

### FIRST FRIDAY FORUM

### PUBLIC CHARGE

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 <u>likely to become</u> 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

# Not all immigrants are subject to public charge

Citizen/National

Lawfully Present

Undocumented

NO!

Certain subcategories when entering the country or applying for LPR status

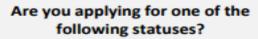
NO!

# Resource to Determine if Public Charge Applies



#### PUBLIC CHARGE: DOES THIS APPLY TO ME?

Do you and your family members already have green cards?



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

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

Does your family plan to apply for a green card or visa from <u>outside</u> the United States? Public charge and any changes under this rule <u>WILL NOT</u> impact 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 does <u>NOT</u> apply to some immigrants, including 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.



Right now, **nothing has changed**. We recommend that you continue to use the health, housing, and nutrition programs that help your family. For example, if you or your children are enrolled in Medicaid or SNAP (food stamps), we recommend that you stay enrolled.



You should talk with an expert for advice on your case before making any decisions. For free or low-cost options near you visit: www.immigrationadvocates/nonprofits/legaldirectory.





# 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**

# 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!

**Public Charge Test** 

Department of State FAM – for those outside of the U.S.

Department of Homeland Security – for those within the U.S.

Policy has not yet changed

Public comment period closed on Dec. 10th

### Rarely Enforced: Grounds for Deportation

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 <a href="https://protectingimmigrantfamilies.org/">https://protectingimmigrantfamilies.org/</a>
- □ Washington Law Help self-help materials https://www.washingtonlawhelp.org/
- □ Protecting Immigrant Families WA Coalition <a href="http://childrensalliance.org/protecting-washingtons-immigrant-families">http://childrensalliance.org/protecting-washingtons-immigrant-families</a>

# QUESTIONS & ANSWERS





### Thank You!

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