

Protecting Immigrant Families Advancing Our Future Campaign

Public Charge Finalized DHS Rule

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(Created by Seciah Aquino, DrPH @ CIPC)

Legal Aid Society of San Diego, Inc.



- Non-Profit Civil Law Firm
 - Incorporated in 1953
- 3 offices
 - Oceanside
 - Midtown/Banker's Hill
 - Main Office/Southeast San Diego
- Multiple Outreach locations:
 - FRC/Appeals offices
 - Courthouses
 - Others: homeless shelters and court, senior centers, hospitals, schools and more.
- Toll-Free Number –
 - LASSD – 1-877-534-2524
 - CCHEA – 1-877-734-3258
- Services are free!



LASSD – San Diego's Largest Non-Profit Civil Legal Service Provider

- Health: Access to Services, Eligibility/enrollment, Mental Health Patient Rights Advocacy
 - Government Benefits: CalWorks/Calfresh/Kin-Gap/Foster Care Adoptive Assistance, SSI/SSDI
 - Consumer Protection: Collection Harrassment, contract disputes, etc.
 - Housing: Tenant issues, Eviction, Public Housing, etc.
 - Family: contested custody (custodial parents), visitation issues, etc.
 - Immigration: Relative petitions, U and T visas, etc.
 - Tax: Federal taxes disputes and negotiation
 - Pro Bono: Unlawful Detainer (Eviction), TRO (civil and domestic), Conservatorship, Wills/power of attorneys, etc.
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Who can LASSD Help?

- Generally, low-income San Diegans but it varies:
 - Depends on the type of problem
 - Example: no income limits for health cases; up to 350 FPL for tax cases
 - Depends on the level of service required
 - Qualified immigrants: LPR, Asylee, Refugee, Granted Withholding of Deportation or Removal, Conditional Entrant, Agricultural Worker temp. visa or H-2A, Temporary Non-Agricultural worker or H-2B, Victims of battery, extreme cruelty, sexual assault or trafficking, T-Visas, Trafficked minors, and U-Visas.
 - Individuals without legal status in certain limited circumstances
 - When in doubt refer!
- Community Based Organizations
 - Technical Assistance and Advocacy



What is Public Charge?

What is Public Charge?

Public Charge is a test used in immigration processes and has been used since 1882. The currently proposed changes will be the first changes since 1996.

The test is used in very specific immigration decisions:

- 1. Applying for a Visa to enter the U.S.**
- 2. Applying to adjust status to become a Lawful Permanent Resident (LPR) - obtaining a green card**
- 3. A green card holder leaves the U.S. for more than 180 consecutive days (6 months) and reenters the country**

Who is currently considered a Public Charge?

Definition

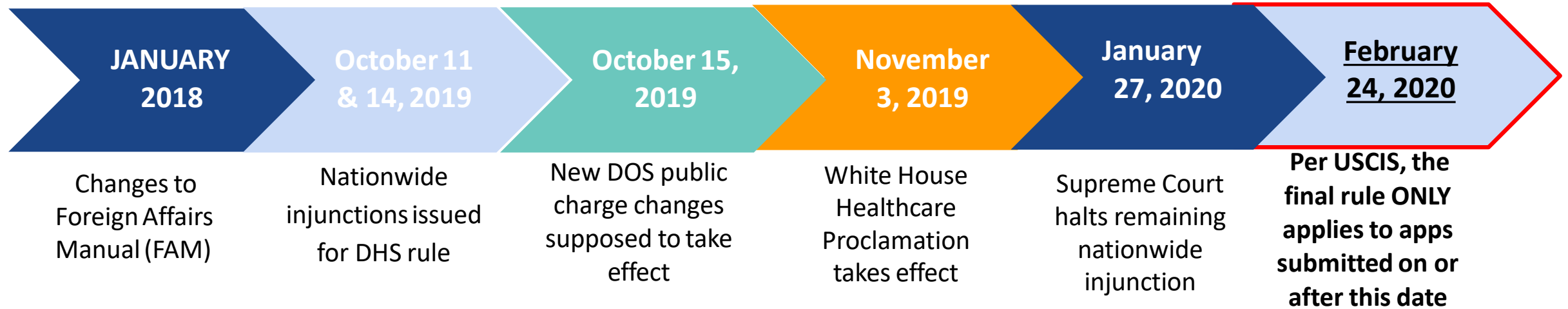
A person who is considered “likely to become primarily dependent on the government for subsistence.”

Benefits Considered

Only two types of benefits considered:

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

Public Charge: Timeline



- The DHS rule was scheduled to take effect on **October 15.**
- Nationwide Injunctions stall implementation
- Supreme Court removes last remaining nationwide injunction
- Per USCIS, final rule effective February 24, 2020

Graphic Adapted from the Protecting Immigrant Families Campaign,
www.protectingimmigrantfamilies.org

How does the public charge test change under the DHS finalized regulation?

Does this test apply to everyone?

Public charge does NOT apply to everyone in the DHS final language.

- Lawful Permanent Residents (Green card holders) applying for citizenship
- Refugees and Asylees
- VAWA self-petitioners
- Survivors of Domestic Violence, Trafficking, or other Serious Crimes
(Applicants/ recipients of U or T visa)
- Special Immigrant Juveniles
- Certain Parolees, and several other categories of non-citizens

Final Public Charge Rule: Overview

New
Definition

A dramatically
different definition
of public charge

Totality of the
Circumstances

New weighted factors of
the totality of
circumstances (TOC) test
designed to make it
harder for low and
moderate income people
to pass

Additional
Benefits

Additional public benefits
programs can be
considered by
immigration officials.

Final Public Charge Rule: Definition

PREVIOUS DEFINITION

An immigrant “likely to become primarily dependent on the government for subsistence”

FINAL DEFINITION

A person who “receives one or more public benefit... for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months).”

Totality of Circumstances Factors

Age

Income and
Financial Status

Health

Education and Skills

Family Status

Affidavit of Support





Final Public Charge Rule: TOC Test

- **Income and Financial Status**

- Under 125% FPL (negative); Over 250% FPL (heavy positive)

- **Age**

- Under 18 or over 61 (negative)

- **Education and Skills**

- **Health**

- Medical condition likely to require extensive treatment, institutionalization or interfere with ability to care for self, attend school or work

- **Family Status**

- **Affidavit of Support**

Final Public Charge Rule: Benefits

Long-standing Policy

*Cash Assistance for Income Maintenance

Long Term Institutional Care at Government Expense

Newly Finalized Rule

Supplemental Nutrition Assistance Program (CalFresh)

** Federally funded Medi-Cal (with exceptions)

Federal, State, Local and Tribal Cash Assistance

Housing Assistance (Public Housing or Section 8 Housing Vouchers and Rental Assistance)

* Included under current policy as well

** Exceptions for emergency medical conditions, & coverage of children < 21 and pregnant women.

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Public benefits NOT included

- Benefits received by immigrant's family members
- Disaster relief
- Emergency medical assistance
- Medi-Cal received while <21 or pregnant
- Extra Help or Low Income Subsidy
- Entirely state, local or tribal programs (other than cash assistance)
- CHIP
- Special Supplemental Nutrition for Women Infants and Children (WIC)
- School Breakfast and Lunch
- Energy Assistance (LIHEAP)
- Transportation vouchers or non cash transportation services
- Non-cash TANF benefits
- Federal Earned Income Tax Credit and Child Tax Credit
- Student Loans



Things to Keep in Mind:

- **The rule is not retroactive, but will be effective Feb. 24, 2020.**
 - Applies only to applications submitted **on or after this date.**
 - Newly named benefits used prior to that date will not be considered.
- **Not everyone would be subject to the rule.**
 - Many immigrants are exempt from the public charge inadmissibility ground.
 - Benefits used by family members will not be counted.
- **Positive factors can be weighed against negative factors** in this forward-looking test.
- **Every situation is different.**
 - Individuals should consult with an immigration attorney if they have questions

How can you talk to immigrant families about public charge?

Community-Facing Talking Points

- **Fight fear with facts - KNOW YOUR RIGHTS.**
 - The public charge rule was designed to be confusing, complicated, and scary on purpose. You have rights in this country no matter where you were born.
- **It's not over - we still have a chance to stop the rule.**
 - Advocates are using every tool at their disposal to stop this rule from taking effect - including in the courtroom.
- **This public charge test does not apply to every immigrant.**
 - Exempt immigrants include: refugees; asylees; survivors of trafficking, domestic violence, or other serious crimes (T or U visa applicants/holders); VAWA self-petitioners; special immigrant juveniles; and certain people paroled into the U.S. Benefits received when people are in one of these statuses will not be counted against them. And lawful permanent residents (green card-holders) are not subject to a public charge test when they apply for U.S. citizenship.

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Community-Facing Talking Points

- **Use of public benefits alone will not make you a public charge.**
- **The public charge test does not consider benefits used by family members.**
 - Benefits used by eligible family members are not counted unless the family members are also applying for a green card.
- **The rule does not consider benefits used before February 24, 2020.**
- **Your personal information is protected.**

Ultimately, health care, nutrition, and housing programs can help you and your children remain strong, productive, and stable. Every family has to make a decision for themselves based on up-to-date and individually tailored information.

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Conversations with Immigrants

Do you or your family members already have green cards?

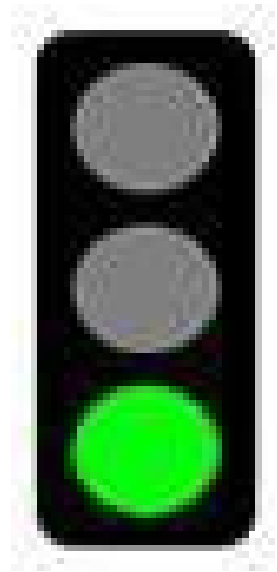
The DHS public charge test does not apply to you. However, if you plan to leave the country for more than 6 months, it is a good idea to talk with an immigration attorney.

*The public charge test is not part of a US Citizenship application.

Do you have or have applied for one of the following statuses?

- U.S. Citizenship • U or T Visa
- Green card renewal • Asylum or Refugee status
- DACA renewal • Special Immigrant Juvenile Status
- TPS

The public charge test does not apply to the categories listed here. If you already have or are in the process of applying for one of these immigration statuses, you can continue to use any government programs that you qualify for.



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Conversations with Immigrants

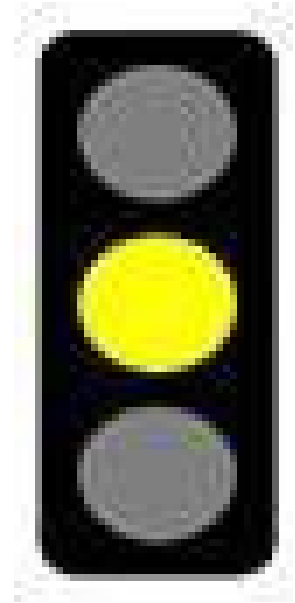
Does your family plan to apply for a green card or visa from inside the United States?

If you aren't sure whether or not this policy applies to you, we recommend that you seek advice from an attorney who understands the new changes. **If you are not subject to the public charge test, we recommend that you continue to get the assistance that you and your family needs.**

Does your family plan to apply for a green card or visa from outside the United States?

U.S. consular offices abroad use different rules in making this decision. You should talk with an expert for advice on your case before making any decisions.

For free or low-cost options near you, go to: www.immigrationadvocates.org/nonprofit/legaldirectory



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MULTIPLE ATTACKS

1. Foreign Affairs Manual (Implemented - Jan 2018) - Changes to way PC rules applied outside country in consulates.
2. DHS Finalization (Finalized- August 2019) - Changes to way PC rules applied inside country.
3. DOJ “Pre-NPRM” (Pending, currently at OMB) - Changes to how PC considered in deportation.
4. HUD NPRM (Pending, Comment period closed May 2019) - Not Public Charge directly, but could result in eviction of more than 25k mixed status families.
5. Trump’s Healthcare Proclamation - Supposed to take effect 11/3/19; injunction stopped for now. Requires coverage w/in 30 days of consular entry



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