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# The proposed public charge rule

#### Public charge discussion

- 1. WHAT is public charge (now and later)?
- 2. TO WHOM does public charge apply?
- 3. WHEN in immigration process are public charge decisions made, and WHERE are they made?
- 4. WHAT IS TIME LINE for Proposed Rule?
- 5. HOW IS Proposed Rule DIFFERENT from current policy?
- 6. **HOW** might my **RECEIPT OF PUBLIC BENEFITS** affect determination of public charge?
- 7. WHO is likely to be affected by Proposed Rule?
- 8. WHAT BENEFITS ARE 100% SAFE to get, now and later?

#### 1. WHAT is "public charge"?

- ALREADY IN PLACE
- REFERS TO person likely to become primarily dependent on government for support
- USED WHEN person applies for:
  - ✓ ADMISSION to U.S., OR
  - ✓ LPR (lawful permanent resident) STATUS (Green Card)

### Public charge test has been and is **forward-looking**

Question is whether person is **likely to rely** on cash or long-term care **in future** 

No single factor is examined in isolation, including past use of cash benefits

Positive factors can be **weighed** against negative factors

### 2. TO WHOM does public charge apply?

Public charge applies to people:

- seeking admission to U.S. or
- seeking to adjust their status to LPR

Public charge does

NOT apply to:

# CITIZENSHIP APPLICATIONS!

Public charge does
NOT apply to:

Green card renewals!

### These people are **NOT** subject to public charge consideration for their **own adjustment** to LPR status:

- \* Refugees
- \* Asylees
- VAWA (Violence Against Women Act) self-petitioners
- Survivors of domestic violence, trafficking, or other serious crimes (recipients of U or T visas)
- SIJs (Special Immigrant Juveniles)
- Parolees (granted humanitarian parole)
- **TPS** recipients (Temporary Protected Status)
- Miscellaneous other categories of noncitizens

### Note about exempt status (refugees, asylees, etc.):

- Exempt status means you will NOT have public charge inquiries in your own Green Card process, when you are trying to adjust to LPR status
- Your exempt status will not protect you from public charge scrutiny if you are trying to help someone else immigrate to U.S. (you file an I-130 to petition for a relative)
- o <u>note</u>: public charge will not be considered for an I-730 asylum petition

3. WHEN in immigration process are public charge decisions made, and WHERE are they made?

Public charge decisions are made at point of admissibility

### Admissibility decisions are made in 1 of 2 places:

Consulates abroad

Use Foreign Affairs
Manual (FAM) to make
decisions about
whether to grant
permission to enter
U.S.

Immigration offices in U.S.

Use current public charge policy to make decisions about whether to grant permission to enter, reenter, or stay in U.S.

### Foreign Affairs Manual (FAM) Revised January 2018

- Revisions did not change public charge definition
- Revisions did change review process. In past, existence of valid Affidavit of Support was sufficient to deflect public charge scrutiny.
- Test is now much more subjective. Consular officials abroad may:
  - ✓ Determine Affidavit of Support is not enough on its own
  - ✓ Look at other factors including age, health, family status, financial resources, and skills
  - Consider use of non-cash benefits as part of "totality of circumstances" assessment
  - Consider use of benefits by sponsors or family members

NOTE: FAM affects ONLY those decisions made by consular officials abroad

### Foreign Affairs Manual (FAM) changes

#### Impact so far?

- Reports of denials or requests for additional evidence
- More scrutiny of Affidavits of Support by joint sponsors
- More questions about employment, income, family members with disabilities

#### **BUT:**



- Forms have NOT changed
- Consular officer still have discretion, so practice varies from place to place
- FAM may be revised again when policy for officials in U.S. changes

### When **consulates** are making admissibility decisions, **keep in mind**:

- Unfortunately, FAM controls, NOT current public charge policy
- Because of FAM changes, consulates are sometimes being more aggressive in assessing whether someone is likely to become a public charge
- Consulates have broad discretion in making public charge decisions
- While consulates generally have not been looking at benefits received by household members and sponsors, it is possible that they could start doing so

Please talk with an immigration professional to evaluate your case. The professional can advise you about which rules apply and how rule changes might affect you. The goal is to help you make an informed choice for yourself and your family

### PROPOSED RULE ON PUBLIC CHARGE

### 4. WHAT IS TIME LINE for PROPOSED RULE?

- Proposed Rule was published for public comment in Federal Register on 10/10/18
- o Comment period will close on Monday, 12/10/18
- Some time after 12/10/18, FINAL RULE will be published
- o FINAL RULE will not be enacted until at least 60 days after publication of FINAL RULE

NOTE: <u>Until FINAL RULE is enacted,</u> current policy remains in place for public charge decisions made in U.S.

#### **Proposed Rule**

will not take effect until early 2019, at earliest

# 5. WHAT IS current policy VS.

**Proposed Rule?** 

#### Inadmissibility determination **FACTORS** under **Proposed Rule**

- ✓ Age: Are you between 18 & 61? (considers ability to work)
- <u>Health</u>: Do you have medical condition likely to require extensive treatment or institutionalization, or condition likely to interfere with your ability to provide care for self, attend school, or work?
- ✓ Family status: (household size, # of dependents you're supporting)
- ✓ Assets, resources, financial status: Do you have annual gross income >125% FPG\*? Do you have sufficient resources to cover reasonably foreseeable medical costs? (\*125% FPG = \$15,175/yr. HH 1; \$20,575/yr. HH 2; \$25,975/yr. HH 3; \$31,375/yr HH 4; etc.)
- <u>Education and skills</u> (includes ability to speak English; relates to ability to work)
- Affidavit of Support
- RECEIPT OF PUBLIC BENEFITS: Have you applied for or received benefits on or after date Final Rule published?

### Proposed Rule: "Heavily weighed" negative factors

- Work: you are authorized to work but are not in school, are not working, and have no reasonable prospect of future employment
- Public benefits: you are currently receiving ≥ 1 "public benefit" or have received ≥ 1 "public benefit" within 36 months\* immediately before applying for visa, admission, or adjustment (\*NOTE: government CANNOT GO BACK to any date BEFORE date final rule is enacted)
- <u>Health</u>: you were diagnosed with medical condition likely
  to require extensive treatment or likely to interfere with
  work, AND you are not currently insured and/or don't have
  sufficient resources to pay for treatment

### Proposed Rule: "Heavily weighed" positive factors

<sup>\*250%</sup> FPG = \$30,350/yr HH 1; \$41,150/yr HH 2; \$51,950/yr HH 3; \$62,750/yr HH 4; etc.

#### Proposed Rule: Specific Changes

### **Definition:** "public charge"

#### Current policy

Person who is "likely to become primarily dependent on the government for subsistence"

#### Proposed Rule

Person who "receives one or more public benefit[s]..."

# 6. HOW ARE PUBLIC BENEFITS EVALUATED under Current policy VS.

**Proposed Rule?** 

### Current policy on public charge for decisions made within U.S.: Receipt of public benefits

#### Government currently looks ONLY at:

 Cash assistance for income maintenance

 Institutionalization for long-term care at government expense

#### This means ONLY:

- MFIP
- o SSI
- o GA

MA, but only for nursing home care

#### Benefits considered under Proposed Rule:

"monetizable" benefits
= benefits with
clear dollar value

- CASH assistance for income maintenance:
  - > SSI, MFIP, GA
- FOOD assistance:
  - SNAP (Food Stamps)
- HOUSING assistance:
  - Section 8 housing choice voucher program
  - Section 8 rental assistance

"non-monetizable" benefits = benefits where dollar value not clear

#### • HEALTH CARE:

- MA (Medicaid) (with some exceptions)
- MA for nursing home care
- Medicare Part D Low Income Subsidy (LIS)
- o HOUSING assistance:
  - Public Housing

### How benefits will be evaluated under **Proposed Rule**:

#### monetizable



Cumulative value>15% FPG\* for HH of1 within any 12-mo.consecutive period

\*<u>15% FPG</u> = \$1,821/yr HH 1

#### non-monetizable



- Benefit received >12
   months within 36 month period
- o Receipt of 2
  non-monetizable
  benefits in 1 month
  will count as 2
  separate months

### How government will "value" monetizable public benefits:

DHS will calculate value
in proportion to total # of people
covered by benefit
within applicable
12 consecutive months
in which benefits are received

#### Benefits **NOT CONSIDERED** by immigration officers in U.S. under **Proposed Rule**

- Cash:
  - ✓ Social Security Disability or Retirement Benefits
  - ✓ Foster Care or Adoption assistance
  - ✓ Unemployment or VA benefits
  - ✓ Workers Compensation
- □ Food:
  - ✓ WIC (Women, Infants & Children)
  - √ School breakfast/school lunch
- Health Care:
  - ✓ MinnesotaCare
  - ✓ Medicare (except for Part D LIS)
  - ✓ Emergency MA
  - ✓ ACA marketplace subsidies/tax credits
  - Health care through school (Individuals with Disabilities Education Act)
- Other:
  - ✓ Energy Assistance (LIHEAP Low Income Home Energy Assistance Program)
  - ✓ EITC (Earned Income Tax Credit)
  - ✓ Child Care Assistance
  - √ Head Start
  - ✓ State scholarships, state programs

## For public charge decisions made in U.S., benefits received by other people DO NOT COUNT!

Under Proposed Rule, benefits received by your dependents will NOT affect whether you are likely to become a public charge.

For example, your child's receipt of housing assistance, MA, cash, or SNAP will not affect your ability to adjust your status or petition for a relative in the future.

#### **NO** retroactivity!

\*Proposed Rule is NOT RETROACTIVE

\*Benefits applied for or received before date of enactment of Final Rule DO NOT COUNT

# 7. WHO is likely to be affected by Proposed Rule?

### People could be eligible to receive public benefits and be directly affected by Proposed Rule:

- Returning LPRs who have been outside US > 6 months (they're treated as seeking admission)
- Some LPRs who have lost their status and have to readjust
- Some parolees
- Some otherwise exempt noncitizens who decide to adjust through family relationship instead of through exempt pathway

# Who could be eligible to receive public benefits and be indirectly affected by Proposed Rule:

- Someone who, in future, hopes to adjust status or extend visa
- Someone (including refugee or other LPR or U.S. citizen) who hopes to petition for relative to come to U.S.

# 8. WHAT BENEFITS ARE 100% SAFE to get, now and later?

#### **TODAY**

(and until **FINAL RULE** is enacted, probably early to mid-2019)

- ✓ Unless you are involved in screening for admissibility at consulate abroad, today you are safe receiving MOST TYPES OF BENEFITS from government
- ✓ Long-time receipt of SSI, MFIP, or GA can still be factor under current policy, as can MA for nursing home care - all other benefits are SAFE
- ✓ Government will not start looking more broadly at your receipt of benefits until AFTER FINAL RULE is enacted

#### What benefits are 100% safe for me to get <a href="mailto:after">after</a> enactment of Final Rule?\*

- Cash:
  - ✓ Social Security Disability or Retirement Benefits
  - ✓ Foster Care or Adoption assistance
  - ✓ Unemployment or VA benefits
  - ✓ Workers Compensation
- □ Food:
  - ✓ WIC (Women, Infants & Children)
  - √ School breakfast/school lunch
- Health Care:
  - ✓ MinnesotaCare
  - ✓ Medicare (except for Part D LIS)
  - ✓ Emergency MA
  - ✓ ACA marketplace subsidies/tax credits
  - Health care through school (Individuals with Disabilities Education Act)
- Other:
  - Energy Assistance (LIHEAP Low Income Home Energy Assistance Program)
  - ✓ EITC (Earned Income Tax Credit)
  - ✓ Child Care Assistance
  - ✓ Head Start
  - State scholarships and other state benefits
    - \* These may not be safe if admission is through consulate abroad

#### Note about benefits

• With certain benefits, you are not allowed to **stop receiving them** (i.e., by taking yourself off the grant) if you want your dependents to continue getting them. If you are otherwise eligible and want to take yourself off the grant, you have to **stop getting them for your household** as well as for yourself.

**Examples: MFIP, SNAP, Section 8, public housing** 

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With certain benefits, you can't switch from one to another

Example: MA/MinnesotaCare (if you are eligible for MA, you are not eligible for MinnesotaCare)

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Please CALL your local LEGAL AID OFFICE if you have questions about your BENEFITS and how new Public Charge rules might AFFECT YOU OR YOUR FAMILY

### What other benefits are 100% safe for me to get after enactment of Final Rule?\*

- ►► Any benefits for your children or other dependent relatives
- ► Government will be looking only at benefits YOU receive, not those others get

\*These benefits may not be safe if admission is through consulate abroad