

COMPARISON OF KEY PROVISIONS OF PUBLIC CHARGE POLICY CHANGES

Proposed changes to the interpretation of the public charge doctrine have created fear and confusion in immigrant communities. The consequence of being considered "likely to become a public charge" are severe and could result in exclusion from the U.S. or an inability to establish permanent residence. In some cases, being deemed a public charge could result in deportation. The confusion is compounded by the differences between three separate agency interpretations: 1) the Department of State's Foreign Affairs Manual, governing public charge determinations at consular offices outside the U.S.; 2) the Department of Homeland Security's proposed regulations on the public charge grounds of inadmissibility, and 3) the Department of Justice's forthcoming proposed rule on inadmissibility and deportability. This table compares key provisions of each of the three agencies' policy proposals.

	Department of State (DOS)	Department of Homeland Security (DHS)	Department of Justice (DOJ)
Status of Rule and Date of Change/ Proposed Change	Revisions to Foreign Affairs Manual published and effective January 1, 2018. Policy changes remain in effect but are likely to change to conform with DHS rules. The current policy has been challenged in court.	1999 policy is in place. Proposed rule published 10/10/2018; comment period ended December 10, 2018; rule currently at OMB; final rule not published.	1999 policy is in place. Proposed rule not yet published, rule is currently at OMB.
How is public charge defined	Primarily dependent on the government for subsistence, as shown by receipt of cash assistance for income maintenance or institutionalization for long-term care at government expense	Proposed rule: A person who receives more than a de minimis amount of the public benefits identified in the rule	Likely to conform with DHS' definition
I/D	Inadmissibility	Inadmissibility	Inadmissibility and Deportability
When Test Applies	When applying for a non-immigrant or an immigrant visa (including applications for lawful permanent residence status) at an embassy or consular office outside the U.S. Some individuals currently in the US must go through consular processing outside the US in order to secure lawful permanent residence	When adjusting to LPR status in the U.S., through a family-based, employment based or a diversity visa petition; proposed rule applies PC-like standards to extension of non-immigrant visa/change of non-immigrant visa category	Where a person who has been inspected and admitted to the US (including those with LPR status) has become a public charge within 5 years after entering the U.S. based on circumstances that predate entry

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Who is Exempt	Refugees, asylees, T and U visa applicants/holders, VAWA self-petitioners, many other humanitarian immigrants	Refugees, asylees, T and U visa applicants/holders, VAWA self-petitioners, many other humanitarian immigrants	No statutory exemptions
Key Elements of Test	Statutory test: age, health, family status, income and resources, skills and education; sufficiency of affidavit of support if required. FAM adds standards to each element, including use of public benefits by applicant or family member and by sponsor and family member	Statutory test: age, health, family status, income and resources, skills and education; sufficiency of affidavit of support if required. Proposed regulation adds standards and evidence to statutory factors, including use of expanded list of benefits by immigrant, and creates heavily weighted factors	Has the person become a public charge within the first 5 years after they entered the U.S. Based on circumstances that predated their entry
Public Benefits Included	Use of “public assistance” as a factor in evaluating the totality of a person’s circumstances. (This could include benefits in addition to cash assistance for income maintenance or long-term care at the government's expense)	Under current policy: cash assistance for income maintenance (such as TANF or SSI) and institutionalization for long-term care at the government’s expense The proposed regulations add: <ul style="list-style-type: none"> ● Medicaid (except for emergency and certain school-based services) ● Supplemental Nutrition Assistance Program (SNAP, “EBT” or “Food Stamps”) ● Medicare Part D (pharmacy) financial assistance ● Some Federal housing programs (Section 8 and public housing) 	Expected to be the same as DHS rule
Whose Use of Benefits is Included in the Test	Immigrant, and potentially family members, sponsor and sponsor’s family members	Immigrant	Immigrant

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<i>Directly Affected Groups</i>	Applicants for visas and LPR status outside the US	Immigrants adjusting to LPR status in the U.S. who are not exempt from public charge; individuals applying to extend or change their non-immigrant status in the US	Immigrants eligible for public benefits within their first five years in the U.S., including veterans and their immediate family members, and potentially humanitarian immigrants. This could include persons receiving housing subsidies, children receiving SNAP, children and pregnant women in many states, and individuals receiving state and local cash assistance or government funded long-term care in some states.
<i>Groups Harmed (Chilled)</i>	All low- and moderate-income households with an immigrant family member	All low and moderate-income households with an immigrant family member	All low- and moderate-income households with an immigrant family member