



# CATHOLIC LEGAL IMMIGRATION NETWORK, INC.

## Public Charge Updates February 3, 2020

---

---

---

---

---

---

---

---

### CLINIC Presenters

- Brad Jenkins, Defending Vulnerable Populations  
[bjenkins@cliniclegal.org](mailto:bjenkins@cliniclegal.org)
- Susan Schreiber, Training and Legal Support  
[sschreiber@cliniclegal.org](mailto:sschreiber@cliniclegal.org)
- Charles Wheeler, Training and Legal Support  
[cwheeler@cliniclegal.org](mailto:cwheeler@cliniclegal.org)



---

---

---

---

---

---

---

---

### Webinar Agenda

- What Just Happened and What Does it Mean?
- Status of DOS Public Charge Changes
- Presidential Proclamation
- Current Status of Litigation
- Recap of New USCIS Public Charge Rule
- Current Information on Implementation
- Program Implications
- Advice to Clients
- Next Steps



---

---

---

---

---

---

---

---

## What Just Happened?

- DHS published final rule effective October 15, 2019
- Five injunctions issued:
  - three on nationwide basis, two on local/regional;
  - USCIS blocked from implementing new regs
- Ninth Circuit stayed two injunctions; Fourth Circuit stayed one injunction; Second Circuit denied stay
- DHS appealed Second Circuit denial to Supreme Court; Supreme Court granted stay of SDNY injunction
- DHS implements rule for applications filed Feb. 24, 2020
- Illinois injunction still in place; affects applicants in Illinois

---

---

---

---

---

---

---

---

---

---



## What is DOS Doing on Public Charge?

- 2018 FAM changes
- Published interim final rule on Oct. 11, 2019
- Published proposed Form DS-5540
- Held up implementation until form finalized
- Lawsuit challenging reg and FAM guidance filed in SDNY

---

---

---

---

---

---

---

---

---

---



## Presidential Proclamation

- Proclamation issued on Oct. 4, 2019
- Denies admission to immigrant applicants w/o approved health insurance or intent to buy it
- Legal challenge brought in Oregon
- Preliminary injunction issued on nationwide basis
- Appeal filed to Ninth Circuit
- Also challenged in SDNY lawsuit

---

---

---

---

---

---

---

---

---

---



## Pending Litigation: Rule Goes Forward for Now

- *San Francisco v. USCIS*, 944 F.3d 773 (9th Cir. 2019) – PI stayed 12/5/2019. Briefing ongoing.
- *Casa de Maryland, Inc. v. Trump*, No. 19-2222 (4th Cir. Dec. 9, 2019) – PI stayed 12/9/2019.
- *Make the Road New York v. Cuccinelli*, 2020 WL 413786 (U.S. Jan. 27, 2020) – Together with *New York v. Cuccinelli*. 1/27/2020 – SCOTUS stays PI. 2d Cir. Oral argument scheduled for March 2, 2020.
  - Related case: *Make the Road New York v. Pompeo* – challenging DOS version of the public charge rule and related FAM changes. Motion for preliminary injunction to be argued March 17, 2020.

---

---

---

---

---

---

---

---

---

---



## Injunctions Still in Effect

- **Illinois Public Charge Injunction** – *Cook County v. Wolf*, 2019 WL 5110267 (N. D. Ill. Oct. 14, 2019). Stay of PI denied. CA7 Oral argument on 2/26/2020.
- **Health Care Proclamation Injunction** – *Doe v. Trump*, 944 F.3d 1222 (9th Cir. 2019) – Stay of PI denied.

Government has not asked SCOTUS for a stay of either of these injunctions.

---

---

---

---

---

---

---

---

---

---



## Changes to Public Charge Assessment

- Changes public charge inadmissibility assessment from “likely to become primarily dependent on public benefits” to “more likely than not to receive one or more [of nine designated] public benefits for more than 12 months in the aggregate in any 36-month period ”
- Considers more types of public benefits receipt as triggering public charge inadmissibility

---

---

---

---

---

---

---

---

---

---



## Final Rule Big Picture

- Assesses public charge inadmissibility by applying five statutory factors to applicant
- Evaluates applicant’s financial status by whether applicant household income is above 125% of the federal poverty guideline (FPG)
- Delegates great discretion to USCIS officer in weighing list of factors w/o standards
- Minimizes role of affidavit of support




---

---

---

---

---

---

---

---

## Current Standard vs New Standard

Martin is applying for adjustment of status. His household income is less than 125% of the FPG, but he expects to get a better job after he immigrates, which should help him pay down his \$2,000 credit card debt. His USC spouse, the petitioner, is currently unemployed, but his brother-in-law has a high-paying job and will be joint sponsor. Under current standard, Martin will probably not be found inadmissible as a person likely to become a public charge. He will have more difficulty with the new standard.




---

---

---

---

---

---

---

---

## Final Reg and Statutory Factors

- Sets out “standards” for consideration of each of the statutory factors:
  - Age
  - Health
  - Family status
  - Assets, resources, financial status
  - Education and skills
  - Affidavit of support
- Applicant may be inadmissible for public charge without any receipt of public benefits




---

---

---

---

---

---

---

---

### Age

- If younger than 18 or older than 61 will need to demonstrate why age won't impact ability to work
- Those 18-61 need to demonstrate employed and employable

---

---

---

---

---

---

---

---



### Health

- Medical condition requiring extensive treatment or institutionalization
- Affect ability to work, attend school, care for self
- Look to panel physician/civil surgeon report
- Other evidence of medical condition

---

---

---

---

---

---

---

---



### Family Status/Household Size

- Household size if 21 or older includes:
  - Spouse and children if residing with applicant
  - Other children or spouse must support (≥ 50%)
  - Dependents on tax return
  - Person who supports applicant (≥ 50%)
- Household size if unmarried, under 21:
  - Same as above, except parent/legal guardian instead of spouse
  - Dependents, children of parent/legal guardian

---

---

---

---

---

---

---

---



### Assets, Resources, Financial Status

- Is gross income  $\geq$  125% FPG?
- If not, assets 3 or 5 times shortfall in income?
- Income/assets to cover medical condition
- Financial liabilities
- Prior fee waivers
- Applied for, certified for, or received benefit
- Evidence: last tax year transcript, 12 mos of bank statements, real estate value, proof not financially eligible for benefit, health insurance, fee waiver receipt, credit history and score

---

---

---

---

---

---

---

---

---

---



### Education and Skills

- Adequate education and skills to work at job with income above FPG
- Primary care giver of household child?
- Evidence: employment history, 3 years of tax transcripts, academic degree (high school diploma), licenses or certifications, English proficiency

---

---

---

---

---

---

---

---

---

---



### Public Benefit Receipt

- Applicant's receipt of:
  - SSI
  - TANF
  - State general relief or general assistance
  - Benefits provided for institutionalization for long-term care
  - Medicaid (with exceptions)
  - SNAP
  - Section 8 Housing Vouchers
  - Section 8 Project-Based Rental Assistance
  - Public Housing

---

---

---

---

---

---

---

---

---

---



## Heavily Weighted Factors

- **Negative:**
  - No job history or prospects if work authorized
  - Current receiving or approved for benefits for 12 mos w/in 36-mth period
  - Serious medical condition, no private insurance
  - Previously denied for public charge
- **Positive:**
  - Assets, resources, support  $\geq$  250% FPG
  - Work authorized and income  $\geq$  250% FPG
  - Private health insurance (not ACA)

---

---

---

---

---

---

---

---

---

---



## Role of Affidavit of Support

- Where affidavit of support required, no longer primary factor in determining public charge inadmissibility
- USCIS will consider likelihood that sponsor will provide support
- Evidence:
  - Income, resources and assets
  - Relationship to and residence with applicant
  - Whether sponsored other immigrants

---

---

---

---

---

---

---

---

---

---



## Remember Martin?

Martin is applying for adjustment of status. His household income is less than 125% of the FPG, but he expects to get a better job after he immigrates and pay down his \$2,000 credit card debt. His brother-in-law will be a joint sponsor. Consider:

- Age?
- Job skills and work history, tax transcripts?
- Education (high school degree)?
- English proficiency?
- Household size and income vs. 125% of FPG?
- Health and health insurance coverage?
- Assets and resources?
- Credit rating?
- Joint sponsor's income, # sponsored, and relationship?

---

---

---

---

---

---

---

---

---

---



## Public Charge Bond

- After inadmissibility finding, USCIS may invite submission of bond
- Not if heavily negative factor
- Cash or surety bond
- Minimum bond \$8,100, only surety bonds initially
- Special form and fee
- Not appealable decision

---

---

---

---

---

---

---

---



## What About Consular Processing?

- Separate DOS rule published in final form
- When implemented will apply to consular determinations
- Not sure of effective date
- Increase in public charge findings already under current guidance
- Backlog in adjustment applications means effect of rule likely seen first by consulates

---

---

---

---

---

---

---

---



## Current Information on Implementation

- Applications filed on/after Feb. 24, 2020
- Benefits received before Feb. 24, 2020 will count if SSI, TANF, state general assistance, long-term institutionalization
- As of Feb. 24, 2020, receipt of SNAP, Medicaid, three housing programs will also count
- New forms to be available during week of Feb. 3

---

---

---

---

---

---

---

---





## New or Changed Forms

- I-944, Declaration of Self-Sufficiency (new)
- I-945: Public Charge Bond (new)
- I-864W, Exemption from Affidavit of Support (eliminated)
- I-485, Adjustment of Status
- I-356, Cancellation of Bond
- I-539, Change/Extend Nonimmigrant Status

---

---

---

---

---

---

---

---

## USCIS on Implementation

- Final rule applies only to applications and petitions postmarked (or if applicable, submitted electronically) on or after Feb. 24, 2020. For applications and petitions sent by commercial courier (UPS, FedEx, and DHL), postmark date is date reflected on courier receipt.
- After Feb. 24, except in Illinois, USCIS will reject prior editions of forms if form is postmarked on or after Feb. 24, 2020

---

---

---

---

---

---

---

---

## Implications for Programs and Practitioners

- Prioritize filing AOS for eligible clients before Feb. 24
- Familiarize staff with new issues and new forms
- Plan for longer client interview and application preparation sessions
- More counseling, document review, form completion
- Utilize new practitioner materials (questionnaires and document checklist for client)
- Likely need to attend AOS interviews to monitor application of public charge assessment

---

---

---

---

---

---

---

---

## Counseling Clients

- AOS
  - Determine if fall into vulnerable group
  - Counsel re risk of NTA if denied
  - Only review is through motion to reopen or reconsider, or in removal proceedings
- Consular Processing
  - Determine if fall into vulnerable group
  - Risk of denied admission
  - Risk of loss of provisional waiver approval
- LPRs
  - LPRs subject to public charge if absent  $\geq$  180 days
  - Potential for deportability if receive benefits w/in 5 years

---

---

---

---

---

---

---

---



## Next Steps

- Join our public charge listserv – keep us posted on case adjudications
- Use Ask the Experts for case questions re public charge inadmissibility
- Attend future trainings we offer (family-based immigration and grounds of inadmissibility)
- Sign up for Feb. 19 webinar on new forms
- We welcome your feedback on materials, training topics, advocacy issues to raise with USCIS

---

---

---

---

---

---

---

---





**Catholic Legal Immigration Network, Inc.**

National Office  
 8757 Georgia Avenue, Suite 850  
 Silver Spring, MD 20910  
 Main Phone: (301) 565-4800  
 Main Fax: (301) 565-4824

[cliniclegal.org](http://cliniclegal.org)  
[fb.com/cliniclegal](https://fb.com/cliniclegal)

---

---

---

---

---

---

---

---