

## The Proposed Public Charge Rule & Young Children

On October 9, a Notice of Proposed Rulemaking (NPRM) by the U.S. Department of Homeland Security (DHS) was published in the Federal Register, outlining the administration’s intent to dramatically change the meaning and application of “public charge” provisions in immigration law.

This proposal could harm the health and wellbeing of millions of people and is of great concern for young children’s development and the early childhood field. One in four young children has at least one immigrant parent. This proposal could put the health, nutrition, and long-term development at risk for millions of children. That’s why it’s critical for policymakers, advocates, service providers, and the early childhood workforce to understand the content and implications of the proposed rule so they can communicate information clearly to their staff, community members, and immigrant families.

This Q&A provides an overview of the proposed public charge provisions and other important information specifically for the early childhood community.

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## 1. What is “public charge” and how would it change under the proposed rule?

The “public charge” test is a longstanding provision in immigration law designed to identify people who may depend on government benefits as their main source of support in the future. If the government determines someone is likely to become a “public charge,” it can deny them admission to the U.S. or refuse their application for lawful permanent residency (a green card). When evaluating whether an individual is likely to become a public charge, immigration officials must consider certain factors: age; health; family status; assets, resources, and financial status; and education and skills. Officials are required to consider the “totality of the circumstances,” meaning that no single factor alone can make an immigrant likely to become a public charge.

Under the current policy, the only benefits considered in determining who is likely to become a public charge are:

- Cash assistance such as Supplemental Security Income (SSI) and Temporary Assistance for Needy Families (TANF); and
- Government-funded long-term care.

The proposed rule would expansively redefine what being a “public charge” means. The rule would change the definition of public charge from a person who is *primarily dependent* on government assistance as his or her main source of support, to a person who *uses one or more public benefits*. It would also allow the government to consider a much broader range of government programs and services in a public charge determination, including those that help families meet their basic needs for food, shelter, and medical care.

## 2. What benefits are included and excluded in the proposed rule?

<i>Included</i>	<i>Excluded</i>
<p><b>Under the proposed rule, immigration agents could weigh current or past receipt of one or more of the following public benefits in a public charge determination (*indicates program is included under current policy as well):</b></p> <ul style="list-style-type: none"> <li>• Cash assistance (SSI, TANF, and state or local cash benefit programs that supplement income)*</li> <li>• Government-funded long- or short-term care*</li> <li>• Supplemental Nutrition Assistance Program (SNAP or Food Stamps)</li> <li>• Housing Assistance (public housing or Section 8 Housing Vouchers and Rental Assistance)</li> </ul>	<p><b>The proposed rule states that any non-cash benefits not listed in the rule are excluded. This means the following programs are NOT relevant in public charge determinations:</b></p> <ul style="list-style-type: none"> <li>• Head Start</li> <li>• Child Care and Development Block Grant (CCDBG) and other state or federal child care assistance programs</li> <li>• Public education services, including public pre-kindergarten</li> <li>• Home visiting</li> <li>• Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)</li> <li>• School breakfast and lunch</li> <li>• Energy assistance (LIHEAP)</li> </ul>

<ul style="list-style-type: none"> <li>• Non-emergency Medicaid<sup>1</sup></li> <li>• Low-income subsidy for prescription drug costs under Medicare Part D</li> </ul> <p>DHS is also considering adding to the list of benefits. The proposed rule requests public comments on whether to include the Children’s Health Insurance Program (CHIP) in the list of benefits to be considered in a public charge determination.</p>	<ul style="list-style-type: none"> <li>• Non-cash TANF benefits</li> <li>• Federal Earned Income Tax Credit and Child Tax Credit</li> <li>• Student loans</li> </ul>
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### 3. What does it mean that this is a proposed rule?

**A proposed rule is just that—a proposal.** By law, the public is given an opportunity to comment on the proposal. The issuing agency (the Department of Homeland Security) must take public comments into consideration as it develops a final rule. Regulatory changes do not go into effect until a specified date after the final rule is issued. Once comments about the rule are submitted, the review process can take months. Some rules are never finalized.

**The public plays an extremely important role by commenting on proposed rules.** These comments can help slow the process down and shape the final rule. This is why it is critical to submit public comments that demonstrate the harm of the proposed rule. A high volume of comments also helps raise the profile of this issue to policymakers and the public and shows the importance of the issue to hundreds of thousands of people across different sectors.

### 4. Who would be affected by changes to public charge?

**The public charge test primarily affects immigrants who are *living in the U.S. legally* and applying for lawful permanent resident (LPR) status (a “green card”).**<sup>2</sup> This includes noncitizen children who are applying to adjust their status.

Public charge is **not** a factor in applying for U.S. citizenship. This is encoded into law and cannot be changed by executive or administrative actions.

Some immigrants are not subject to the public charge test. These include refugees, asylees, survivors of domestic violence, and other protected groups. These exceptions are also encoded in law and cannot be changed by executive or administrative actions.

**However, the proposed rule wouldn’t just affect individuals who are subject to the public charge test—it would also affect their families.** Children do best when their parents are healthy, when their families have enough to eat, and when their family’s income is stable. Under the proposed rule, immigrant parents may be deterred from using benefits for themselves or their families out of fear of immigration consequences. This “chilling effect” may even extend to immigrants who are not subject to a public charge test. When families are destabilized, children suffer.

## 5. Are benefits received by dependent children included in the proposed rule?

**No. Benefits directly received by dependent children—including U.S. citizen-children—would not factor into a public charge determination under the proposed rule.** Public charge determinations only include receipt of benefits by the immigrant in question. If a child is an immigrant, his or her use of benefits counts towards his or her own public charge determination.

**However, any expansion of the public charge rule will have a devastating impact on children, families and communities.** Children will be harmed under this proposal, as their health and wellbeing is inextricably linked with that of their parents. We know that children thrive in households in which every member is healthy and fed and in which incomes are stable. If a father chooses to forgo benefits through the Supplemental Nutrition Assistance Program (SNAP) out of fear that it will negatively affect his ability to obtain a green card, the entire family will have less to eat. If a pregnant mom with Temporary Protective Status (TPS) is afraid to use Medicaid during her pregnancy for fear of public charge consequences later, her child's health could be in jeopardy.

## 6. How could past benefit use impact an immigrant's public charge determination?

**The proposed rule makes it clear that use of any of the expanded list of benefits in the past and up to the effective date of a future final rule would not be considered in a public charge determination.** Using benefits now can support families' health, nutrition, and economic stability.

## 7. What would the change to public charge mean for immigrant families?

**Across the country, programs like Medicaid, SNAP, and housing assistance help millions of families meet their basic needs.** If the proposed rule is made final, immigrant families who are applying to adjust their status—or who may at a later date wish to apply for their green card—may be afraid to seek programs that help them stay strong and productive and raise children who thrive. This could have consequences for the health and wellbeing of an estimated 9.2 million children, including immigrant children and citizen children with immigrant parents.<sup>3</sup>

History shows that legislative and regulatory changes to immigration rules can have far-reaching collateral impacts, extending well beyond immigrants who are directly impacted. Based on benefit enrollment patterns in the aftermath of welfare reform during the 1990s, researchers expect immigrants' use of benefits to decline significantly if the proposed public charge rule were implemented. The Kaiser Family Foundation estimates that changes to public charge could lead to nearly a million or more citizen-children disenrolling from Medicaid and CHIP.<sup>4</sup>

**We know that families are already increasingly reluctant to enroll or maintain enrollment in publicly funded health and nutrition programs.**<sup>5</sup> In CLASP's field research, we heard about families

forgoing nutrition assistance, parents refusing health insurance for their children, pregnant women delaying prenatal care, and parents withdrawing their children from early care and education programs.

Parents worried that participating in these programs would affect their ability to obtain legal permanent residence or make them identifiable to immigration agents. The proposed rule is likely to exacerbate these persistent fears. It's possible that programs *not* included in the public charge rule will still see declines in use as a result of a chilling effect.

**Ensuring that eligible families can use services that meet their nutrition, health care, and other essential needs keeps children learning, parents working, families strong, and allows all of us to contribute fully to our communities.** Decades of research show the positive impact of participating in such programs on the long-term health and wellbeing of children in households with low incomes.<sup>6</sup> For example, as a household benefit, SNAP promotes food security and good mental and physical health for parents and children alike.<sup>7</sup> Similarly, health insurance coverage is associated with better health outcomes for children, but children also benefit indirectly when their parents are covered. Good health is necessary for parents to be effective caregivers and provide for their families financially.<sup>8</sup> When parents are insured, the entire family is more likely to have insurance coverage and to receive necessary health care services.<sup>9</sup> Moreover, parents' insurance coverage reduces the cost burden of medical care, thereby promoting families' economic security and parents' psychological wellbeing.<sup>10</sup>

In the draft rule, DHS itself acknowledges that implementing the rule as proposed could cause otherwise eligible immigrants to disenroll in programs, which could then lead to:

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

## 8. What would the change to public charge mean for early care and education providers?

**Changes to public charge do not change immigrants' eligibility for public benefits or child care and early education programs.** Early childhood programs should continue to follow existing rules and restrictions regarding asking questions and collecting data related to a child's or parent's immigration status. The rules governing public charge cannot change unless a final rule is issued. The public charge determination process happens on an individual basis at the time when immigrants or their family members are applying to enter the U.S. or adjust their status.

## 9. Why is it important for early childhood policymakers, advocates, and providers to understand public charge?

**Children in immigrant families are a large and growing share of the U.S. young child population.** Many immigrant families rely on their early care and education providers for resources and support. Families are certain to have questions about the rule and whether it is safe for them to continue accessing public benefits.

**Early childhood policymakers, advocates, and providers must be prepared to communicate effectively about the proposed rule, both with other members of the field and with immigrant families and others in the community.** In our research, CLASP learned that families are increasingly fearful about using programs such as nutrition assistance and public health insurance for their children, and some are even reluctant to bring their children to school or child care. The publication of the proposed rule is likely to exacerbate this fear. Early childhood providers must be prepared to tell parents that participating in the program is safe.<sup>11</sup>

## 10. Does the public charge rule affect immigrant families' eligibility for public benefits?

**No. Public charge is a provision in immigration law and has no bearing on immigrant eligibility for publicly funded programs, services, or benefits.** For information on immigrant eligibility for federal early care and education programs, see [this fact sheet](#) from CLASP.<sup>12</sup>

## 11. How should I talk to immigrant families in my community about the proposed rule?

It is important to emphasize that the proposed rule is **just a proposal** right now, meaning that it has not gone into effect and the rules governing public charge determinations have not changed.

The proposed rule makes it clear that any changes under a final rule would only apply to benefits received **after the effective date of the final rule**. Non-cash benefits or services received prior to that date would not factor into future public charge determinations. Disenrolling from programs at this time may offer little or no advantage.

**Even if the rules change, immigrants applying for admission or permanent residency will still be able to show why they are not likely to become a “public charge” in the future.** Immigration officials are required to consider immigrants' “totality of circumstances”—including their age, health, financial status, educational background, and skills, in addition to public benefits receipt—when making public charge determinations. Past or current receipt of public benefits by itself cannot make someone a public charge. Families will need to make decisions based on their unique circumstances and needs. Individuals may want to get help deciding what's best for their family. They can use this online directory to search for local nonprofit organizations that provide legal help and advice: <https://www.immigrationlawhelp.org>.

For more information on how to talk to families about public charge, see [this fact sheet from the Protecting Immigrant Families \(PIF\) campaign](#).<sup>13</sup>

## 12. Why should I submit comments on the proposed rule during the public comment period?

**If the public charge rule is finalized in its current form, it would transform who we are as a nation.**

The proposal would make—and has already made—immigrant families afraid to seek programs that support their basic needs. These programs help families stay strong and productive and raise children who thrive. With about one in four children having at least one immigrant parent, this issue touches millions and is critical now and for our nation's future.

What's more, this proposed rule represents a sweeping backdoor change to our legal immigration system. It would not only limit the number of legal immigrants who are allowed to enter the country or adjust their status each year, but also make these determinations based on an individual's wealth rather than his or her potential. The administration's proposed standards would disproportionately disadvantage families with young children looking to come to the U.S. to start a better life, falling most heavily on prospective immigrants from Asia, Latin America, and Africa.<sup>14</sup>

**The public comment period is our opportunity to weigh in and fight back.** Opposition to the proposed rule must be strong because the stakes are high. It is critical to submit public comments that demonstrate the harm the proposed rule would cause. A high volume of comments also helps raise the profile of this issue to policymakers and the public and shows that this issue is important to hundreds of thousands of people across different sectors. *Unique* public comments can slow the regulatory process down, so we encourage you to customize your comments.

**Early childhood policymakers, advocates, and providers are uniquely positioned to provide public comment on the proposed rule.** You can offer your expertise in child development and draw important connections between children's wellbeing and the health, safety, and economic security of their parents. Moreover, early childhood stakeholders can lift up stories of community members who would be affected by the proposed rule, or support these families in telling their own stories if they feel empowered to do so.

For more information about the public comment period and submitting public comments, see [this fact sheet](#) from the PIF campaign.<sup>15</sup>

## 13. How do I submit comments on the proposed rule?

**CLASP and NILC are co-leading the *Protecting Immigrant Families, Advancing Our Future* campaign to fight back against threats to immigrants and their families.** In partnership with more than 200 member organizations, the campaign is educating stakeholders and helping thousands of organizations and individuals submit public comments in opposition to the proposed rule.

CLASP developed **template comments** for early childhood stakeholders. We encourage you to adopt these comments as applicable for your organization and the communities you serve. As noted above, while *unique* comments are best, please submit even if you're using a template comment.

Individuals can also submit comments through a simple comment submission tool, available at <https://protectingimmigrantfamilies.org/#take-action>.

The deadline to submit comments is December 10, 2018.

## Get in touch with CLASP

Have a question we didn't answer here? Need support submitting comments? We are here to help.

**Contact: Hannah Matthews ([hmatthews@clasp.org](mailto:hmatthews@clasp.org)) or Rebecca Ullrich ([rullrich@clasp.org](mailto:rullrich@clasp.org)).**

## Endnotes

<sup>1</sup> The proposed rule makes an exception for certain disability services that are funded by Medicaid but provided under the Individuals with Disabilities Education Act.

<sup>2</sup> Certain other categories of immigrants are also subject to public charge determinations, including those who are looking to extend or change the category of a nonimmigrant visa. For more information, see the PIF Campaign's "PROPOSED CHANGES TO PUBLIC CHARGE: ANALYSIS and FREQUENTLY ASKED QUESTIONS," last updated October 10, 2018, <https://docs.google.com/document/d/1FMcQYbV4DWPa9bPQn63oQVJkbrQxe5dRmjjVFi0lfg/edit>.

<sup>3</sup> Manatt, "Public Charge Rule – Potentially Chilled Population Data Dashboard," 2018, <https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population>.

<sup>4</sup> Kaiser Family Foundation, *Proposed Changes to "Public Charge" Policies for Immigrants: Implications for Health Coverage*, 2018, <https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/>.

<sup>5</sup> Wendy Cervantes, Rebecca Ullrich, and Hannah Matthews, *Our Children's Fear: Immigration Policy's Effects on Young Children*, CLASP, 2018, <http://www.clasp.org/ourchildrensfear>

<sup>6</sup> Maya Rossin-Slater, "Promoting Health in Early Childhood," *The Future of Children* 25 (2015); Hilary Hoynes, Diane Whitemore Schazenbach, and Douglas Almond, "Long-Run Impacts of Childhood Access to the Safety Net," *American Economic Review* 106 (2016); David Murphey, *Health Insurance Coverage Improves Child Well-Being*, Urban Institute, 2017, <https://www.childtrends.org/publications/health-insurance-coverage-improveschild-well>.

<sup>7</sup> Food Research and Action Center, *The Role of the Supplemental Nutrition Assistance Program in Improving Health and Wellbeing*, 2017, <http://frac.org/wp-content/uploads/hunger-health-role-snap-improving-health-well-being.pdf>. Caroline Ratcliffe and Signe-Mary McKernan, *How Much Does SNAP Reduce Food Insecurity?* Urban Institute, 2010, <https://www.urban.org/sites/default/files/publication/28506/412065-How-Much-Does-SNAP-Reduce-Food-Insecurity-.PDF>; Vanessa M. Oddo and James Mabli, "Association of Participation in the Supplemental Nutrition Assistance Program and Psychological Distress," *Am J Public Health* 105 (2015).

<sup>8</sup> Institute of Medicine, Committee on the Consequences of Uninsurance, "Family Well-being and Health Insurance Coverage," in *Health Insurance is a Family Matter*, National Academies Press, 2002, [www.ncbi.nlm.nih.gov/books/NBK221008/](http://www.ncbi.nlm.nih.gov/books/NBK221008/); Elisabeth Wright Burak, *Healthy Parents and Caregivers are Essential to Children's Healthy Development*, Georgetown University Health Policy Institute, Center for Children and Families, 2016, <https://ccf.georgetown.edu/2016/12/12/healthy-parents-and-caregivers-are-essential-to-childrens-healthy-development/>.

<sup>9</sup> Stacey McMorrow, Jason A. Gates, Sharon K. Long, et al., "Medicaid Expansion Increased Coverage, Improved Affordability, and Reduced Psychological Distress for Low-Income Parents," *Health Affairs* (2017); Maya Venkataramani, Craig Evan Pollack, and Eric T. Roberts, "Spillover Effects of Adult Medicaid Expansions on Children's Use of Preventive Services," *Pediatrics* 140 (2017); Michael Karpman, Jason Gates, Stacey McMorrow, et al., *Uninsurance among Parents, 1997-2014: Long-Term Trends and Recent Patterns*, Urban Institute, 2016, <https://www.urban.org/research/publication/uninsurance-among-parents-1997-2014-long-term-trends-and-recent-patterns>.

<sup>10</sup> Robin A. Cohen and Emily P. Zammitti, *Problems Paying Medical Bills Among Persons Under Age 65: Early Release of Estimates from the National Health Interview Survey, 2011-June 2016*, National Center for Health Statistics, 2016, [https://www.cdc.gov/nchs/data/nhis/earlyrelease/probs\\_paying\\_medical\\_bills\\_jan\\_2011\\_jun\\_2016.pdf](https://www.cdc.gov/nchs/data/nhis/earlyrelease/probs_paying_medical_bills_jan_2011_jun_2016.pdf); Kyle J. Caswell and Timothy A. Waidmann, "The Affordable Care Act Medicaid Expansions and Personal Finance," *Medical Care Research and Review* (2017); Stacey McMorrow, Jason A. Gates, Sharon K. Long, et al., "Medicaid Expansion Increased Coverage, Improved Affordability, and Reduced Psychological Distress for Low-Income Parents," *Health Affairs* (2017).

<sup>11</sup> Center for Law and Social Policy, *Sensitive Locations Fact Sheet*, 2018, <https://www.clasp.org/publications/fact-sheet/sensitive-locations-fact-sheet>.

<sup>12</sup> Hannah Matthews, *Immigrant Eligibility for Federal Child Care and Early Education Programs*, CLASP, 2017, <https://www.clasp.org/sites/default/files/public/resources-and-publications/publication-1/Immigrant-Eligibility-for-ECE-Programs.pdf>.

<sup>13</sup> Protecting Immigrant Families Campaign, *How to Talk about Public Charge with Immigrants and Their Families*, 2018, <https://www.nilc.org/issues/economic-support/how-to-talk-about-public-charge-pif/>.

<sup>14</sup> Jeanne Batalova, Michael Fix, and Mark Greenberg, *Through the Back Door: Remaking the Immigration System via the Expected "Public-Charge" Rule*, Migration Policy Institute, 2018, <https://www.migrationpolicy.org/news/through-back-door-remaking-immigration-system-expected-public-charge-rule>.

<sup>15</sup> Protecting Immigrant Families Campaign, *What You Need to Know about the Notice and Comment Period*, 2018, <https://docs.google.com/document/d/1o68SNvMAItY745xzqnfHq96aaHSZWLarCQ3h0-8z1E/edit>.