

To public agencies, community-based organizations and service providers who serve immigrants and refugees:

April 4, 2018



Dear friends,

By now, you may have seen that the United States Department of Homeland Security intends to propose significant changes to the way the “public charge test” in federal law is applied to immigrants seeking to obtain legal status. On March 28, 2018, media published a leaked draft of a Notice of Proposed Rulemaking (NPRM) that would expand the definition of public charge. The draft is now under review by the Office of Management and Budget and will be published for comment in the Federal Register in the very near future.

Currently, the only benefits USCIS considers as evidence an immigrant could become a public charge in the future is if he/she has used cash assistance (such as TANF or SSI) or long-term institutionalized medical care at the government's expense. The proposed rule would likely allow USCIS to also consider the use of both federally- and state-funded benefits like SNAP (Basic Food in WA), Medicaid (Washington Apple Health), CHIP, premium subsidies for marketplace health coverage, WIC, and other non-cash supportive services. A person's use of the Earned Income Tax Credit would also be considered. If the draft rule were to be adopted in its current form, use of these benefits by the applicant *or by the applicant's family members* – including by U.S. citizen children – would all be considered when an immigrant applies to become a legal permanent resident.

In Washington State, there is a broad coalition of nonprofit, public, and private sector organizations working to address the impact of these rules and protect families. This includes Children's Alliance, OneAmerica, Northwest Immigrant Rights Project, Northwest Health Law Alliance, Northwest Harvest, the Washington State Hospital Association, and many others. We prepared this document to provide our communities with the latest information. To be added to the listserv of Washington State advocates, please email Sarah Domondon at sarah.domondon@childrensalliance.org

The following talking points, which have been gathered from the National Immigration Law Center, the National WIC Association, and the Kaiser Family Foundation, may be useful in addressing fears expressed by community members:

- The "public charge test" **applies only at the time a person's application to become a legal permanent resident (a "green card" holder)**. Primarily, this affects people who are seeking to obtain a green card, either inside the U.S. or at a U.S. consulate abroad, based on a **family-based immigration petition**.
- The public charge test **does not apply to refugees, asylees, and people who have received humanitarian visas** (Special Immigrant Juvenile, VAWA self-petitioners, U visas, T visas). **It does not apply to legal permanent residents applying for citizenship**.
- **The leaked draft does NOT change current law**. It is simply the first attempt at a proposal to change the rules. As of today's date, the rule has not yet been formally proposed. If and when it is formally proposed, the rulemaking process could take several weeks, perhaps months.
- **At this point, there is no reason for people to stop benefits that they or their families currently receive legally.**
 - The draft proposed rule makes it clear that any changes to the consideration of benefits use will apply only to benefits received *after* the rule is final. Even if the rules change, applicants will still be able to show why they are not likely to become a public charge *in the future*.
 - Even if the rule change goes into effect, immigration officials will still be required to look at "the totality of circumstances" that relate to noncitizens' ability to support themselves, including their age, health, income, assets, resources, education/skills, family to support, and family who will support them.
 - **Past and current use of public benefits is only one of many factors** that can prove an immigrant may become a public charge, and **no one factor is definitive**. Any negative factor, such as not having a job, can be overcome by positive factors, such as having completed training for a new profession. Even if this proposed rule were to go into effect, receiving a public benefit does not automatically mean a denial of an immigration application.
- **Immigrants who are concerned about the impact of using public benefits on their immigration case should get advice from an immigration attorney or accredited representative.** To find organizations that offer low-cost immigration legal services, visit [the Immigration Advocates' Network directory](#).

The following services have never been considered public benefits for the purposes of the public charge test and the draft does not propose to change that:

- Using food banks, community centers and public libraries
- Attending a K-12 public school

- Calling 911, the police or the fire department in case of an emergency
- Drawing on any benefits that have been earned through work or military service, such as Social Security for retirees, veterans' benefits, and Medicare.

What's Next?

- First, the Notice of Proposed Rulemaking will be reviewed by the Office of Management and Budget. Once the review is complete - it could take as little as 10 days - the proposed regulation will be published in the Federal Register, and the public will have **60 days to submit comments on the rule.** Individuals and organizations can submit public comments and share stories about how the proposed rules would affect them and the communities they serve.
- In Washington State, the Children's Alliance is collecting stories and anecdotes about the on-the-ground effects of this leaked information and any eventual rulemaking. Please document any calls and walk-ins who express concerns; these stories will be used confidentially to support public advocacy in opposition to these proposed changes. If you have stories to share, please contact Sarah Domondon at sarah.domondon@childrensalliance.org.
- Nationally, the National Immigration Law Center (NILC) is collecting impact stories and anecdotes at publiccharge@nilc.org.

Further resources:

- Stay up-to-date on the movement of the proposed regulation by subscribing to the Protecting Immigrant Families campaign, spearheaded by the Center for Law and Social Policy (CLASP) and the National Immigration Law Center (NILC).
- The Protecting Immigrant Families Campaign resource page includes links to their most updated fact sheet, presentations and talking points.
- Resources from WIC (Women, Infants, Children) about potential public charge changes
- NW Harvest's Immigration Rights and Resources Toolkit for social service providers who serve immigrants and refugees