

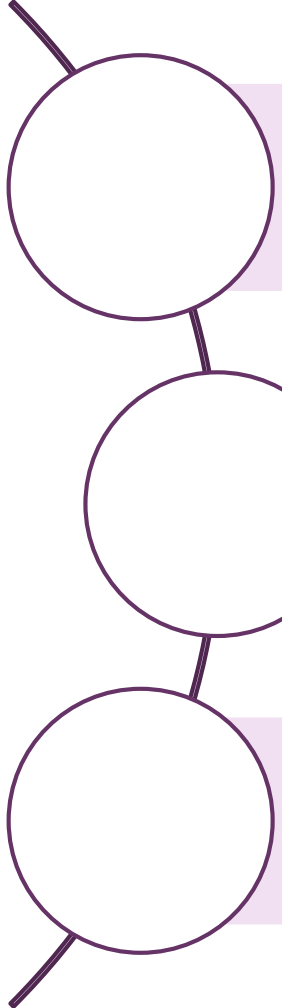


FIRST FRIDAY FORUM

June 7, 2019

PUBLIC CHARGE

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Under Section 212(a)(4) of the Immigration and Nationality Act (INA), the government can deny an application for entry into the U.S. or adjustment of status (green card) if the individual "at the time of application for admission or adjustment of status, is likely at any time to become a public charge."

"Public Charge" – 1999 field guidance defines as an individual who is likely to become primarily dependent on the government for subsistence as demonstrated by either the receipt of government funded cash assistance or institutionalization for long-term care

The public charge test is a forward-looking totality of the circumstances test, no one factor is dispositive

BACKGROUND

Not all immigrants are subject to public charge

Citizen/National

NO!

Lawfully Present

Certain subcategories
when entering the
country or applying
for LPR status

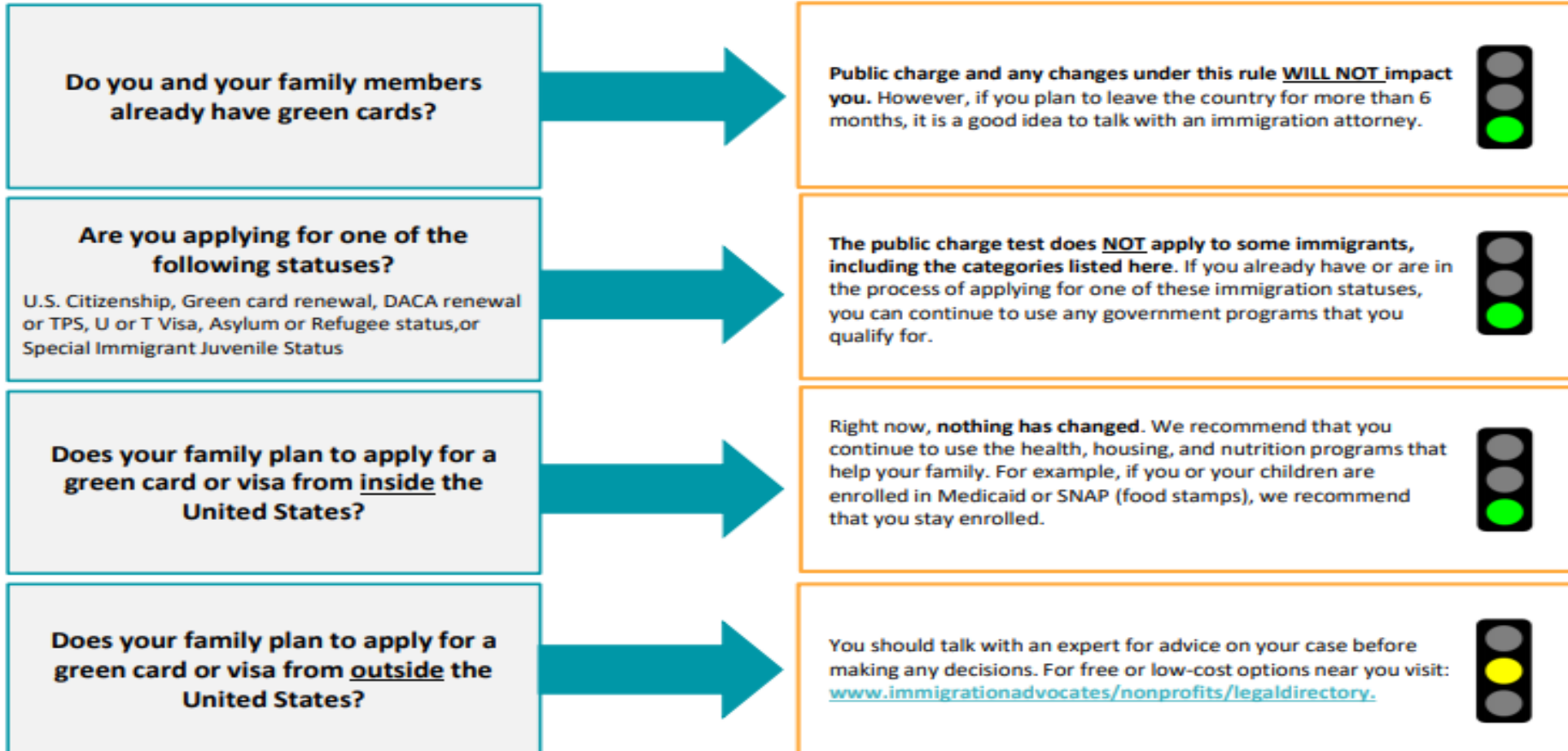
Undocumented

NO!

Resource to Determine if Public Charge Applies



PUBLIC CHARGE: DOES THIS APPLY TO ME?



Proposed Public Charge Rule

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Summary: Why the proposed policy is a radical change

Definition Change

From “primarily dependent” on government for subsistence to even modest use of public benefits that support work

New Negative TOC Factors

Earning low wages, having children, not speaking English or being diagnosed with a medical condition = negative factors. Only positive factor is high income (over \$62,000/ year for a family of 4)

Additional Benefits Included

Non-Emergency Medicaid, SNAP, Housing, Medicare Part D
Low-Income Subsidy (in addition to cash and long-term care)

Proposal: Definition Change

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Current
DHS
policy:

- An individual who is *likely* to become primarily dependent on the government for subsistence

Proposal
seeks to
broaden:

- An individual who receives one or more of the listed public benefits

Key Takeaway!

This is only a **proposal**

**There have been changes to the Dept. of State Foreign Affairs Manual (FAM)*

- The proposed rule was formally published in the federal register on Oct. 10 and open for public comment until Dec. 10, 2018
- Department of Homeland Security must consider and respond to all unique comments before finalizing
- It may change before it becomes final or it may never be finalized

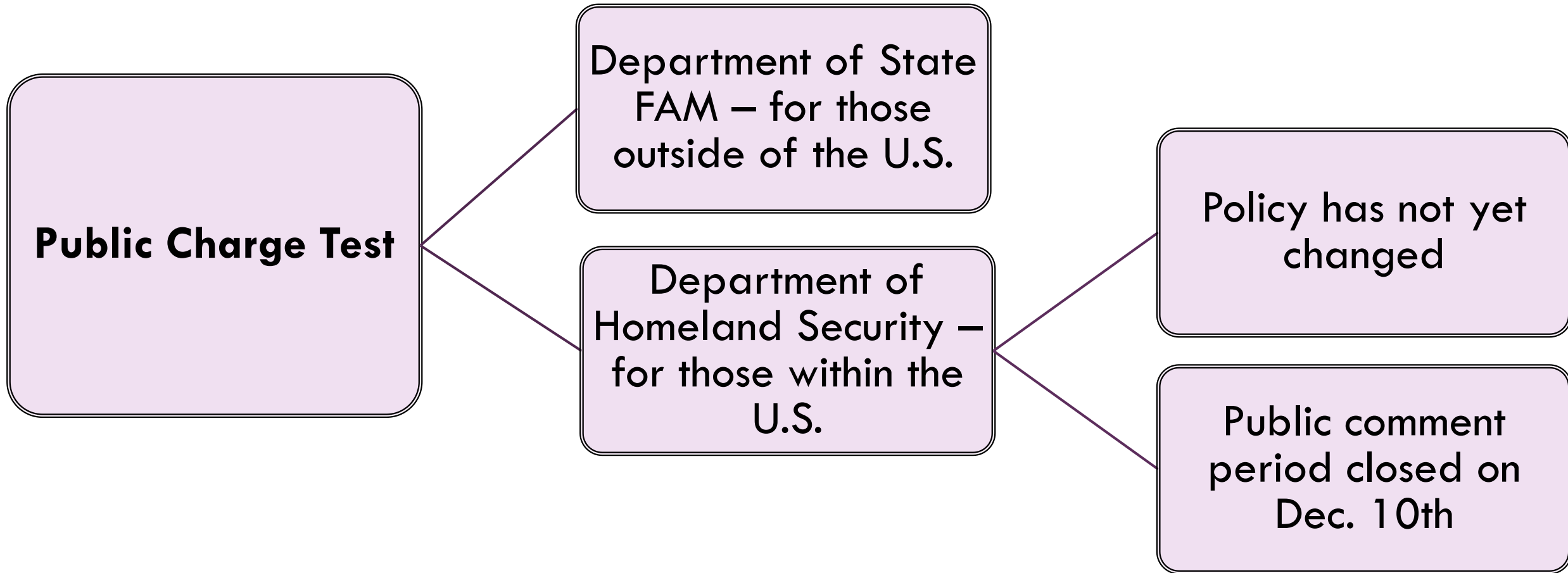
What has changed?

Foreign
Affairs
Manual
“FAM”

- On January 3, 2018, the U.S. Department of State published revised sections that deal with “public charge”
- These are instructions that officials in U.S. embassies and consulates abroad use to make decisions about whether to grant a person permission to enter the U.S. as an immigrant or on a non-immigrant visa
- Includes changes to the treatment of a sponsor’s affidavit of support, and the use of non-cash benefits by applicants, sponsors and family members
- There is litigation around this

Currently there are two different tests!

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Rarely Enforced: Grounds for Deportation

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You became a public charge within 5 years of entry to the U.S.

For reasons that existed *before* you entered the U.S.

This does not apply if you become a public charge because of something that happened *after* you entered the U.S.

RESOURCES

- Protecting Immigrant Families – National Campaign - <https://protectingimmigrantfamilies.org/>
- Washington Law Help – self-help materials - <https://www.washingtonlawhelp.org/>
- Protecting Immigrant Families – WA Coalition - <http://childrensalliance.org/protecting-washingtons-immigrant-families>

QUESTIONS & ANSWERS



Thank You!

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