

NACo ANALYSIS OF DHS PROPOSED RULE ON “PUBLIC CHARGE”

Understanding the proposed rule and how it could impact counties and our residents



Background on the proposed public charge rule

On October 10, the U.S. Department of Homeland Security (DHS) released a long-anticipated [notice of proposed rulemaking \(NPRM\)](#) that would reshape how the federal government defines “public charge” – a term used by federal immigration authorities to determine whether an individual seeking immigration status is likely to become primarily dependent on the federal government for subsistence. The draft rule would widen the scope of programs and factors that federal immigration authorities may consider when determining if an individual qualifies as a “public charge.” This includes individuals already in the country seeking permanent legal residency or visa extensions, as well as those seeking entry to the country.

Previous administrations have also altered the definition of a “public charge,” with the most recent change coming under the Clinton Administration, which clarified the definition to only include cash-based income assistance programs. This definition is still in place and serves as the foundation for current “public charge” law.

As administrators of numerous federal benefits programs and as front-line providers of the public’s health and safety, counties should be aware of these proposed modifications to the “public charge” definition. The changes, as described in detail on page five, may include increased usage of the local safety-net services and new administrative demands and costs for complying with federal guidelines. **Counties are encouraged to share with NACo staff their local perspective on how this proposal could impact their jurisdiction and residents.**

How is “public charge” defined under current law?

- Under current federal regulations established in 1996, the term “public charge” is defined as an individual who is “primarily dependent” on federal government assistance, meaning federal benefits supply more than half of his or her income.
- The term currently applies to reliance on *cash benefits* like the Temporary Assistance for Needy Families (TANF) program or Supplemental Security Income (SSI), as well as government funded long-term institutional care.

How would the proposed rule change the definition and scope of “public charge”?

- The proposed rule would expand the definition of “public charge” to include certain health, nutrition and housing programs, in addition to the cash benefits mentioned above, which would remain subject to the definition. **Under the proposed definition, DHS’ cites that nearly 400,000 immigrants per year already in the U.S. would be subject to the new requirements and regulations.**

- Along with expanding the scope of the programs considered for a “public charge” designation, the proposal also reduces the dollar amount an individual may receive in public assistance before they are deemed a “public charge.” An individual who accepts the equivalent of at least 15 percent of federal poverty guidelines (equivalent to roughly \$1,800 a year, or \$150 a month) would be deemed a “public charge.”
- The proposed rule would also expand the scope of factors permissible to consider when determining whether an individual is “likely to become a public charge” in the near future. In addition to potential use of an array of federal benefits programs, the proposed rule would also outline over a dozen potential “negative factors” that immigration authorities may consider when making this determination (outlined below on page 3).

What federal programs would be considered under the proposed rule?

The table below provides a full list of the additional programs that would be included in the “public charge” designation (**highlighted in red**), programs considered for the “public charge” designation under current law and programs that DHS will not consider under the new proposed rule.

Programs included under current law	Programs included under proposed rule	Programs excluded from current law and proposed rule
• Cash assistance programs ○ Temporary Assistance for Needy Families (TANF) ○ Supplemental Security Income (SSI) • Government funded long-term institutional care	• Cash assistance programs ○ Temporary Assistance for Needy Families (TANF) ○ Supplemental Security Income (SSI) • Government funded long-term institutional care • Supplemental Nutrition Assistance Program (SNAP, formerly known as food stamps) • Non-emergency Medicaid • Medicare Part D low-income subsidy • Housing assistance ○ Public housing ○ Section 8 housing voucher • Rental assistance	• Disaster relief • Emergency medical assistance • Early education and child development services • Employment and training programs

What other criteria may be considered when determining whether an individual is a “public charge”?

In addition to broadening the scope of federal public assistance programs that would be counted against an individual if used, the proposed rule also sets forth new standards for immigration officials to consider when evaluating if someone is likely to become a “public charge” at any point in the future. **The table below outlines the indicators factors that could become a “negative factor” or “positive factor” that DHS could use to determine whether an individual meets the “public charge” determination under the proposed rule.**

Negative factors	Positive factor
• Current use of public benefits • Amount of benefits used ○ Use of monetized benefits over 12 months ○ Use of nonmonetized benefits for more than 12 months in any previous 36-month period ○ Use of monetized benefits plus use of nonmonetized benefits for more than nine months in any previous 36-month period • Being younger than 18 or older than 61 years of age • Having a medical condition that may affect an individual’s ability to work, attend school or care for themselves ○ Not having sufficient resources to cover the medical condition • Not having private health insurance • Having several children or other dependent family members • If an applicant has limited English proficiency • Having bad credit or a low credit score • Having no employment history	• Household income is above 250 percent of the federal poverty guidelines

Who would be impacted by the proposed rule?

- The draft rule would be applied to any individual seeking to come to the U.S. through various visas, with limited exceptions for certain immigrant populations, such as refugees. The proposal would also impact individuals already in the country who are seeking to become permanent legal residents or to extend their stay in the country by renewing their immigration status.
- In determining whether an individual is a public charge, federal immigration authorities would only consider benefits an individual is receiving for **him/herself**, rather than all benefits received by members of his/her household. An individual **who is receiving assistance for his/her U.S. citizen child but not for him/herself, for example, is not using public benefits** under the proposed new definition and is therefore is not an inadmissible “public charge.”
- The population that is expected to be most impacted by the proposal are individuals outside the U.S. trying to emigrate to the country.

The table below highlights populations that may be impacted due to the proposed regulation’s new definition, income requirements and other standards.

Who are the populations that would be impacted?	Who are the populations that will not be impacted?
• Individuals who have already legally immigrated to the U.S. and are: ○ Applying to become lawful permanent residents or green card holders ○ Applying to extend or change the category of a nonimmigrant visa, or renewing their status	• Individual who have already become U.S. citizens • Undocumented individuals (because they are largely ineligible for public assistance) ○ <i>Note: If an undocumented immigrant applies to change their immigration status, they may be impacted</i>
• Individuals seeking to come to the U.S. who are: ○ Applying for various visas ○ Green card holders who have been outside the U.S. for more than six months	• U.S. citizen children that receive public assistance benefits • Refugees and asylees • Survivors of domestic violence • U.S. citizen children

How counties may be impacted by the proposed rule?

- **Increased use of the local safety-net:** If the contemplated changes to the “public charge” definition result in fewer individuals accessing federal benefits such as SNAP, Section 8 housing vouchers and healthcare services, counties may face increased demands for assistance from these individuals and their families.
- **Administrative burden on county agencies:** Many counties administer federal programs, and this proposal could impose burdensome new tracking and reporting requirements for local offices that administer these programs.
- **Risk of public disease outbreaks:** The proposed rule may discourage immigrants and their families from seeking federal health benefits, such as Medicaid or the Children’s Health Insurance Program (CHIP). If families do not seek health benefits, they may be more likely to contract and spread disease in a manner that increases the risk of public disease outbreaks, which are harmful to all members of our communities and extremely costly to county budgets.

What’s next

Now that the proposed rule has been published in the *Federal Register*, the public can submit comments for a 60-day period, including weighing in on whether certain programs should be included under the final rule. Among the programs under consideration to be included in the department’s final rule, is the Children’s Health Insurance Program (CHIP), which provides health insurance to children and families with incomes that are modest but too high to qualify for Medicaid. Together, CHIP and Medicaid insure over 30 million children and covers a range of health services, such as prenatal doctor visits for pregnant women and dental checkups for young children.

After DHS considers these comments, the departments will issue a final rule.

Contact

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