

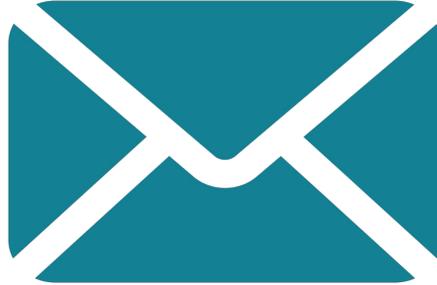
DHS Final Public Charge Rule

***PIF Webinar
September 12, 2022***





HOUSEKEEPING





WHAT WE'LL COVER

What's in the Final Rule

Communicating about the Rule

Materials from PIF

USCIS Outreach Plans and Next Steps

Q&A

Our Speakers



Adriana Cadena
Protecting Immigrant
Families Coalition (PIF)
cadena@nilc.org



Sonya Schwartz, PIF
sonya@sonyaandpartners.com



Ed Walz, PIF
ed@springboard.partners



Alicia Wilson
PIF
akwilson3000@gmail.com



Hope Nakamura
Legal Aid of San Mateo
HNakamura@legalaidsmc.org



Tanya Broder
National Immigration Law Center
broder@nilc.org

We will also be joined by Doug Rand, Brenda Gonzalez, and Carlos Munoz-Acevedo from USCIS



BEFORE WE DIVE INTO WHAT'S IN THE FINAL RULE

- Public charge is an antiquated policy reflecting centuries of racial and class bias
- We are committed to working with Congress to strike it
- However, it remains part of the Immigration and Nationality Act and the Department of Homeland Security (DHS) must administer the law
- The final rule will help limit the chilling effect of the policy

Our collective impact!

266,000 comments

9 lawsuits

500+ comments

1,000+ comments



What's next for PIF?

1st We pushed to halt the attack

2nd We secured basic protections

3rd We fight for transformative
change

FINAL RULE



The Department of Homeland Security's public charge final rule will take effect on **December 23, 2022** and applies to people applying for admission and adjusting status **inside** the U.S.

- It cements and improves upon the 1999 INS Interim Field Guidance that was in place for more than 20 years and was based on a century of policy and practice that preceded it
- The 1999 INS Field Guidance is in effect until then

Note: The State Department's current policy is similar to the 1999 Interim Field Guidance and applies to people applying for admission or LPR status **outside** the U.S, including people required to leave the U.S. to seek status through consular processing.



Definition of Public Charge

“Likely at any time to become primarily dependent on the government for subsistence as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense.”



Only Two Types of Public Benefits Considered

Public cash assistance for income maintenance	Long-term institutionalization at government expense
<p>Supplemental Security Income (SSI)</p> <p>Temporary Assistance for Needy Families (TANF)</p> <ul style="list-style-type: none">- Cash assistance only- TANF “child only” benefits are not considered in a parent’s immigration application <p>State, Tribal, territorial or local cash assistance for income maintenance (e.g. General Assistance)</p>	<p>Limited to to institutional services, including in a nursing facility or mental health institution</p> <p>Does not include short-term rehabilitation, imprisonment for conviction of a crime, or home and community based services</p>

Note: Use of an included benefit will not automatically make someone a public charge. DHS will consider the amount and duration of receipt and how recently the benefit was received, along with other factors in the totality of circumstances test, such as education and skills, income...



Public Benefits Not Considered

- **Health Care:** Medicaid (except for long term institutionalization), CHIP, Marketplace subsidies, Medicare, immunizations, or testing/treatment for communicable diseases
- **Nutrition:** SNAP, free and reduced school meals, WIC
- **Housing:** Subsidized public housing, Section 8 housing Choice Voucher or Project Based Rental Assistance
- **Special Purpose or Supplemental Benefits:** disaster assistance, pandemic assistance, utility assistance, child care assistance
- **Federal, tribal, territorial, state or local tax credits:** CTC, EITC

We will ask USCIS to provide additional guidance, listing other programs that will not be considered. For example, we will ask them to confirm that “earned” benefits, such as Social Security retirement and unemployment insurance are excluded (consistent with the NPRM).



Receipt of Benefits

Benefits received by family members not applying for immigration status – such as U.S. citizen children – will not be considered

A noncitizen must be listed as a **beneficiary** of the benefits.

Does not count as receipt of benefits:

- *Applying* for a benefit on one's own behalf or that of another
- Approval for *future* receipt of benefits
- Receipt of benefits *solely on behalf of another person, or by another person*, even if a noncitizen assists with the application process – E.g. TANF child only benefit



Totality of Circumstances Test

Does not define the statutory factors: age; health; family status; assets, resources and financial assistance; education and skills

Does describe evidence officers will use to support certain factors

Favorably considers the affidavit of support

Will consider current and/or past use of 2 types of benefits

Disability alone is not sufficient to be determined a public charge

USCIS officers must articulate a reason for each public charge determination



Exemptions

People exempt from a public charge determination:

- People applying for or granted asylum, refugee status, or TPS;
- Special Immigrant Juveniles; Afghan or Iraqi Special Immigrant Visa holders.
- VAWA self-petitioners, and survivors who have applied for or been granted T or U status are generally exempt from a public charge assessment, regardless of their ultimate pathway to adjust status.

Benefits are not considered if used by:

- People who have an exempt status when they receive the benefit
- People who are eligible for resettlement assistance, and other benefits available to refugees (example: Afghan and Ukrainian humanitarian parolees).
- See the full set of exemptions at 8 CFR § 212.23

Note: LPRs do not face a public charge determination when they apply for citizenship

The Final Rule's Helpful Clarifications

Benefits used when in an exempt status and/or by people eligible for refugee benefits/resettlement assistance are not considered

HCBS, short term rehabilitation, imprisonment do not count as long term institutionalization

29 categories of noncitizens who are exempt from public charge determination spelled out

Confirms that VAWA self-petitioners, and survivors who have applied for or been granted T or U status are generally exempt from a public charge assessment, regardless of their pathway to adjust status

WHAT'S NEXT



NEXT STEPS ON PUBLIC CHARGE

Department of Homeland Security - Applications processed inside the U.S.

Rule takes effect on December 23, 2022

USCIS will update the policy manual to implement the final rule, and will publish an I-485 to mirror the rule.

It is likely that the public charge final rule – like many other Biden administration policies – will be challenged in court.

Department of State - Applications processed outside the U.S. Includes applicants who are required to leave the US to seek status through consular processing.

Reviewing comments received in January 2022 about its public charge rule.

- Under the pre-2019 (and current) policy, a valid affidavit of support is generally sufficient to satisfy the public charge test

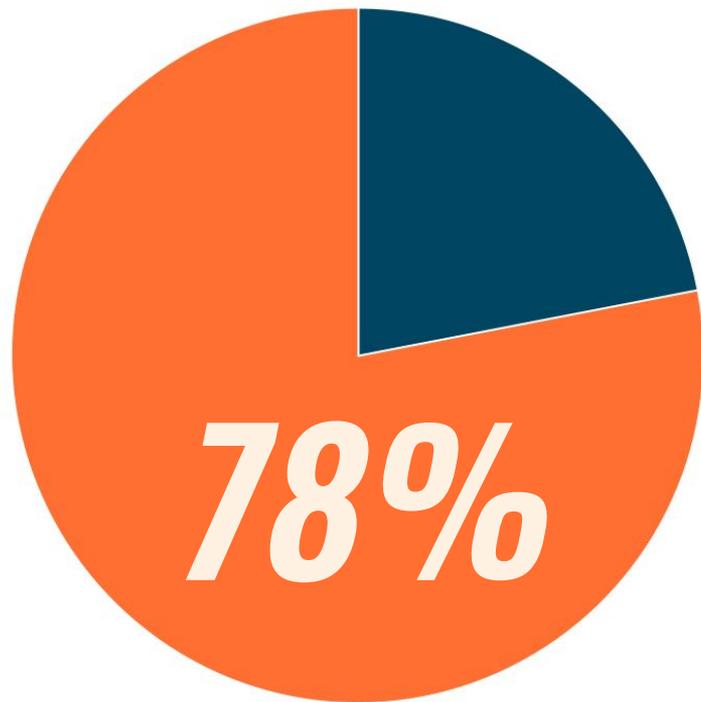
Current policy manual (Foreign Affairs Manual or “FAM”) is similar to the 1999 Field Guidance and DHS Final Rule.

DOS indicated that it will issue an NPRM, which will likely be consistent with the DHS final rule.

COMMUNICATION



THE CHALLENGE





EARLY OUTREACH HAS BEEN GOOD

- Many national outlets
- Regional outlets in key markets
- No bad stories*
- Federal agencies prominent
- PIF partners
- Tweetstorm had 150+ accounts, reached millions



DHS EVENTS NATIONWIDE



FOR IMMIGRANT FAMILIES

- You could already get the care and help you need without public charge concerns
- Adds critical protections for immigrant families
- Our broader fight to repeal racist provisions in immigration law continues
- This is the time to get your family the care and help they need

FOR THE BROADER PUBLIC

- A major win in a broader fight
- Adds critical protections for immigrant families
- Communication is critical, and we need your help
- The public charge law is racist and must be repealed



PIFCOALITION.ORG/TOOLKIT

Below you'll find a webinar opportunity, upcoming tweet storm, and partner toolkit.



STRATEGY: FLOOD THE ZONE

Ally

Ally

Ally

Federal

Ally

Ally

Your
Organization

State

Ally

Ally

Local



STRATEGY: FLOOD THE ZONE

TV News

Friends & family

Social media

Federal govt

Newspapers

Attorneys

State govt

Community org

Radio





3 THINGS RIGHT NOW FOR MEDIA

1. Issue a statement
2. Urge partners to issue a statement
3. State-specific press briefing

PIF MATERIALS



COMMUNITY EDUCATIONAL MATERIALS

- 2 Documents available in 9 languages
 - “Does Public Charge Apply To Me?” (aka “the stoplight”)
 - Breaks down public charge concerns by immigration status
 - “Public Charge: 3 Things You Need to Know”
 - Very simple, headline-driven document with most important messages for families
 - Printable, or shareable digitally
 - Template versions can be modified for partners to personalize

DOES PUBLIC CHARGE APPLY TO ME?

Are you and your family members U.S. citizens?
Public charge does NOT apply to you. You should continue to use programs you are eligible for.



Do you and your family members already have green cards?
Public charge does NOT apply to you when you renew your green card or apply to become a U.S. Citizen. However, it may apply if you leave the country for more than 6 months. Talk with an immigration attorney if you are planning to take a long trip outside the U.S.



Are you applying for or do you have one of the following statuses: TPS, U or T Visa, Asylum or Refugee status, or Special Immigrant Juvenile Status?
Public charge does NOT apply to you. If you already have or are in the process of applying for one of these immigration statuses, you can use any government programs that you qualify for.



PUBLIC CHARGE 3 THINGS YOU NEED TO KNOW

July 2022

Some people who apply for a green card or a visa to enter the U.S. must pass a “public charge” test. In those cases, immigration officials look at whether the person will mostly depend on the government for support in the future. Three important things immigrant families need to know about public charge are:

1 MOST PEOPLE DO NOT HAVE TO WORRY ABOUT PUBLIC CHARGE AT ALL

Public charge does not apply to everyone. People seeking a green card through a family member or who seek to enter the US from outside the country may be subject to this test. Many immigrants are exempt from public charge – see the website at the bottom of this page or use this QR code.



2 MOST GOVERNMENT PROGRAMS DO NOT COUNT

Only 2 kinds are considered:

1. Monthly cash support. This includes Supplemental Security Income (SSI), Temporary Assistance



EXPLAINER VIDEO



**PROTECTING
IMMIGRANT
FAMILIES**

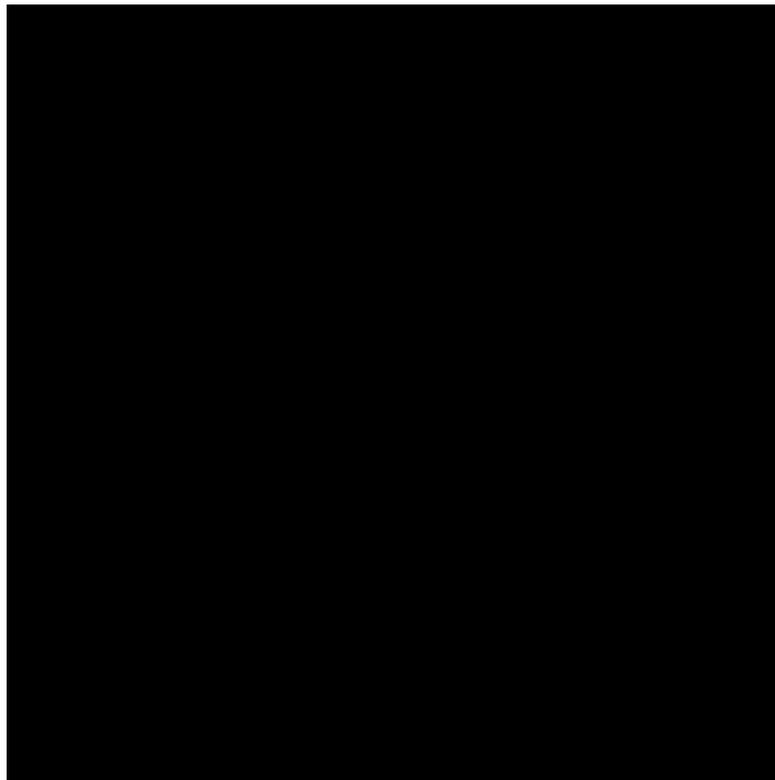


Briana Cadena (she/her/ella)

www.pifcoalition.org



STOPLIGHT ANIMATIONS



COMMUNITY EDUCATIONAL MATERIALS

- Shareable Digital Tools
 - Community-focused social media samples (twitter, facebook, instagram)
 - Adaptable images to accompany sample text
 - Explainer Videos: 60-second explainers for social media sharing
 - Videos hosted on PIF's YouTube channel
 - Script for partners to record their own
 - Tips, guide for video creation
 - Stoplight Animation
 - Animated version of "Stoplight" resource
 - Can accompany social media messages
- 30-second PSA script for partners to use





PROVIDER- FOCUSED MATERIALS

- 1,2,3s of Public Charge
 - Basic fact sheet on public charge for front-line staff
 - Answers many questions clients could ask about public charge
- Public Charge Update: What Advocates Need To Know
- Training tools
 - “Public Charge 101” template slide deck for training colleagues about public charge
 - Community-facing public charge slide deck template: 9 slides with accessible language to explain public charge in community settings



THE 1,2,3s OF PUBLIC CHARGE

July 2022

Public charge considers if a person applying for a green card could be primarily dependent on the government for support in the future. Immigration officials review all of a person's circumstances and may consider whether a person has been primarily dependent on two specific types of benefits in the past. If immigration officials determine a person is likely to depend on the government for subsistence in the future, they can deny that person permission to come to the U.S. or deny their green card application.

1 WHO DOES PUBLIC CHARGE APPLY TO?

Public charge does not apply to everyone. People seeking a green card through a family member or who seek to enter the US from abroad may be subject to this test. Many people (see the list below) are exempt.

There is **no public charge test** for the following categories of immigrants:

- Asylees
- Refugees
- U or T visa applicants and holders (human trafficking or victims of crimes)
- VAWA self petitioner
- People seeking or granted SIUS (Special Immigration Juvenile Status)

There is **no public charge test** when an immigrant applies for the following:

- U.S. citizenship
- Green card renewal
- Asylum, DACA, TPS, or DED (initial applications and renewals)

WHICH BENEFITS ARE CONSIDERED?

2

Immigration officials can only consider benefits received by the green card applicant. They cannot consider benefits used by other family or household members, even if the applicant's name is on their family member's application, unless the benefits received are the family's only income. Most people applying for family-based green cards are not eligible for these benefits programs. Immigration officials can only consider two types of benefits:

1. Monthly cash assistance intended to support a person. This includes Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), and state-based cash



Get specific information for California

National ▼

The public charge test has changed and should be easier for most people to pass. Get the facts about public charge & immigration.

Rules about public benefit programs and immigrants are confusing. But benefits can help your family stay healthy and thrive.

Click [Use the Guide](#) to see if public benefits could affect different immigration options.



Use the Guide

***USCIS Outreach Plans and
Next Steps***

Q&A

***PLEASE SUBMIT QUESTIONS
IN THE Q&A BOX!***

SPEAKER CONTACT INFORMATION



Adriana Cadena
Protecting Immigrant
Families Coalition (PIF)
cadena@nilc.org



Sonya Schwartz, PIF
sonya@sonyaandpartners.com



Ed Walz, PIF
ed@springboard.partners



Alicia Wilson
PIF
akwilson3000@gmail.com



Hope Nakamura
Legal Aid of San Mateo
HNakamura@legalaidsmc.org



Tanya Broder
National Immigration Law Center
broder@nilc.org

***THANK
YOU***

