

Protecting Immigrant Families

*Working Together to Fight the
Administration's Proposed*

Public Charge Rule Changes

October 1, 2018



COALITION ON HUMAN NEEDS



Presented on behalf of: Protecting Immigrant Families

A project of:



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Deborah Weinstein, Moderator

Deborah Weinstein has been executive director of the Coalition on Human Needs since 2003. Before that she was director of the Family Income Division at the Children's Defense Fund. At CDF she worked on policy strategies to lift children and their families out of poverty, including Temporary Assistance for Needy Families (TANF), child support, jobs and wages, housing, nutrition, unemployment insurance, and equitable tax policy.



Elizabeth Lower-Basch

Elizabeth Lower-Basch is director of CLASP's income and work supports team. Her expertise includes federal and state welfare (TANF) policy, other supports for low-income working families (such as refundable tax credits), systems integration, and job quality. She worked for 10 years at U.S. HHS, and has a master of public policy from Harvard University's Kennedy School of Government.



Jackie Vimo

Jackie Vimo is currently an Economic Justice Policy Analyst for the National Immigration Law Center (NILC), a national organization that engages in policy analysis, litigation, education, and advocacy to defend and advance the rights and opportunities of low-income immigrants and their families. Jackie has been working for almost two decades on a broad range of public policy issues in California, New York, and Argentina, where her family is from and still lives.



Dagmara Avelar

Dagmara Avelar is the Program Manager for the New Americans Initiative and Immigrant Family Resource Program at the Illinois Coalition for Immigrant and Refugee Rights (ICIRR). As the manager of these programs, she works directly with 59 community-based organizations across the state of Illinois to address barriers to citizenship as well as language access primarily for immigrants and refugees.



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ELIZABETH LOWER-BASCH, CENTER FOR LAW AND SOCIAL POLICY

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WHAT IS PUBLIC CHARGE?

- A. A long standing provision in U.S. immigration law
- B. A proposal designed to scare immigrant families and make them less likely to apply for and receive basic needs programs.
- C. A back door attempt to tilt our immigration rules in favor of the rich.
- D. **All of the above**

KEY TAKEAWAYS

- The Administration's proposal is an affront to our values of welcoming immigrants who come to the U.S. in search of a better life.
- If implemented, it would make us a sicker, weaker, less healthy nation.
- But it's just a proposal – and we can fight it.
 - We've known that it was coming for a while, and we're prepared.
 - Hundreds of groups from the immigrant, anti-poverty, anti-hunger, health, housing, faith and other communities have come together under the Protecting Immigrant Families campaign.
 - We need you to join us.

www.protectingimmigrantfamilies.org

Protecting Immigrant Families Advancing Our Future



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RESOURCES

- If you go to our website, we have [an updated two page fact sheet](#), a [quick analysis document](#), [talking points](#) and a [social media toolkit](#) and more.
- As soon as the comment period opens, we'll have a microsite where people can submit comments and within a few weeks, we'll have template comments that organizations can customize.

BACKGROUND: PUBLIC CHARGE

A public charge assessment is made when a person

- **Applies to enter** the U.S.
- **Applies to adjust status** to become a Lawful Permanent Resident (LPR, or green card)

A public charge assessment is NOT made when applying to become a U.S. citizen.

Public charge does not apply to some categories of immigrants (such as refugees).



TOTALITY OF CIRCUMSTANCES

- By statute, officer must look at applicant's totality of circumstances. This means negative and positive factors are weighed against each other.
- The decision is forward-looking and can't be based only on what happened in the past



FACTORS IN TOTALITY OF CIRCUMSTANCES TEST

- Age
 - Health
 - Family status
 - Financial status
 - Education and skills
 - Affidavit of support
- An **affidavit of support** is a legally enforceable contract that a sponsor signs to accept financial responsibility for another person, usually a relative, who is coming to the U.S. to live permanently.
 - In practice, having a valid affidavit of support has generally been enough to overcome a public charge determination

BENEFITS: CURRENT POLICY

- Under 1999 guidance, public charge is defined as being “primarily dependent on the government for subsistence”
- Only benefits that can be considered are:
 - Cash assistance for income maintenance (e.g. TANF, SSI, general assistance)
 - Institutionalization for long-term care at government expense
- Has allowed us to give a clear message to immigrants that it’s ok to participate in other public programs.

PUBLIC CHARGE: WHAT'S HAPPENED?

- Threats have been leaked since start of Trump Administration
 - Draft executive order leaked early in 2017
 - Draft rules leaked in February and March 2018
 - Rumors created lots of fear– not all threats mentioned are in NPRM.
- Changes made to Foreign Affairs Manual in January 2018
 - Provides guidance to consular officials making decisions abroad
 - Affidavit of support is not enough on its own and use of non-cash benefits may be considered as part of “totality of circumstances”
 - See: <https://www.nilc.org/wp-content/uploads/2018/02/PIF-FAM-Summary-2018.pdf>
- Text of NPRM released on DHS website Saturday 9/22, 6.30pm EDT.

NPRM: ATTACKS ON LOW-INCOME FAMILIES

- Broadens concept of public charge to cover families combining work and public help
- Counts food, health and housing programs
- Makes it easier to penalize families under “totality of circumstances” test

NPRM: CONCEPT OF PUBLIC CHARGE

- Current definition: “primarily dependent on the Government for subsistence.”
- Proposed definition: Public charge means someone “who receives one or more public benefits, as defined in paragraph (b) of this section.”



NPRM: PROGRAMS

Adds programs that can be counted

- Supplemental Nutrition Assistance Program (SNAP)
- Non-Emergency Medicaid
- Low-Income Subsidies under Medicare Part D
- Housing choice (Section 8) vouchers and project-based subsidies, and public housing

Cash and long-term institutionalization still counted

NPRM: VAST OVERREACH



LIN 3 U.S.-BORN CITIZENS WOULD STRUGGLE TO MEET STANDARD OF EXTREME TRUMP RULE FOR IMMIGRANTS.

CENTER ON BUDGET AND POLICY PRIORITIES | CBPP.ORG

- NPRM sets low standard for threshold level of receipt, versus “primarily dependent”
- Expands to programs that supplement earnings for low-income working families
- Fundamentally not what was meant by “public charge” when concept was created

NPRM: HARM TO CHILDREN

- The receipt of public benefits by U.S. citizen children will not directly be a factor in a parents' public charge test.
If a child is an immigrant, his/her own use of benefits counts toward his/her own public charge determination.
- Still hurts children, because
 - their health and well-being is inextricably linked to their parents.
 - when adults are denied green cards, families are destabilized and sometimes separated.



NPRM: TOTALITY OF CIRCUMSTANCES

- Adds criteria and evidence for each element under “totality of circumstances” test.
- Net effect is to add lots of negative factors that can be taken into effect, very few positive factors.

Non-exhaustive list of factors

- Benefit receipt
- Health conditions and insurance
- Age (too old or too young)
- Employment status
- Income under 125 percent of FPL for size of household
- Education and English language proficiency
- Credit score
- Fee waivers for immigration benefits



NPRM: NEGATIVE FACTORS

- Heavily weighed negative factors:
 - Not a student, authorized to work, but no current/recent employment, or no “reasonable prospect” of future work
 - Current receipt of public benefits
 - Receipt of public benefits within 36 months of application
 - NOTE: Not retroactive before final rule is effective
 - Diagnosis of medical condition that is “likely to require extensive treatment” or will interfere with ability to work or support self and uninsured without the “prospect of private health insurance”.



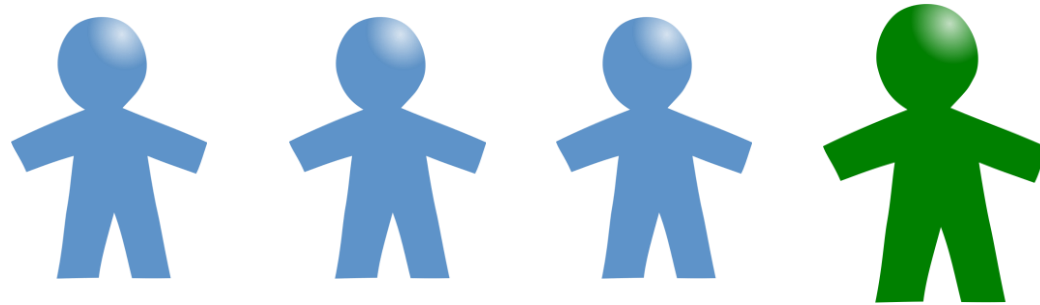
NPRM: POSITIVE FACTORS

- Heavily weighed positive factors:
 - Non-citizen is currently employed with an annual income of at least 250% of federal poverty level for household size:
 - For family of 4, is nearly \$63,000 in 2018
 - Note: Median household income in U.S. was \$61,400 in 2017
 - Household assets of at least 250% of FPL
- No statutory basis for this threshold.



IMPACT

- **1 in 4 children** have an immigrant parent



- As many as **26 million** people in families with non-citizens who make less than 250% of the Federal Poverty Line (FPL) or **\$62,750 for a family of 4**, might be chilled from participating in programs that make their families healthier and stronger.

NPRM: AFFIDAVIT OF SUPPORT

- Affidavit of support is a positive factor, but not “heavily weighed” or “outcome determinative”
- DHS will assess what weight to give to affidavit based on:
 - Sponsor’s income, assets, resources and financial status
 - Relationship to applicant and whether living together
 - Potential for scrutiny of sponsors or joint sponsors, interviews
- Lack of AOS will result in denial based on public charge



EXAMPLES

Clara came from Nicaragua to visit cousins in the U.S. when she was 16. Soon after arriving, Hurricane Mitch ravaged her hometown. She stayed in the U.S. because she had nowhere safe to return, and in 2001, she was granted Temporary Protected Status (TPS). Clara works as a hotel housekeeper. In November 2017, the government announced they would be ending TPS for Nicaraguans. Clara and her partner of many years decided to get married. Clara is pregnant and is enrolled in Medicaid because she lives in Ohio, a state that provides health coverage to lawfully residing pregnant women. Clara's husband is a citizen and wants to sponsor Clara for a green card before her TPS expires in January 2019, but is scared of what that means for her access to health care during her pregnancy.

Examples

Sasha is a 35-year-old woman from Russia who recently escaped a physically and verbally abusive relationship from her husband who was a green card holder. Sasha has self-petitioned for a green card under the Violence Against Women Act (VAWA). She received a prima facie determination that her case will be approved but knows that the process to obtain a green card through VAWA can take several years. Because Sasha does not speak English very well and is suffering from severe emotional distress, she has not been able to find steady work. She recently applied for and began receiving SNAP and Medicaid to help her get back on her feet. Sasha's U.S. Citizen brother petitioned for Sasha's green card back in in 2005. Because of limits to family-based immigration, Sasha has been on the waitlist for 13 years and just found out that she is eligible to adjust status through her brother's petition. Sasha is relieved that she has the option to become a green card holder sooner than she expected.

KEY PUBLIC MESSAGES

Message Must Haves:

- **Start with a shared value:** How you live your life and contribute to your community should define you in this country, not how you look or how much money you have.
- **Explain how Trump's proposed regulation is an affront to those values.** This regulation puts the wealthy ahead of families who've waited years to be reunited.
- **Call for people to speak out and fight back.** People can share their stories and spread the word. And when the time comes, people should send a comment!

Talking Points on Narrowed Rule

- If finalized this regulation would be a significant and **harmful departure from the current policy**
- **Not helpful to compare the latest rule to the March leaked draft.** This allows the Trump Administration to move the goal posts – normalizing terrible proposals by comparing them with even more terrible ones
- Parent and child well-being health are inextricably linked. Parents who report they are in good health are more likely to have children who are in good health. **There is no way to target individual immigrants without hurting children, families, and communities. Hurting parents hurts children. Hurting families hurts communities.**

FIGHTING THE CHILLING EFFECT

- Even before the rule is released, we're already hearing stories of people missing doctors' appointments or withdrawing their children from WIC because of fear.
- Important to make sure people understand key points:
 - Many groups of immigrants are not subject to a public charge determination
 - Receipt of benefits that are newly countable prior to the final rule being published and effective will not be held against people.
 - Only the individual's use of benefits will directly be taken into account, not receipt by family members.
 - Only use of listed programs counts, not other programs (e.g. not WIC, Head Start, Pell grants, school lunches, meals on wheels).

MESSAGING TO FAMILIES

- The rules for immigrants who apply for a green card in the U.S. (who are not processed abroad) **have not changed**. Receipt of non-cash public benefits for which you are eligible currently are not considered when you obtain a green card in the U.S.
- Public charge test considers **totality of the circumstances**.
 - Families need to make *individual determinations*
 - May want to consult lawyer or BIA-accredited representative
 - Using health care and nutrition benefits can help you be stronger and healthier
- For **individuals currently receiving public assistance**, there may be **no advantage to terminating benefits at this time**
- You are not alone, and there is still time to fight back.



PROPOSED RULE: TIMELINE

1

March 2018 → Draft rule went to Office of Management and Budget

2

Sept 22 → Draft rule posted on Dept. of Homeland Security website

3

Any day → Proposed rule (NPRM) published in Federal Register

4

Opportunity for Public Comment (60 days likely)

5

DHS reads comments and responds to them in final rule

6

Effective date of final rule (at least 60 days after published)

The Public Comment Period

Help us reach our goal of 100,000 comments!

- **Who can comment?**
 - Anyone!
 - Individuals, organizations, community providers
 - Elected officials, including members of Congress
- **How to comment?**
 - Submit comment on [Regulations.gov](https://www.regulations.gov).
 - Through PIF comment and other sites -- stay tuned!
- **What to say?**
 - **Templates available soon**
 - [Comment FAQ document](#)
- **When to comment?**
 - Comments must be submitted during the 60-day window



STRATEGIES TO RESPOND

- **SUBMIT** public comments in opposition
 - Organizational comments
 - Individual comments
- **EDUCATE** immigrant families to fight the chilling effect
- **TALK TO** policymakers to urge them to oppose the changes
- **DOCUMENT** the harm and identify individuals/families who may be willing to share their story publicly

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PIF CAMPAIGN

- Over 1100 organizations from 46 states signed on to statement of opposition to rule within 2 days after it was posted.
- Over 200 organizations have joined as Active Members
- Sector-based strategy of developing template comments focused on the issues that matter to you most
 - Detailed comments for both slowing DHS' review process and creating the administrative record for future litigation
 - Need both quality and quantity of comments.
- State-based coalitions

WHAT YOU CAN DO NOW

1. **Join Us!** www.protectingimmigrantfamilies.org/takeaction
2. **Share your story** at <http://bit.ly/PIFstory>
3. **Speak up on social media** using #ProtectFamilies
4. **Sign on to our opposition statement** at bit.ly/PublicChargeRuleSignOn
5. **Prepare to FIGHT BACK and COMMENT!**

WHAT YOU CAN DO: AFTER NPRM IS PUBLISHED

! LUCHEMOS POR NUESTROS BENEFICIOS PÚBLICOS!

¿QUÉ ES LA CARGA PÚBLICA?
ES UNA REGLA FEDERAL CONTRA UN INMIGRANTE QUE RECIBE ASISTENCIA EN EFECTIVO DEL GOBIERNO PARA SUS NIÑOS Y QUE AL MOMENTO DE SOLICITAR LA RESIDENCIA PERMANENTE, PUEDE SER RECHAZADO

¿QUÉ PUEDE CAMBIAR?
LOS BENEFICIOS QUE PUEDEN SER CONSIDERADOS CARGA PÚBLICA AHORA SON:
• EL SUBSIDIO PARA PAGAR EL SEGURO MEDICO
• EL MEDICAID
• LAS ESTAMPILLAS PARA COMIDA
• REMBOLSO POR DEPENDIENTES (TAXES)
• EL WIC
Y otros

¿A QUIÉN PODRÍA AFECTAR?
A CUALQUIER FAMILIA INMIGRANTE QUE RECIBE BENEFICIOS PÚBLICOS Y QUE AL SOLICITAR LA RESIDENCIA PERMANENTE O PEDIR A UN FAMILIAR, PUEDE SER RECHAZADO

¿CÓMO PARAMOS ESTE CAMBIO?
• INFORMESE
• HABLE CON SU FAMILIA
• COMPARTA SU HISTORIA CON CASA
• SUS HISTORIAS AYUDARAN A VENCER ESTA INJUSTICIA
Comentario Oficial

¿QUIERE PARTICIPAR?

VENGA A CASA EN SILVER SPRING
734 UNIVERSITY BLVD. EAST

- COMMENT!
- Adapt template comments for your state or focus area
- Community Education
 - Develop & share resources w/ partners
 - Engage Newspaper, Radio & TV Media
 - Hold community meetings
 - Use social media
 - #ProtectFamilies

Protecting Immigrant Families – Illinois

Illinois Context



- Illinois is home to 1.76 million immigrants
- Illinois has the fifth largest number of immigrants in benefits-receiving families in the U.S. (only California, New York, Texas and Florida are home to more)

AllKids- State Funded Medical Care for Children – Includes undocumented

How is Illinois Fighting Back

- PIF- IL: Multi-sector Leadership
 - Policy, Health and Human Services, Legal and Immigrant Rights Organizations
- Sub-committees
 - Advocacy and Policy
 - Communications
 - Outreach
- Sector Leads
 - Adapt national comment templates with Illinois data
 - Reach out to organizations and individuals in their sector to sign up to submit comments

How is Illinois Fighting Back

- Rapid Response Plan
 - 24-48-72 hour plan
 - List-serve communications
 - Press Conference
 - Social Media Tool Kit
 - E-Townhall

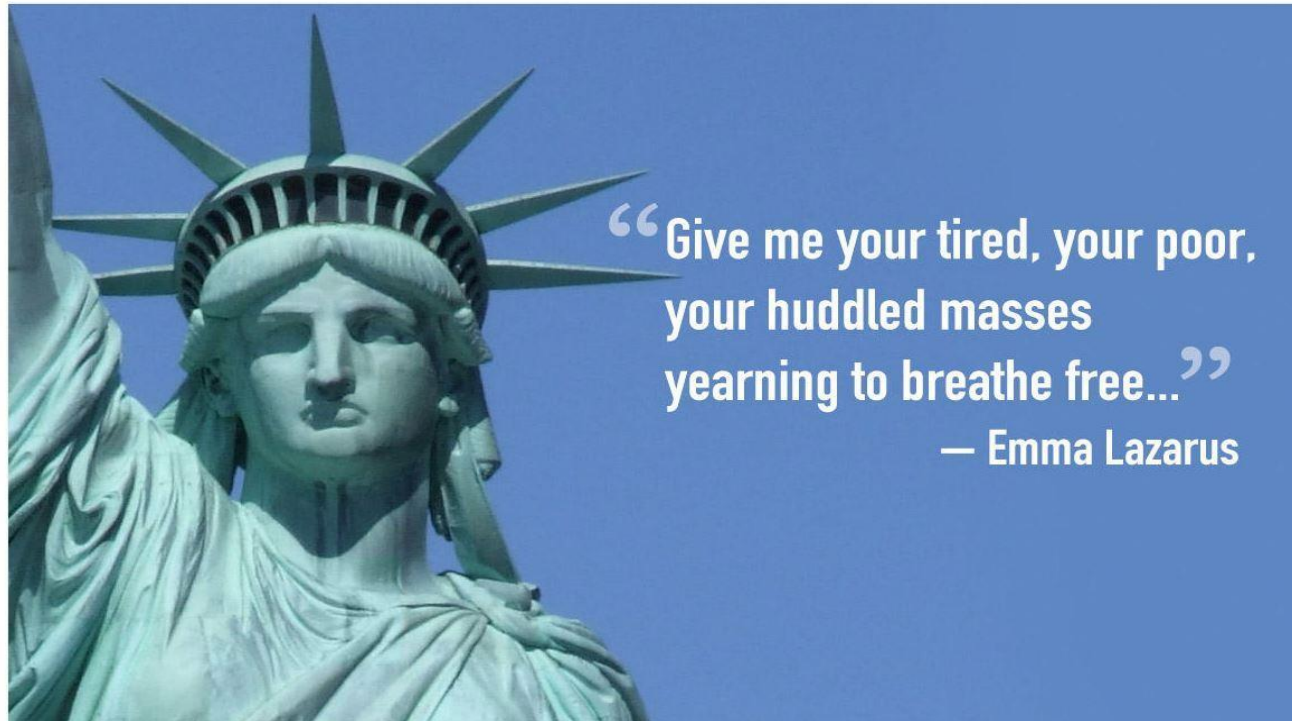


TIP: Create a “tick-tock” plan with roles. Roles need to be designated a single owner.

How is Illinois Fighting Back

- Long Term Planning
 - Training for Providers
 - Information Sessions for directly impacted individuals
- Education for Other Stakeholders
 - Legislator Briefing
 - Media Roundtable
 - Editorial Boards





***Protecting Immigrant Families-
Illinois***

Email us at:

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Questions??

