Trump Administration’s Proposed “Public Charge” Rule

What Housing and Homelessness Advocates Should Know

November 8, 2018
Public Charge and Housing Resources

  - “Technical” Fact Sheet
  - Basics FAQ
  - Talking Points
- Comment Template
  - Available by request
  - Email acooktha@nhlp.org
Today’s Agenda

(1) How does the proposed rule impact those relying or likely to rely on housing assistance programs?

(2) What has happened so far? Where is the proposed rule now?

(3) How does the proposed rule change existing authority?

(4) How would these changes affect immigrant families receiving or who may be eligible for housing assistance?

(5) What are the next steps for the rule?

(6) What can you do?
How does the proposed rule impact housing programs?

• The proposed rule **departs from longstanding immigration policy** by making it more likely for certain non-citizens to be deemed a “public charge” because they either receive, or are deemed likely to receive in the future, one or more specific federal housing subsidies.

• Being deemed a public charge means that a non-citizen can be **denied** admission into the U.S., an extension of stay in the U.S., or a green card.

• These potential immigration consequences mean that thousands of immigrants and their families will either **disenroll from or not apply for desperately needed housing assistance**.
## What has happened so far?

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>Jan 2017</td>
<td>Leaked draft Executive Order re: public charge</td>
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<tr>
<td>Jan 2018</td>
<td>Changes to the U.S. State Department’s Foreign Affairs Manual (FAM) re: public charge determinations</td>
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<tr>
<td>Feb 8, 2018</td>
<td>First leaked draft of proposed public charge rule by DHS</td>
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<tr>
<td>Mar 28, 2018</td>
<td>Second leaked draft of proposed public charge rule by DHS</td>
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<tr>
<td>Sept 22, 2018</td>
<td>Final “unofficial” draft of proposed rule published on DHS website</td>
</tr>
<tr>
<td>Oct 10, 2018</td>
<td>Proposed rule officially published in Federal Register</td>
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What is a “public charge”?

• Origins of the public charge law

• Immigration officials can deem a person inadmissible to the U.S. or deny an application for a green card (lawful permanent residence) because the person is likely to become a public charge.
Currently, public charge is defined as:

A person who is primarily dependent on the government for subsistence, as shown by either:

(i) the receipt of **public cash assistance**

or

(ii) institutionalization for long-term care at the government’s expense
Who is subject to the public charge determination?

Currently, noncitizens seeking

(1) Admission into the U.S. or

(2) Adjustment of status to LPR

Under the proposed draft, a similar test would be applied to non-immigrants seeking to extend or change their status.
Who cannot be considered a public charge?

- The following categories of non-citizens are not subject to a public charge determination:
  - Lawful permanent residents applying for U.S. citizenship
  - Refugees and asylees
  - VAWA self-petitioners, survivors of domestic violence, trafficking, or other serious crimes
  - Special immigrant juveniles
  - Certain parolees
  - Several other categories of non-citizens
What is considered in public charge determinations?

- “Totality of the circumstances”—Immigration officials review these factors:
  - Age
  - Health
  - Family status
  - Assets, resources, financial status
  - Education and skills
  - Affidavit of support

- Is housing assistance considered?
  - DHS’s current public charge determination does NOT consider non-cash benefits (other than long-term care). Housing assistance is not considered.
Proposed changes to “public charge” definition

Current definition – Person who is *primarily dependent* on the government for subsistence, as shown by either (i) the receipt of *public cash assistance* or (ii) institutionalization for long-term care at the government’s expense

Under the proposed rule, a “public charge” would be any applicant who *uses or receives, or is likely to use or receive, one or more “public benefit(s)”*
What would be a “public benefit”?

• DHS has proposed an exclusive list of federal public benefits that would be considered.

• **Housing assistance** listed in proposed rule:
  o Public Housing
  o Section 8 Housing Choice Voucher Program
  o Project-based Section 8 Rental Assistance

• Homeless assistance is not explicitly included, except for Section 8 Moderate Rehabilitation
What other assistance would be a “public benefit”?

Cash Benefits that would continue to be considered:
- SSI
- TANF
- Federal, State, local, or tribal cash benefit programs for income maintenance

Monetized Non-Cash Benefits considered:
- SNAP (formerly Food Stamps)
- Section 8 Housing Choice Voucher Program
- Section 8 Project-Based Rental Assistance

Non-Monetized Non-Cash Benefits considered:
- Medicaid (with limited exceptions)
- Any benefit for long-term institutionalized care at government expense
- Premium and Cost Sharing Subsidies for Medicare Part D
- Public Housing
### How would the rule affect housing assistance?

<table>
<thead>
<tr>
<th>Amount or Time Used Threshold</th>
<th>Calculating Monetized Benefits</th>
<th>Calculating Non-Monetized Benefits</th>
<th>Calculating Combined Use of Monetized and Non-Monetized Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cumulative value of Monetized Benefits that exceeds 15% of FPG for an individual.</td>
<td>Receipt of 12 months’ assistance within a 36-month period</td>
<td>Cumulative value of Monetized benefits at or below 15% of FPG</td>
</tr>
<tr>
<td></td>
<td>$1,821 in 2018</td>
<td>Multiple non-monetized benefits received in one month are counted as multiple months</td>
<td>Essentially any amount will count</td>
</tr>
<tr>
<td>Period of Time Considered</td>
<td>Within any period of 12 consecutive months</td>
<td>Within a 36-month period</td>
<td>Receipt of 9 months’ assistance</td>
</tr>
<tr>
<td></td>
<td>Monetized: within any 12 consecutive months</td>
<td>Non-Monetized: within a 36-month period</td>
<td></td>
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</table>
What if dependents receive assistance?

• The proposed rule does **NOT** consider whether an applicant’s **dependents, including children**, have sought, received or used public benefits.

• Dependents can still be harmed by the rule.
Who would be eligible for public housing and Section 8 and subject to the public charge test?

<table>
<thead>
<tr>
<th>Immigrants Eligible for Public Housing and Section 8 Programs</th>
<th>Subject to the Public Charge Test?</th>
</tr>
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<tbody>
<tr>
<td>Parolees.</td>
<td>Yes (with some exceptions) – public charge rule applies when seeking change of status</td>
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<tr>
<td>Granted withholding of Removal.</td>
<td>Yes – public charge rule applies when seeking change of status.</td>
</tr>
<tr>
<td>Immigrants admitted for temporary residence under section 245A of the Immigration and Nationality Act [8 USCS § 1255a].</td>
<td>Yes – public charge rule applies when seeking change of status.</td>
</tr>
</tbody>
</table>
What are “heavily weighed” factors?

• The proposed rule lists certain factors as “heavily weighed” negative or positive factors.

• DHS states that this is **NOT** an exhaustive list
What are “heavily weighed” negative factors?

- Heavily weighed **negative factors** include:
  - Being found to have a medical condition that is likely to require extensive medical treatment or institutionalization, if the applicant is uninsured and has no prospect of either getting insurance or being able to pay.
  - Inability to demonstrate current employment, recent employment history, or no reasonable prospect of future employment
  - Receiving or being approved to receive any covered public benefit within the 36 months preceding an immigrant’s application
  - The applicant was previously found inadmissible or deportable on public charge grounds
What are “heavily weighed” positive factors?

- ONLY heavily weighed **positive factor**:
  - Household has financial assets, resources, and support of at least 250% of the FPG based on the applicant’s household size (In 2018 - $62,750 for a family of four)
  - The applicant is authorized to work and is currently employed with an income at least 250% of FPG based on the applicant’s household size.
What other factors would the rule look at?

- **Age**
  - 18-61 considered “working age”

- **Health**
  - Medical conditions affecting ability to work, go to school or take care of oneself, or requiring extensive treatment, if uninsured or lack access to private health insurance

- **Assets and resources**
  - Income, cash assets, non-cash assets that can be converted into cash within 12 months (real estate holdings = net cash value minus the sum of all loans on the home)

- **Education and skills**
  - Ability to maintain full-time employment, ability to speak English, educational levels

- **Financial status**
  - Having assets, resources and support, including employment, at above 250% of the Federal Poverty Level.
  - Use or receipt of public benefits, support to any dependents, size of family, credit reports & scores, government-subsidized health insurance
The proposed rule states that DHS will consider an applicant’s non-cash assets that can be converted into cash within 12 months.

Non-cash assets include homes—however, the rule will reduce the net value of an applicant’s home by subtracting the sum of all loans and liens on the home.

This bare net equity calculation is unfair and will undervalue homes:
- It fails to take into account the prospective value of homeownership.
- It ignores the well-documented correlation between homeownership and future financial self-sufficiency.
Other proposed changes

Public Bond

• DHS proposes to allow some people who are deemed likely to become a public charge to submit a bond to overcome this barrier. This generally would not be available for people who have used a benefit within the past 36 months – or who have other “heavily negative” factors.

• Minimum bond would be set at $10,000 – which would be breached if a person uses a listed public benefit.
Proposed rule not retroactive

• The rule would be **prospective-looking** and would NOT apply retroactively.

• The rule would not consider any newly listed benefits used prior to the effective date (60 days after a final rule has been published).

• Although the benefits test includes a 36-month look-back period, this time period will not begin to toll until 60 days after the final rule has been published.
Hypothetical #1

• Facts:
  o Mr. Smith, along with his two school-aged children, was paroled into the U.S. under section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)).
  o All Smith family members are eligible to receive federal housing assistance under current immigration restrictions. For the last year and a half, the Smith family has been receiving $1,200 per month under the Section 8 Housing Choice Voucher program.
  o Mr. Smith recently married a U.S. Citizen and is applying to change his status to that of a Lawful Permanent Resident through a family-based visa petition.

• Questions:
  o Is Mr. Smith exempted from the public charge rule?
  o How much of the housing benefit is attributable to Mr. Smith?
  o Does Mr. Smith’s benefits use qualify him as a public charge?
Hypothetical #1

• Answer:
  o To determine the amount attributable to Mr. Smith, USCIS would divide the total voucher subsidy by the number of eligible household members:
    ▪ $1,200 a month/ 3 eligible household members = $400 a month attributable to Mr. Smith.
    ▪ The remaining $800 per month of the voucher subsidy would not be held against Mr. Smith in his public charge determination.

  o After determining the amount of the benefit attributable to Mr. Smith, USCIS will look to see if Mr. Smith has received monetizable benefits over a period of 12 months that exceed 15% of the FPG (currently $1,821):
    ▪ Mr. Smith receives $400 a month from a monetizable benefit (Section 8 voucher), over a period of 12 months.

  o $400 a month x 12 consecutive months equals $4,800, which exceeds $1,821 (15% of FPG for household of one in 2018)
Hypothetical #2

• Facts:
  o Mr. Hitchens lives with his infant son, Bertrand.
  o Mr. Hitchens moved to the U.S. on a student visa with his wife who shortly thereafter gave birth to Bertrand. Unfortunately, Mrs. Hitchens died as a result of complications arising from Bertrand’s birth.
  o Because Bertrand is a U.S. citizen, his family can move into public housing, which they live in for 9 months while Mr. Hitchens finished his studies. The child also receives $100 a month from SNAP.
  o Mr. Hitchens finished his graduate program and applies to adjust to a Lawful Permanent Resident through a family-based petition.

• Questions:
  o Is Mr. Hitchens exempt from the public charge rule?
  o How much of the housing benefit is attributable to Mr. Hitchens?
  o Does Mr. Hitchens family’s benefits use make him a public charge?
How would this rule impact immigrant families?

• The rule would force immigrants to choose between receiving critical services and getting immigration status.

• The rule would harm immigrants and their dependents, including U.S. citizens, who live together and force more mixed-status families into homelessness.

• The rule would deter eligible families from receiving or seeking housing assistance.

• Chilling access to critical services would undermine the goal of self-sufficiency. People are more likely to give up any support if any counts in public charge test.

• The rule would exacerbate child poverty and homelessness.
Public opposition against the rule

- Federal, state and local officials
- Faith-based groups
- Public health groups
- National, state, and local advocacy groups
Rulemaking Process:
OMB Review → NPRM → Notice & Comment → Final Rule

The Reg Map
Informal Rulemaking

Step One:
Initiating Events
- Agency Initiatives
- Administrative Procedure Act Provisions
- Required Reviews
- Statutory Mandates
- Recommendations from Other Agencies/States/Federal Advisory Committees
- Lawsuits
- Petitions

Step Two:
Preparation of Proposed Rule
- Determination Whether a Rule Is Needed
- OMB Review

Step Three:
Publication of Proposed Rule
- NPRM
- Notice & Comment

Step Four:
Final Rule
- OMB Review Under Executive Order 12866
- Final Rule

Step Five:
Public Comments
- Administrative Procedure Act Provisions
- Special Types of Final Rules

Step Six:
Preparation of Final Rule, Interim Final Rule, or Direct Final Rule
- OMB Review Under Executive Order 12866

Step Seven:
Publication of Final Rule, Interim Final Rule, or Direct Final Rule
- OMB Review Under Executive Order 12866

Step Eight:
Publication of Final Rule, Interim Final Rule, or Direct Final Rule
- OMB Review Under Executive Order 12866

Step Nine:
Publication of Final Rule, Interim Final Rule, or Direct Final Rule
- OMB Review Under Executive Order 12866

Specific Analyses for Steps Three and Seven
- Regulatory Planning and Review (L.O. 12866)
- Regulatory Flexibility Act (5 U.S.C. 601-612)

What will happen next? Rulemaking procedure
Notice & Comment Period

• When: Comments are due **December 10, 2018**.

• Who: Advocates, organizations, and impacted individuals

• How: [www.regulations.gov](http://www.regulations.gov) or use PIF’s microsite at [www.protectingimmigrantfamilies.org](http://www.protectingimmigrantfamilies.org)

• Help getting started: Template for housing advocates and providers
  • Access by request – send email to acooktha@nhlp.org
Protecting Immigrant Families Comment Strategy

• Unified front with hundreds of organizations

• Campaign Goal – 100K comments submitted

• General Comment Tips
  • Do not make suggestions that will make the rule “better”
  • If using template ensure that at least 30% of the comment is original content
  • Hold back comments until after Thanksgiving
  • Comments can be submitted anonymously by a third party
What to discuss in comments?

- Details: How would your clients or tenants be harmed?
- Stories: Illustrate the impact on immigrant families?
- Policy: Why the rule is un-American and bad policy for this country?
What should I say to the public or officials?

Use a Value, Problem, Solution, Action Approach

• VALUE: We can all agree…

• PROBLEM: But today we have a problem…

• SOLUTION: The good news is…

• ACTION: That’s why we need you and as many people as possible to…
What should I say to my clients and others?

• STOP THE CHILL!

• Some immigrants are NOT subject to public charge

• Many programs are excluded.

• This is only a proposal.

• Negative and positive factors are both considered.

• Each situation is different.

• Fight back and comment!
Key Takeaways

• This is part of the larger Administration attack on immigrants and their families.

• This rule will harm individuals and communities.

• Comment!

• Educate!
Resources

• Protecting Immigrant Families website – www.protectingimmigrantfamilies.org

• NHLP & NLCHP’s public charge and housing resources
  • https://www.nhlp.org/our-initiatives/public-charge-and-housing/
    • Simple Q&As
    • “Technical” fact sheet
    • Talking points
  • Comment template – contact acooktha@nhlp.org
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