for a Catholic Charities client) = \$23,997,154.5).

<sup>10</sup> See 83 Fed. Reg. at 51,270.

<sup>11</sup> *Id.* 51,184.

proposal essentially punishes applicants who choose to have larger families – creating a disincentive for individuals to have children or to care for aging parents.

5) The rule proposes a definition of “public charge” and “public benefit” that is arbitrary and will make people less self-sufficient. If implemented, DHS’s proposed definition of public charge would undermine the rule’s stated goal – self-sufficiency.<sup>12</sup> The very purpose of many of the programs included in the proposed rule is to facilitate self-sufficiency. The U.S. Department of Agriculture, for example, notes that SNAP “helps participants become financially stable and provides needed support as they transition to self-sufficiency.”<sup>13</sup> Research has similarly shown that access to public benefits can increase a recipient’s long-term self-sufficiency.<sup>14</sup> Furthermore, DHS’s proposed thresholds to define “public benefit” are arbitrary and inadequate. In fact, under the proposed rule, a non-citizen parent with stable employment could be deemed a public charge if an immigration officer believes them likely to receive just \$4.98 per day in assistance.<sup>15</sup>

6) The rule proposes a public charge scheme that will create grounds to deny virtually every immigration application. A consular or DHS official will continue to engage in a “totality of the circumstances” test to determine admissibility of immigrants and nonimmigrants, however, the proposed rule sets forth an unwieldy list of weighted factors to be considered when administering the test that will cause confusion and very likely will result in arbitrary decisions. The lack of clarity as to how many “positive” factors outweigh a “negative” or “highly-negative” factor means that these officials will have, in practice, nearly unlimited discretion to deem a person a potential public charge. In fact, research shows that 94 percent of immigrant applicants would have at least one negative factor under the new test.<sup>16</sup> Additionally, the proposed rule ignores data showing that immigrants: (1) consume public benefits at a lower rate than native born Americans;<sup>17</sup> and (2) positively contribute financially to the economy in the long run.<sup>18</sup>

### What Do the Comments Request?

In light of these concerns – and others detailed in the full comments – USCCB and CCUSA strongly urge DHS to abandon the proposed rule and return to the current and longstanding interpretation of “public charge.” The comments further note that, at a bare minimum, DHS must vastly revise its proposed rule and re-engage on a new notice and comment period with the substantially revised proposed rule to avoid arbitrary and unjust results.

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<sup>12</sup> *Id.* at 51,118.

<sup>13</sup> U.S. Dep’t of Agriculture, *The Benefits of SNAP*, available at [https://fns-prod.azureedge.net/sites/default/files/SNAP\\_ComChan\\_SNAPBenefits.pdf](https://fns-prod.azureedge.net/sites/default/files/SNAP_ComChan_SNAPBenefits.pdf) (last visited Nov. 2, 2018).

<sup>14</sup> See, e.g., Danilo Trisi, *One-Third of U.S. Born Citizens Would Struggle to Meet Standard of Extreme Trump Rule for Immigrants*, CENTER ON BUDGET AND POLICY PRIORITIES (Sept. 27, 2018), <https://www.cbpp.org/blog/one-third-of-us-born-citizens-would-struggle-to-meet-standard-of-extreme-trump-rule-for>.

<sup>15</sup> The Federal Poverty Guidelines show the 2018 poverty line for a household of one being \$12,140. Thus, 15 percent of this divided by daily receipt over a year would be \$4.98 ( $\$12,140 \times .15 = \$1,821$ ;  $\$1,821 / 365 = \$4.98$ ). See *Poverty Guidelines*, DEP’T OF HEALTH AND HUMAN SERVICES, <https://aspe.hhs.gov/poverty-guidelines> (last visited Nov. 1, 2018).

<sup>16</sup> SAMANTHA ARTIGA, KAISER FAMILY FOUNDATION, ESTIMATED IMPACTS OF THE PROPOSED PUBLIC CHARGE RULE ON IMMIGRANTS AND MEDICAID (2018).

<sup>17</sup> See ALEX NOWRASTEH, ET AL., CATO INSTITUTE, IMMIGRATION AND THE WELFARE STATE: IMMIGRANT AND NATIVE USE RATES AND BENEFIT LEVELS FOR MEANS-TESTED WELFARE AND ENTITLEMENT PROGRAMS (2018).

<sup>18</sup> Giovanni Peri, *The Effect of Immigrants on U.S. Employment and Productivity*, (Federal Reserve Bank of San Francisco: Economic Letter, Aug. 30, 2010).