CHANGES TO PUBLIC CHARGE
Analysis and Frequently Asked Questions

Last updated FEBRUARY 24, 2020*

Two federal agencies’ regulations on the “public charge” grounds of inadmissibility went into effect on February 24, 2020. U.S. Department of Homeland Security (DHS) regulations will apply to U.S. Citizenship and Immigration Services (USCIS) processing in the U.S. of applications for adjustment to lawful permanent resident (LPR) status submitted electronically or postmarked on or after February 24, 2020. U.S. State Department regulations apply immediately to applications for visas and LPR status processed at U.S. consulates outside the United States.

Not every immigrant is subject to the public charge test. Refugees, asylees, and many other categories of humanitarian immigrants are exempt.¹

More resources, including for community education, are available on the Protecting Immigrant Families (PIF) Campaign website.² The PIF Public Charge Dictionary defines common terms used when discussing immigrant eligibility for public programs.³

Overview of How Public Charge Policy Has Changed

The public charge ground of inadmissibility has been a part of U.S. immigration law and policy since the late 1800s. Historically, a person has been considered a “public charge” if the person is primarily dependent on the government for subsistence. Individuals may be denied a visa to come to the U.S. or the ability to become a lawful permanent resident (sometimes referred to as having a “green card”) if they are deemed likely to become a public charge in the future.

In determining whether individuals are likely to become a public charge, immigration officials review their current situation and characteristics, looking at what the immigration statute calls a “totality of the circumstances.” 8 USC section 1182(a)(4).⁴ This assessment requires officials to consider, at a minimum, an intending immigrant’s age, health, family

¹ https://ecfr.io/Title-08/se8.1.212_123.
² https://protectingimmigrantfamilies.org/know-your-rights/.
³ https://docs.google.com/document/d/1P2mWIbmjRBlicE1NSF2g7z_dhPXNqNi1xu8_lRSmoo/edit.

* This NILC edition of “Changes to Public Charge: Analysis and Frequently Asked Questions” is a revised and reformatted (but not updated) edition of a Protecting Immigrant Families (PIF) Campaign publication bearing the same title. This NILC edition was first published April 1, 2020.
status, income and resources, education and skills, as well as the legal sufficiency of an affidavit of support filed on behalf of the person if the person is required to have one.

The DHS and State Department regulations that took effect on February 24, 2020, make three major changes to the meaning and application of public charge policy. They:

- change the definition of “public charge”
- add to the totality-of-circumstances factors standards and evidentiary requirements that disadvantage low- and moderate-income applicants
- designate essential nutrition, health care, and housing benefits, as well as cash assistance for income maintenance, as benefits to be considered in the public charge assessment

In addition, the DHS regulations introduce a new test for nonimmigrants seeking extensions of their visas or a change to another nonimmigrant status (e.g., from a student visa to an employment visa), penalizing those who have used a listed benefit for 12 months in the aggregate out of the 36 months prior to their application.

The regulations introduce significant and harmful changes that will fundamentally alter the immigration system, making it much harder for low- and moderate-income immigrants to obtain LPR status (to get a “green card”) and ultimately U.S. citizenship.

The regulations caused significant harm even before they took effect. Fear and confusion have been causing people to disenroll from programs or to forgo benefits for which they are eligible. In other words, they’ve had a chilling effect. According to a December 2018 nationwide survey, about one in seven adults in immigrant families reported a chilling effect where individuals did not participate in a government program for fear of risking future green card status. Several states have reported drops in participation. The potential impact is far-reaching, given that 13.7 percent of the U.S. population is foreign-born and one in four children in the U.S. has at least one foreign-born parent.

**Definition of Public Charge**

Part of federal immigration law for over a hundred years, the public charge inadmissibility screening was intended to identify people who may depend on the government as their primary source of support. If the government determines that a person is “likely at any time to become a public charge” in the future, it can deny a person admission to the U.S. or lawful permanent resident (or “green card”) status. **Immigration and Naturalization Act section 212(a)(4), 8 USC section 1182(a)(4).**

The DHS and State Department regulations redefine a “public charge” as a non–U.S. citizen who receives or is likely to receive one or more of the specified public benefits for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months). The benefits considered are cash assistance for income maintenance from any level of government, the Supplemental Nutrition Assistance Program (SNAP, formerly known as food stamps), public housing, Section 8 housing assistance, and Medicaid (with exceptions for people under age 21, women during pregnancy and for 60 days after the pregnancy ends, and receipt of emergency services).
Totality of Circumstances Test: New Standards and Heavily Weighted Factors

NOTE: This summary does not include all the details in the regulations and should not be considered or used for providing legal advice.

The public charge inadmissibility test is forward-looking. An immigration officer assesses whether a person is likely to become a public charge in the future. This determination is made based on the totality of circumstances assessment that considers the applicant’s age, health, family status, income and resources, education and skills, and the validity of any affidavit of support filed on the applicant’s behalf.

The regulations add many factors and evidentiary standards to the totality of circumstances test and create heavily weighted positive and negative factors.

INCOME & ASSETS

The regulations adopt new income thresholds for households seeking to overcome a public charge test and introduce specific factors to consider.

Negative factors include:

- a household income below 125 percent of the federal poverty level ($32,750 for a family of four), unless the household has significant assets
- application for or receipt of (after Feb. 24, 2020) one of the benefit programs specified in the rule
- application or receipt of (after Feb. 24, 2020) a fee waiver to obtain an immigration status that is subject to the public charge determination

Positive factors include:

- health insurance that is not classified as a public benefit under the regulations or assets and resources sufficient to cover “any reasonably foreseeable medical costs”
- heavily positive weight is applied only to households earning over 250 percent of the federal poverty level ($64,375 annually for a family of four)

AGE

The regulations:

- assign negative weight to people who are younger than 18 or older than 61
- assign positive weight to persons between the ages of 18 and 61

HEALTH

- The regulations consider whether the applicant has been diagnosed with one or more health conditions that could require extensive treatment in the future or that could affect their ability to work, attend school, or care for themselves. If the applicant has such a condition and does not have health insurance or sufficient resources to pay for “reasonably foreseeable medical expenses,” heavily negative weight will be assigned.
• Heavy positive weight is assigned to people who have private unsubsidized health insurance, which the rule defines as not including Affordable Care Act (ACA) plans supported by advance premium tax credits.

FAMILY STATUS

• The regulations consider the applicant’s household size, including immediate family members as well as anyone else to whom the applicant provides at least half of their support, or who provides the applicant with half of their support, or who lists them as a dependent on their tax returns.

EDUCATION & SKILLS

The regulations consider whether the person has:

• a history of employment (e.g., three years of tax returns)
• a high school degree or equivalent, higher education, occupational skills and certificates or licenses
• proficiency in English or in other languages in addition to English
• a role as the primary caretaker of someone in the household who is a child, senior, or a person who is ill or who has disabilities.

AFFIDAVIT OF SUPPORT

An affidavit of support is a contract that a sponsor — usually a family member — signs to accept financial responsibility for an applicant and the applicant’s dependents. In addition to considering the applicant’s income or resources, the regulations consider whether the sponsor is likely to support the individual, based on the sponsor’s relationship to the immigrant, including whether the sponsor is residing in the same household as the applicant.

Benefits Considered

The regulations expand the types of benefits that could be considered in a public charge determination, adding several widely used programs that help low- and moderate-income working families. These programs that can be counted under the regulations are:

• any federal, state, local or tribal cash assistance for income maintenance, including Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), and general assistance programs (considered under the previous rule as well)
• Medicaid (with exceptions including coverage for emergency services, children under 21 years old, pregnant women, including 60 days of postpartum services)
• Supplemental Nutrition Assistance Program (SNAP, formerly called food stamps)
• federal public housing, Section 8 housing vouchers, and Section 8 project-based rental assistance
Use of cash assistance programs or long-term institutional care before Feb. 24, 2020, will be considered in public charge determinations. Use of any amount of the programs listed above for any period of time on or after Feb. 24, 2020, will be considered as a negative factor in the totality of circumstances, with a heavy negative weight assigned to people who use one or more programs for 12 months in the aggregate out of 36 months. Note however that:

- DHS will not consider any benefits not listed in the rule (see table, below)
- DHS will not consider benefits received by people other than the applicant, even if the applicant requested the benefits on their behalf
- DHS will not consider noncash programs funded entirely by states, localities or tribes

The regulations also exclude from consideration benefits received by active duty servicemembers or members of the Ready Reserve and their spouses and unmarried minor children. (Benefits received by veterans or their families are not excluded.)

Benefits received by immigrants while in an immigration status that is exempt from a public charge determination (e.g., while a refugee, Violence Against Women Act (VAWA) self-petitioner, etc.) will not be considered if they apply for admission into the U.S. or LPR status under a pathway such as a family-based visa petition, where public charge applies.

**NOTE:** The regulations are not retroactive. This means that benefits — other than cash or long-term care at government expense — that were used before the regulations became effective on Feb. 24, 2020, will not be considered in the public charge determination.

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<tr>
<th>Benefits Included for Public Charge</th>
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<tr>
<td>• Cash support for income maintenance*</td>
<td>ANY benefits not on the included list will not be applied toward the public charge test. Examples include:</td>
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<td>• Nonemergency Medicaid**</td>
<td>• Disaster relief</td>
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<td>• Supplemental Nutrition Assistance Program (SNAP, or food stamps)</td>
<td>• Entirely state, local, or tribal programs (other than cash assistance)</td>
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<td>• Housing assistance (public housing or Section 8 housing vouchers and rental assistance)</td>
<td>• Benefits received by the applicant’s family members</td>
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<td>* Included under current policy as well</td>
<td>• Children’s Health Insurance Program (CHIP)</td>
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<td>** Exception for coverage of children under 21, pregnant women (including 60 days postpartum), and emergency services</td>
<td>• Special Supplemental Nutrition for Women Infants and Children (WIC)</td>
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<td>• School breakfast and lunch</td>
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<td>• Energy assistance (LIHEAP)</td>
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<td>• Transportation vouchers or noncash transportation services</td>
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<td>• Noncash Temporary Assistance for Needy Families (TANF) benefits</td>
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<td>• Tax credits, including the Earned Income Tax Credit and Child Tax Credit</td>
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<td>• Advance premium tax credits under the Affordable Care Act</td>
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<td>• Pell grants and student Loans</td>
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<td>• Any other program not listed in the left column</td>
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Other Notable Issues

Most immigrants who are subject to a public charge inadmissibility assessment are not eligible for the benefits considered under the regulations. A USCIS or consular official will be considering whether an applicant is likely to use the specified benefits in the future.

The regulations do not address or change the public charge ground of deportability. Under current law and policy, a person who has become a public charge within five years after entering the U.S. for reasons that existed prior to their entry can be deportable, but only in extremely rare circumstances. The U.S. Department of Justice may propose regulations that change this policy. More information about this is available in PIF’s “Public Charge & Deportation: FAQ for Advocates and Community Members” (PDF).

Two Things to Keep in Mind

Some immigrant groups are not subject to public charge

Certain immigrants are not subject to public charge inadmissibility determinations and would not be affected by these regulations. Exempt immigrants include: refugees; asylees; survivors of trafficking, domestic violence, or other serious crimes (T or U visa applicants/holders); VAWA self-petitioners; special immigrant juveniles; and certain other “humanitarian” immigrants.

Public benefits received while a person is in an exempt status will not be counted negatively if the person later seeks to adjust to LPR status through a nonexempt pathway, such as a family-based petition.

A public charge assessment is not part of the naturalization process. In addition, there is no public charge assessment when LPRs renew their green card.

Immigration officials must weigh positive factors against negative factors.

The public charge statute requires immigration officials to look at all aspects of a person’s situation. Any negative factor, such as having a low income, can be outweighed by positive factors, such as having completed training for a new profession or having college-educated children who will help support the family.

FREQUENTLY ASKED QUESTIONS: THE PUBLIC CHARGE TEST

When is a public charge determination made?

Whether a person is likely to become a public charge is typically assessed when a person: (1) applies for admission to the U.S. (e.g., applies for a visa or undergoes consular processing for a green card from abroad), or (2) applies for lawful permanent resident (LPR) status. An LPR who leaves the U.S. for over 180 days and seeks to reenter the U.S. may also be subject

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7 https://ecfr.io/Title-08/se8.1.212_123.
to a public charge determination. There is no public charge assessment when an LPR applies to become a naturalized U.S. citizen.

**Which immigrants are exempt from public charge?**

Some categories of noncitizens are not subject to a public charge test, including: refugees; asylees; survivors of trafficking, domestic violence, or other serious crimes (T or U visa applicants/holders); VAWA self-petitioners; special immigrant juveniles; and certain other “humanitarian” immigrants.

**Does the public charge test apply to renewals of green cards?**

A person’s lawful permanent residence does not expire when the green card expires. Since there is no new admission when people renew their green card, the public charge ground of inadmissibility would not apply at this stage.

**Does the new rule apply to nonimmigrants?**

The DHS regulations apply a new test to people in the U.S. who seek to extend a temporary nonimmigrant visa, as well as those seeking to change the category of their nonimmigrant visa (e.g., from a student to an employment-based visa). It looks only at whether the person has used a listed benefit for more than a total of 12 months during a 36-month period since the nonimmigrant status was granted. Nonimmigrants are generally not eligible for the listed benefits.

**Will this rule affect immigrants who already have green cards or are U.S. citizens?**

The rule does not affect people who have already become U.S. citizens. Lawful permanent residents (immigrants with green cards) also are not subject to a public charge inadmissibility determination when they apply to become a U.S. citizen. However, LPRs who leave the U.S. for more than 180 consecutive days (6 months) may be subject to a determination of admissibility, including a public charge assessment, when seeking to reenter the U.S. They should consult with an immigration attorney prior to departing the U.S.

**Does public charge apply to DACA recipients?**

There is no public charge assessment when people renew their DACA. However, DACA recipients are not exempt from the public charge issue. DACA recipients who have a pathway to becoming an LPR that is not exempt from the public charge assessment, such as marriage to a U.S. citizen, would be subject to the assessment. However, if they apply for an immigration status through an exempt pathway, such as a U visa, they would not be subject to a public charge test.

**Who decides whether someone is likely to become a public charge?**

For individuals applying to enter the U.S. from abroad or who need to go abroad for their green card interview, consular officials (employed by the U.S. State Department) make the public charge determination. For individuals who have their green card application decided
in the U.S. or who apply to extend/change their nonimmigrant status, U.S. Citizenship and Immigration Services officials make the decision.

**Can a public charge determination be retroactive?**

The public charge determination is a forward-looking test based on the totality of the applicant’s circumstances. DHS and the U.S. State Department may consider the past use of certain benefits, but their ability to do so is limited by the regulations’ effective dates.

- The applicant’s use of cash assistance for income maintenance, from any level of government, can be considered without regard to when it was received.
- The applicant’s institutionalization for long-term care at government expense can be considered only before Feb. 24, 2020, unless one of the benefits included in the regulations, such as Medicaid, paid for the long-term care.
- Benefits that were previously excluded from the public charge test (benefits other than cash assistance or long-term care) will NOT be considered unless received after the regulations’ effective date (Feb. 24, 2020).

**Which categories of immigrants are eligible for the benefit programs included in the regulations and also potentially subject to public charge grounds of inadmissibility?**

Although most immigrants who are eligible for the specified benefit programs are not subject to public charge inadmissibility determinations, a small group of individuals could be penalized for using benefits for which they are eligible. Examples include:

- **All programs.** Lawful permanent residents who leave the U.S. for more than 6 months and attempt to reenter the U.S. can be subject to an inadmissibility determination, which could include a public charge assessment.
- **Medicaid or SNAP.** Some people granted parole, withholding of removal, and a small subset of Cuban/Haitian entrants if they seek adjustment to LPR status based on a family-based visa petition or other nonexempt pathway.
- **SNAP.** In addition to the categories of people listed above, some members of the Hmong and Lao communities that helped the U.S. during the Vietnam War if they seek adjustment to LPR status based on a family-based visa petition or other nonexempt pathway.
- **Public housing or Section 8.** Some people granted parole (into the U.S.) or withholding of removal are eligible for housing programs and would be subject to a public charge assessment if they seek adjustment to LPR status based on a family-based visa petition or other nonexempt pathway. In addition, citizens of Micronesia, the Marshall Islands, or Palau could be subject to a public charge assessment if they leave the U.S. and attempt to reenter or if they seek LPR status through a pathway that isn’t exempt from the public charge assessment.
How can the rule affect people who aren’t eligible for the listed benefits?

Immigration and consular officials will consider whether, in their judgment, the person is likely to use the threshold amount of the specified benefits at any point in the future, when they may become eligible. This determination is based on the totality of circumstances factors discussed above.

Are there special rules for members of the U.S. armed forces and their families?

The regulations include some special provisions for members of the U.S. armed forces and their families. Receipt of public benefits is not counted in the public charge determination if, at the time of receipt of the benefit or when applying for admission to the U.S. or adjustment of status, the non-U.S. citizen who received the benefits is enlisted in the U.S. armed forces and serving in active duty or the Ready Reserve, or is the spouse or unmarried minor child of such an individual. In addition, the income threshold under the totality of circumstances test is 100 percent of the federal poverty level, rather than 125 percent.

Are there special rules for veterans of the U.S. armed forces and their families?

The rule does not make any special provisions for veterans of the U.S. armed forces or their families.

The receipt of one or more public benefits for a total of 12 months within the past 36 months is assigned a “heavily negative” weight in the new rule. Does this mean immigration/consular officials can look at benefits used prior to Feb. 24, 2020?

Only cash assistance and long-term care used prior to the regulations’ effective date may be considered. Receipt of any benefits newly designated under the new regulations (Medicaid, SNAP, housing assistance) could not be considered until the rule’s effective date, Feb. 24, 2020. Thus, USCIS will not be able to do a complete three-year look-back on the health care, nutrition, and housing benefits added by the proposed rule until three years after Feb. 24, 2020.

Does the rule consider benefits used for less than 12 months?

Any amount of the specified benefits used after the regulations’ effective date, and cash assistance used at any time, may be considered a negative factor in the totality of circumstances.

Does the rule exempt benefits used by pregnant women and new mothers?

The new public charge rule explicitly excludes from the public charge assessment Medicaid received by pregnant women and for 60 days postpartum. In addition, the rule does not include in the assessment labor and delivery services covered by emergency Medicaid. There are no similar exemptions for cash assistance, SNAP, or housing programs.
Does the rule exclude children’s use of benefits?

The rule excludes Medicaid and any other health benefits received by children under age 21 from being considered in the public charge test. It does not exclude cash assistance, housing, or SNAP benefits received by immigrant children. These benefits may be taken into account if the child is applying for admission into the U.S. or LPR status.

Is a dependent’s use of benefits considered in the immigrant's public charge assessment (e.g., does a U.S. citizen child’s use of SNAP (food stamps) affect a parent's green card application, if the parent wasn’t receiving the benefit)?

No. According to the regulations, only the applicant’s use of benefits is taken into consideration. Receipt of benefits by dependents and other household members would not be considered in determining whether the immigrant applicant is likely to become a public charge. In cases where other members of a household may be eligible for a benefit (such as SNAP or public housing), only benefits received by the immigrant applying for immigration status — not their household members — would be considered.

Are advance premium tax credits (subsidies) under the Affordable Care Act counted in the public charge test?

Receipt of advance premium tax credits (subsidies) under the Affordable Care Act is not counted as receipt of a public benefit. And having subsidized health care coverage under the ACA or other private health insurance can help overcome a negative weight based on a person’s health condition. But only private insurance without subsidies is weighed as a heavily positive factor.

Are state- or locally funded programs counted in the public charge assessment?

State, locally, and tribally funded programs cash assistance programs for income maintenance are considered. State, locally, and tribally funded noncash programs, such as health care and state-funded housing assistance, are not counted.

In many states, people applying for health insurance on the Affordable Care Act exchange or seeking state-funded health insurance are automatically reviewed for Medicaid eligibility. Is this considered an application for Medicaid? Must it be reported?

Where programs (either under the ACA or state-funded health programs) require a Medicaid screening prior to an eligibility determination, this may be considered an application. However, immigrants will also have the opportunity to provide evidence that they were denied these benefits, and why.
Do the regulations establish 125 percent of the federal poverty level as an income requirement for admission to the U.S. or being granted LPR status? Does having an income of 250 percent of the federal poverty line mean that the immigrant will not be considered likely to become a public charge?

A household income under 125 percent of the federal poverty level is a negative factor in the public charge assessment. A household income over 250 percent of the federal poverty level is a heavily weighed positive factor. But the public charge assessment considers all of a person’s circumstances, weighing positive factors against any negative factors. Household income carries weight but will not necessarily be the deciding factor.

How does this rule change the U.S. immigration system?

Drawing upon analysis of U.S. Census Bureau data, Migration Policy Institute (MPI) researchers applied the administration’s expanded “totality of circumstances” test under the proposed rule to immigrants who had received LPR status within the past five years. MPI found that 69 percent had at least one negative factor under the administration’s proposed test, while just 39 percent had income at or above 250 percent of the federal poverty level. According to MPI, the new assessment criteria will have a disproportionate negative effect on women, children, and seniors. It is also likely to disproportionately exclude immigrants from Latin American countries and favor immigration from Europe. The Trump administration has sought legislative approval to restrict family-based immigration, and this rule is a back-door attempt to accomplish what Congress has rejected.

Can the DHS rule be stopped with litigation?

At least nine court cases challenging the rule are currently pending across the country. Although multiple courts initially prohibited the government from implementing the rule, the Supreme Court allowed it to go into effect while the cases proceed. The rule is likely to be in effect during the next several months at a minimum.

Are refugees and trafficking victims exempt from public charge determinations if they apply to enter the U.S. at consular offices abroad?

Yes. The same categories of humanitarian immigrants who are exempt from the public charge assessment under the DHS regulations are exempt under the State Department regulations.

Does U.S. immigration law allow the government to deport lawful permanent residents if they become dependent on public benefits?

Immigration law provides that individuals who have become a public charge within five years of their entry to the U.S., for reasons that existed before they entered the country, may become deportable as a public charge (PDF). Administrative decisions require that all the following be present before a person may be deported on public charge grounds:

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9 https://ecfr.io/Title-08/se8.1.212_123.
• The person or their sponsor had a legal obligation to repay the cost of a benefit.
• The person or their sponsor received notice of the repayment obligation within five years of the person’s last entry to the U.S.
• The benefits-granting agency has obtained a legal judgment requiring repayment of the benefit and has not received repayment.

The DHS and U.S. State Department regulations interpret the public charge grounds of inadmissibility and do not address the public charge ground of deportability. However, the U.S. Department of Justice has been developing public charge regulations, which are expected to address deportation on public charge grounds. The Justice Department has not yet posted a proposed rule addressing the public charge ground of deportability.

**When does the public charge deportability ground apply?**

The public charge ground of deportability applies to people who already have been inspected and admitted to the U.S., including people granted LPR status. By contrast, the public charge ground of inadmissibility applies to people seeking admission to the U.S. (including lawful permanent residents who seek reentry after an absence of more than 180 days), an immigrant or nonimmigrant visa at a consulate abroad, or adjustment to LPR status. As previously noted, the final DHS rule applies a similar test to nonimmigrants seeking to extend or change nonimmigrant status in the U.S.

Updates on the expected U.S. Department of Justice proposed rule on public charge will be posted on the PIF website, ProtectingImmigrantFamilies.org, as it becomes available. For more information on the existing policy, see PIF’s “Public Charge & Deportation: FAQ for Advocates and Community Members” (PDF).

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