



# **Trump Administration's Proposed "Public Charge" Rule**

*What Housing and Homelessness Advocates Should Know*

February 26, 2019

# Today's Agenda

- (1) What is a “public charge”?
- (2) How does the proposed rule change existing authority?
- (3) What are the potential housing impacts?
- (4) What has happened so far? Where is the proposed rule now?
- (5) What are the next steps for the rule, and what can advocates do now?

# What is a “Public Charge”?

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# History of “Public Charge”



- Origins of the public charge law
- Immigration officials can deem a person inadmissible to the U.S. or deny an application for a green card (lawful permanent residence) because the person is likely to become a public charge.

# What is a “public charge”?

Currently, public charge is defined as:

A person who is primarily dependent on the government for subsistence, as shown by either:

(i) the receipt of **public cash assistance**

or

(ii) institutionalization for long-term care at the government’s expense

# Who is subject to the public charge determination?

Currently, noncitizens seeking

(1) Admission into the U.S. or

(2) Adjustment of status to LPR

# What is currently considered in public charge determinations?

- “Totality of the circumstances” - Immigration officials review these factors:
  - Age
  - Health
  - Family status
  - Assets, resources, financial status
  - Education and skills
  - Affidavit of support
- **Is housing assistance considered?**
  - DHS’s current public charge determination does NOT consider non-cash benefits (other than institutionalized long-term care). Housing assistance is not considered.

# Who cannot be considered a public charge?

- The following categories of non-citizens are not subject to a public charge determination:
  - Lawful permanent residents applying for U.S. citizenship
  - Refugees and asylees
  - VAWA self-petitioners, survivors of domestic violence, trafficking, or other serious crimes
  - Special immigrant juveniles
  - Certain parolees
  - Several other categories of non-citizens

# What Does the Proposed Rule Change?

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# Proposed changes to “public charge” definition

**Current definition** – Person who is *primarily dependent* on the government for subsistence, as shown by either (i) the receipt of *public cash assistance* or (ii) institutionalization for long-term care at the government’s expense

Under the proposed rule, a “public charge” would be any applicant who **uses or receives, or is likely to use or receive, one or more “public benefit(s)”**

# What would be a “public benefit”?

- DHS has proposed an **exclusive** list of **federal** public benefits that would be considered.
- **Housing assistance** listed in proposed rule:
  - Public Housing
  - Section 8 Housing Choice Voucher Program
  - Project-based Section 8 Rental Assistance
- Homeless assistance is not explicitly included, except for Section 8 Moderate Rehabilitation

# What other assistance would be a “public benefit”?

## **Cash Benefits that would continue to be considered:**

- SSI
- TANF
- Federal, State, local, or tribal cash benefit programs for income maintenance

## **Monetized Non-Cash Benefits considered:**

- SNAP (formerly Food Stamps)
- Section 8 Housing Choice Voucher Program
- Section 8 Project-Based Rental Assistance

## **Non-Monetized Non-Cash Benefits considered:**

- Medicaid (with limited exceptions)
- Any benefit for long-term institutionalized care at government expense
- Premium and Cost Sharing Subsidies for Medicare Part D
- Public Housing

# Who is subject to the public charge determination under the proposed rule?

Currently, noncitizens seeking

(1) Admission into the U.S. or

(2) Adjustment of status to LPR

(3) Under the proposed draft, a similar test would be applied to non-immigrants seeking to extend or change their status.

# What are the Potential Housing Impacts?

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# How does the proposed rule impact housing programs?

- The proposed rule **departs from longstanding immigration policy** by making it more likely for certain non-citizens to be deemed a “public charge” because **they either receive, or are deemed likely to receive in the future, one or more specific federal housing subsidies.**
- There are different standards depending on the federal benefits an individual uses, but a non-citizen could be penalized for receiving as little as \$1,821 within a year—that’s only \$151.75 a month!
- Being deemed a public charge means that a non-citizen can be **denied** admission into the U.S., an extension of stay in the U.S., or a green card.
- These potential immigration consequences mean that thousands of immigrants and their families will either **disenroll from or not apply for desperately needed housing assistance.**

# How would the rule affect housing assistance?

	Calculating Monetized Benefits	Calculating Non-Monetized Benefits	Calculating Combined Use of Monetized and Non-Monetized Benefits
Amount or Time Used Threshold	<ul style="list-style-type: none"> <li>Cumulative value of Monetized Benefits that exceeds 15% of FPG for an individual.                             <ul style="list-style-type: none"> <li>\$1,821 in 2018</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Receipt of 12 months' assistance within a 36-month period</li> <li><b>Multiple non-monetized benefits received in one month are counted as multiple months</b></li> </ul>	<ul style="list-style-type: none"> <li>Cumulative value of Monetized benefits at or <b>below</b> 15% of FPG                             <ul style="list-style-type: none"> <li><b>Essentially any amount will count</b></li> </ul> </li> <li>Receipt of 9 months' assistance</li> </ul>
Period of Time Considered	<ul style="list-style-type: none"> <li>Within any period of 12 consecutive months</li> </ul>	<ul style="list-style-type: none"> <li>Within a 36-month period</li> </ul>	<ul style="list-style-type: none"> <li>Monetized: within any 12 consecutive months</li> <li>Non-Monetized: within a 36-month period</li> </ul>

# Who would be eligible for public housing and Section 8 and subject to the public charge test?

Immigrants Eligible for Public Housing and Section 8 Programs	Subject to the Public Charge Test?
Parolees.	Yes (with some exceptions) – public charge rule applies when seeking change of status
Granted withholding of Removal.	Yes – public charge rule applies when seeking change of status.
Immigrants admitted for temporary residence under section 245A of the Immigration and Nationality Act [8 USCS § 1255a].	Yes – public charge rule applies when seeking change of status.
Immigrants lawfully admitted pursuant to section 141 of the Compacts of Free Association with the Marshall Islands, the Federated States of Micronesia, and Palau (COFA) (48 U.S.C. 1931 note).	Yes.

# What if dependents receive assistance?

- The proposed rule does **NOT** consider whether an applicant's **dependents, including children**, have sought, received or used public benefits.
- Dependents can still be harmed by the rule.

# Proposed rule not retroactive

- The rule would be **prospective-looking** and would NOT apply retroactively.
- The rule would not consider any newly listed benefits used prior to the effective date (60 days after a final rule has been published).
- Although the benefits test includes a 36-month look-back period, this time period will not begin to toll until 60 days after the final rule has been published.
- Don't disenroll from covered programs!

# Where is the Proposed Rule Now?

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# What has happened so far?

**Jan 2017** Leaked draft Executive Order re: public charge

**Jan 2018** Changes to the U.S. State Department's Foreign Affairs Manual (FAM) re: public charge determinations

**Feb 8, 2018** First leaked draft of proposed public charge rule by DHS

**Mar 28, 2018** Second leaked draft of proposed public charge rule by DHS

**Sept 22, 2018** Final "unofficial" draft of proposed rule published on DHS website

**Oct 10, 2018** Proposed rule officially published in Federal Register

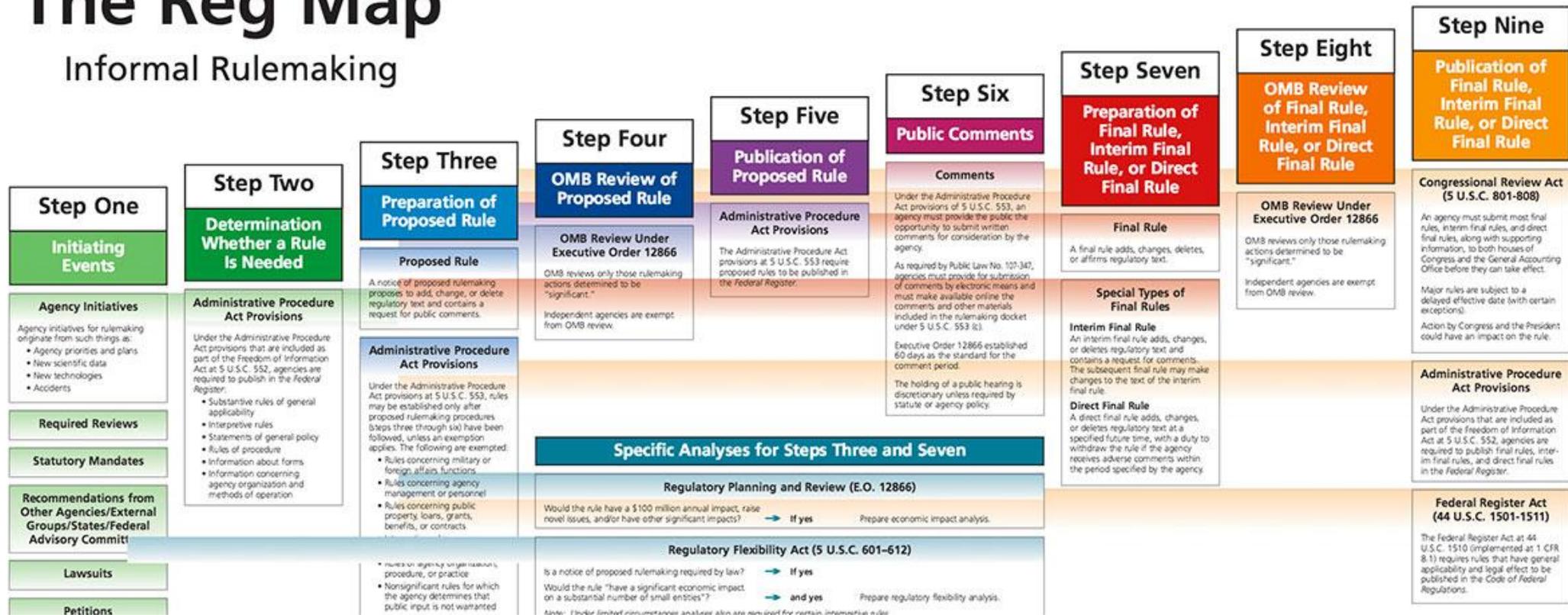
**Dec 10, 2018** Window for public comments closed

# What will happen next? Rulemaking procedure

## Rulemaking Process: OMB Review → NPRM → Notice & Comment → Final Rule

### The Reg Map

Informal Rulemaking



# Public opposition against the rule

- Federal, state and local officials
- Faith-based groups
- Public health groups
- National, state, and local advocacy groups

# Protecting Immigrant Families Comment Campaign

- Unified front with hundreds of organizations
- Campaign Goal – 100K comments submitted
- Results of PIF Campaign?
  - Over 220,000 public comments were submitted
  - Over 90% of the comments opposed the proposed rule

# What are the Next Steps?

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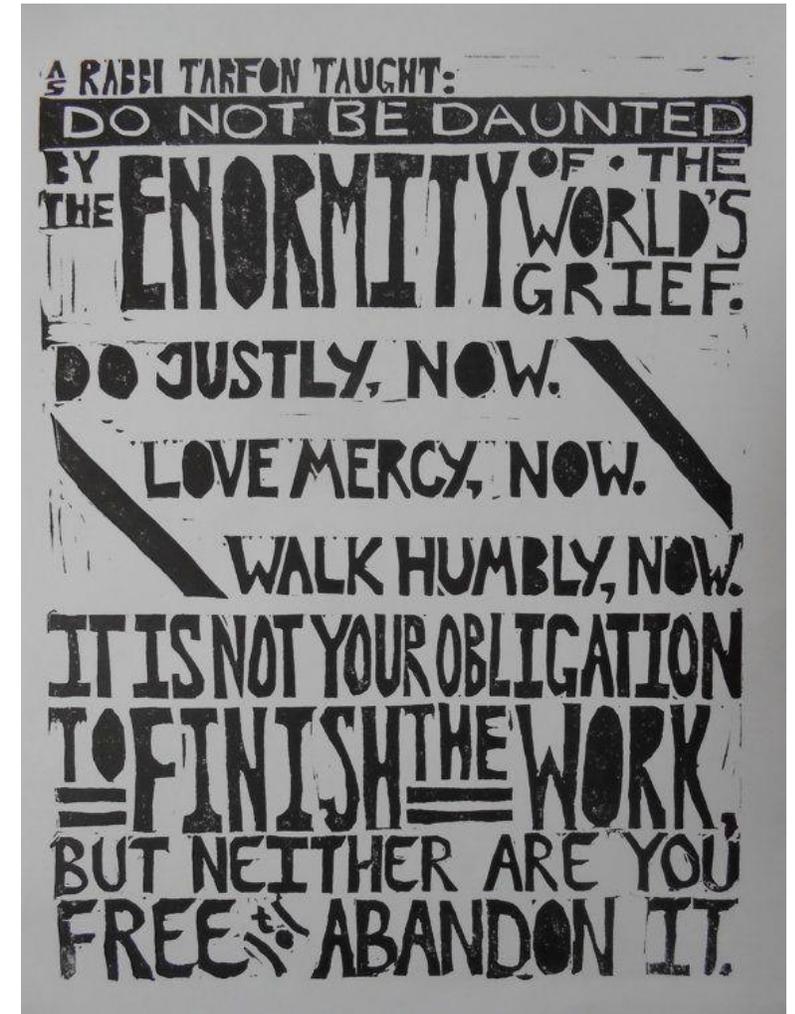
# How would this rule hurt immigrant families?

- The rule would force immigrants to choose between receiving critical services and getting immigration status.
- The rule would harm immigrants and their dependents, including U.S. citizens, who live together and force more mixed-status families into homelessness.
- The rule would deter eligible families from receiving or seeking housing assistance.
- Chilling access to critical services would undermine the goal of self-sufficiency. People are more likely to give up any support if any counts in public charge test.
- The rule would exacerbate child poverty and homelessness.

# What should I say to my clients and others?

- **STOP THE CHILL!**

- Some immigrants are NOT subject to public charge
- Many programs are excluded.
- This is only a proposal.
- Each situation is different.
- Fight back and speak out against this disastrous proposed rule!



# Public Charge and Housing Resources

- <https://www.nhlp.org/our-initiatives/public-charge-and-housing/>
  - “Technical” Fact Sheet
  - Basics FAQ
  - Talking Points
- Protecting Immigrant Families website – [www.protectingimmigrantfamilies.org](http://www.protectingimmigrantfamilies.org)

**How Would the Public Charge Rule Impact Families Seeking and Using Federal Housing Assistance?**

On October 10, 2018, the U.S. Department of Homeland Security (DHS) published a proposed rule that seeks to change the way in which DHS determines whether an immigrant is likely to become a "public charge." **The proposed rule would affect immigrant families that use or qualify for federal housing assistance.**

**What is a public charge?**  
Currently, many noncitizens are subject to a "public charge" test as part of their immigration process. The test looks at whether an individual is likely to be **primarily dependent** on the government for subsistence, as shown by either the receipt of **public cash assistance** or institutionalization for long-term care at the government's expense (emphasis added). **The current test does not consider federal housing assistance.** If a person is determined to be a public charge, they can be denied admission into the U.S. or denied a green card.

**How does the proposed rule change the public charge test?**  
The proposed rule would change the public charge test to examine whether an applicant **uses or receives, or is likely to use or receive, one or more public benefits, including non-cash benefits, such as certain federal housing assistance.** This means that immigrants and their families may be forced to choose between receiving critical benefits and risking their ability to enter or stay in the United States.

**What affordable housing programs are covered by the rule?**  
The proposed rule explicitly includes three federal housing programs: Section 8 Housing Choice Voucher Program, Project-Based Section 8 Rental Assistance (including Section 8 Moderate Rehabilitation), and Public Housing.

**Who would be directly affected by the rule?**  
The rule would primarily affect noncitizens who are applying for lawful permanent resident status (a green card), individuals seeking an extension of or changes to their non-immigrant status, and immigrants seeking admission into the U.S.  
Some immigrants will not be subject to the public charge test. These include refugees, asylees, survivors of trafficking and other serious crimes, self-petitioners under the Violence Against Women Act, special immigrant juveniles, certain people who have been paroled into the U.S., as well as lawful permanent residents applying for U.S. citizenship.

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