



CWDA

Advancing Human Services
for the Welfare of *All* Californians

Public Charge

Draft Regulation Comments

Overview

What is public charge?

What may change?

Public comment process

Demonstrating the chilling effect

What is Public Charge?

- A Public Charge is defined as a person dependent on the government for financial and material support
- A person deemed **likely** to become a public charge can be denied permission to enter the United States and/or obtain permanent resident status (i.e., a “green card”)

What is Public Charge?

- The likelihood of whether a person will become a public charge is assessed at three points, when they apply to:
 - Enter the US
 - Become a lawful permanent resident (LPR)
 - Adjust immigration status
- Note: There is no public charge test when an LPR applies for citizenship

Who is Exempt from Public Charge?

Many immigrants permitted to enter or remain in the U.S. for **humanitarian reasons** are exempt from Public Charge, including:

- Refugees and asylees;
- Survivors of trafficking (T visa) and other serious crimes (U visa);
- Self-petitioners under the Violence Against Women Act;
- Special immigrant juveniles; and
- People applying for Temporary Protected Status

Statutory Public Charge Test

Whether a person is likely to become a public charge is based on **all of the facts** relevant to their ability to support themselves.

Immigration agents are **required by law** to consider:

- age
- health
- financial resources
- dependents
- skills and work experience

Public Charge – Use of Public Benefits

- Other relevant factors may be considered
 - Other factors relevant in a public charge test include receipt of public benefits
- Under current rules in effect since 1999, only two types of public benefits can be considered:
 - Cash assistance for income maintenance
 - Institutionalization for long-term care at government expense

What May Change?

PROPOSED REGULATIONS

USCIS has developed proposed Public Charge regulations that would:

- Expand the definition of public charge
- Apply the public charge assessment to more individuals
- Consider more factors in the public charge assessment
- Introduce a new wealth/resource “test”
- Include additional public benefit programs

What May Change?

- Change the definition of Public Charge to a person who uses or receives one or more public benefits.
 - “Public benefits” would include federal, state, local or tribal cash assistance for income maintenance and certain noncash medical, housing and food benefits
 - But, regulations maintain **totality of circumstances** test – i.e., just using the benefits may not automatically make someone a public charge.



Monetizable Benefits

Included where the value of the benefit exceeds 15% FPL for a household size of one for a year

- Cash assistance for income maintenance:
 - SSI
 - TANF (CalWORKs)
 - State or local cash assistance (CAPI, GA/GR)
- Monetized non-cash:
 - SNAP (CalFresh)
 - Section 8 housing assistance
 - Medicaid (Medi-Cal)

Non-monetizable Benefits

Included if received for >12 months in the aggregate during preceding 36 months, or >9 months while also receiving monetizable benefit

- Each benefit is counted separately - 2 benefits received in the same month count as 2 months

List includes:

- Medicaid, except for emergency services and school-based benefits to children
- Long-term care
- Financial assistance under Medicare Part D
- Subsidized housing

Changes Are Not Retroactive

Receipt of benefits, other than cash and long-term care, will not be considered in making the public charge determination until 60 days after the rule becomes final

Excluded Benefits

SOME EXAMPLES INCLUDE...

- Emergency and disaster relief
- Services available to the community as a whole
- School-based nutrition services
- Public education, including Head Start
- Tax credits including EITC and ACA tax credits
- WIC nutrition benefits
- Benefits used by members of the military, Ready Reserve, and their spouses and children

Other Statutory Factors

- **Age:** defines working age as 18 - minimum age for Social Security retirement
 - Consider impact of age on ability to work
- **Health:** whether diagnosed with medical condition that could affect ability to work or require extensive care/institutionalization in the future
- **Family:** household size

Other Statutory Factors

- **Financial resources:**
 - Income at least 125% FPL (or assets equal to 5x the gap)
 - Has *applied for* any benefit or immigration fee waiver
 - Has private insurance or resources to pay for medical expenses
- **Skills and work experience** – includes assessment of proficiency in English

“Heavily Weighted” Factors

Negative factors for a person:

- Authorized to work but not working and not a full-time student
- Currently receiving a public benefit/Has used a public benefit within last 36 months
- Medical condition that could interfere with work or require expensive treatment

“Heavily Weighted” Factors

Negative:

- Uninsured without the prospect of receiving private insurance/paying for care
- Previously determined to be a public charge

Positive:

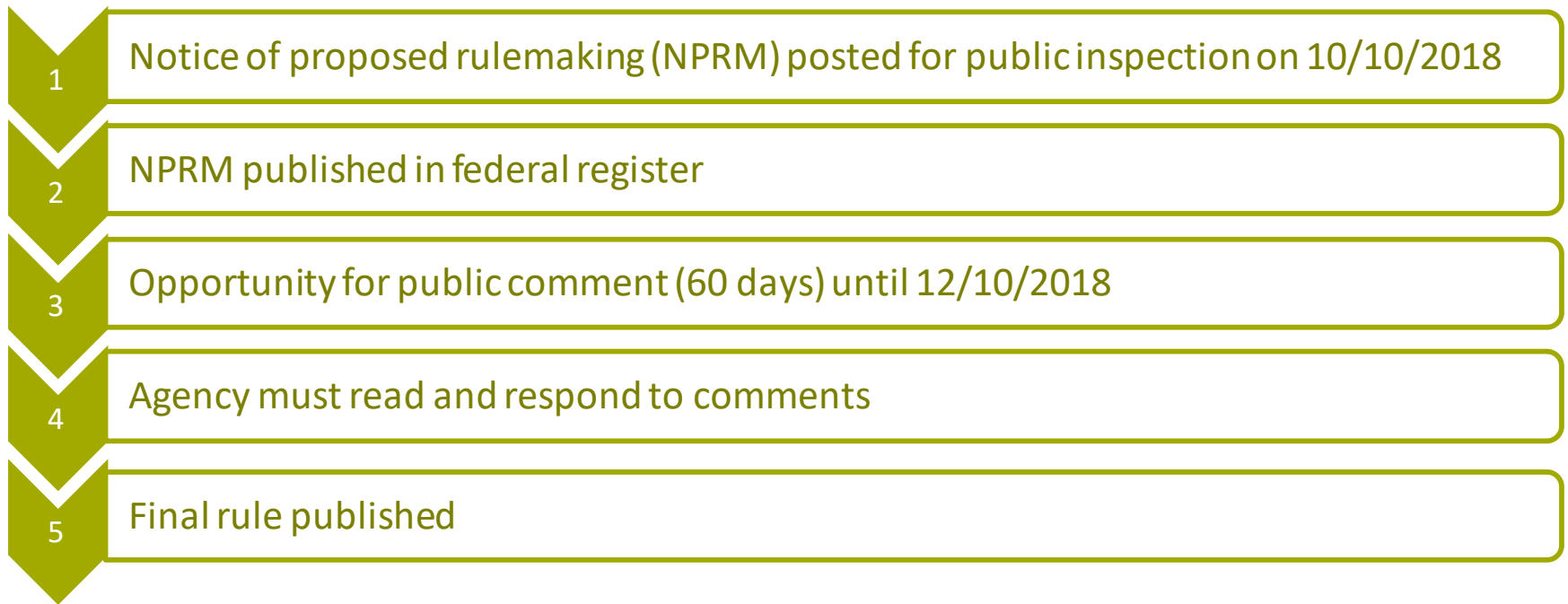
- Income or resources over 250% of Federal Poverty Level (>\$62,000 for family of four)

Remember

Important statutory provisions that cannot be changed by regulation:

- Public charge is assessed when a person applies to enter the US and to become a permanent resident
- The **balance** of factors must be considered
 - Negative factors can be outweighed by positives
- Many categories of immigrants are **exempt**

Proposed Rule: Timeline



Take Action!

Protecting Immigrant Families Campaign

- Co-chaired by NILC and CLASP
- Over 185 organizational members (including CWDA)

Short-term goal: generate public comments on the proposed public charge regulations

- Microsite and templates for comments

Sign up on protectingimmigrantfamilies.org

Document the Harm

IDEAS FOR COUNTIES

Counties are encouraged to document the chilling effect these proposed changes can have on communities.

This could include beneficiaries cancelling public benefits they are entitled to, and those foregoing the care, food assistance, and other essentials needed to support their families and children in fear of deportation.

Providing Comments

- Comments can be provided [here](#).
- Counties are reminded to keep comments “unique” and not just cut and paste.
 - The federal government can at its prerogative consider identical or practically identical comments to be all the same comment.
- Counties are encouraged to use this [template](#) to easily provide comments (be sure to personalize to your county’s situation).

County Human Services Efforts

- San Francisco County
- Alameda County
- Contra Costa County
- *Sample materials are in the [CWDA Immigration Toolkit](#)*

Additional CWDA Next Steps

- **Working with CSAC, CHEAC and CAPH**
 - Developing a joint draft template, but don't stop working locally to get clearance to send comments in the meantime.
 - Template will likely add aspects on public health impacts of foregoing needed health coverage as well as rise in uncompensated care for safety net providers such as public hospitals and clinics.



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