

CHAPTER 1 INTRODUCTION

This chapter includes:

§ 1.1	Purpose of This Manual	1
§ 1.2	Contents of This Manual	2
§ 1.3	Staying Informed and Getting Involved.....	3

§ 1.2 Purpose of This Manual

This manual is designed for attorneys, accredited representatives, advocates, paralegals, and other staff at nonprofit organizations, government agencies, law enforcement agencies, schools, social service agencies, health care providers, and other organizations who serve immigrant communities that qualify for public benefits and services.

Green card applicants and other noncitizens seeking to enter the United States on certain visas are subject to the “public charge” ground of inadmissibility (among other grounds), which looks at the likelihood an intending immigrant will rely on specified public benefits soon after their arrival in the United States. Someone who is deemed likely to become primarily dependent on the government for support may be denied a green card or visa on the basis that they are likely to become a “public charge.”

As of this manual’s writing (March 2019), the future of public charge is uncertain. Although existing standards to determine the likelihood of becoming a public charge have been in place for almost twenty years, an October 2018 Notice of Proposed Rulemaking (NPRM) from the U.S. Department of Homeland Security signaled that changes may be on the horizon. In addition, those who apply for immigrant visas at U.S. consulates abroad have already started to see changes in how public charge is evaluated. This has caused fear and uncertainty within immigrant communities and requires immigration legal services providers to thoroughly understand public charge in order to best inform immigrant clients of any potential impact or non-impact on clients and their families.

Our hope is that this manual will help build the capacity of the field to address public charge concerns from clients, many of whom are not subject to public charge at all, are not eligible for the benefits that would subject them to public charge anyway, or are using benefits that are not considered as part of a public charge determination.

Because an NPRM has been published a new, final rule may be published soon. At that time, we will update this publication to incorporate the changes.

PRACTICE TIP: Talking to community members about public charge. When community members are considering whether to enroll in or dis-enroll from public benefits, the possible impact such a decision may have on “public charge” in their or a family member’s immigration case is only one consideration. Further, it may not be the driving factor in a client’s decision to

apply for or continue receiving public benefits. Even if immigration is a person's main concern, the public charge laws might not apply to their situation. Public charge does not apply to applicants for U visas, asylum, TPS, DACA, and VAWA, for example. It does not apply to those seeking cancellation of removal in immigration court. It does not apply to those who are undocumented and have no current opportunity to seek status. In fact, public charge only applies to a narrow range of people seeking admission or a green card through a family member.

Even if a community member is or someday could be subject to a public charge assessment, public charge is only one possible consideration in deciding whether they should apply for or receive public benefits. For many noncitizens who are eligible for cash aid or long-term institutionalization, these benefits provide critical support that is otherwise unaffordable to them and their families and may outweigh other concerns, including immigration issues.

If the list of benefits under a new rule expands to include nutritional assistance, public housing, or other benefits that are not currently part of the public charge assessment, community members may choose to avoid those benefits, regardless of whether they will be subject to the public charge ground.

In sum, advocates should not tell community members to avoid applying for or to dis-enroll from public benefits solely because of a possible public charge risk, without considering the overall needs of their family and the relevance of public charge to their immigration strategy.

§ 1.2 Contents of This Manual

This manual contains nine chapters and an appendix of referenced documents. Please refer to these chapters for substantive coverage of the following topics:

Chapter 1, Introduction, covers the purpose and contents of this manual, including who this manual is for and how to stay informed on this issue.

Chapter 2, Brief History of Public Charge, provides an overview of how public charge has been interpreted since its inception and its evolution in the regulations and Foreign Affairs Manual.

Chapter 3, Public Charge as a Ground of Inadmissibility, provides an overview of who is subject to the grounds of inadmissibility, which include public charge; specifies who is subject to the public charge ground; and discusses the legal standard to assess public charge.

Chapter 4, Assessing Public Charge, explains the “totality of the circumstance” test that immigration officials use to assess public charge, and one factor of this test, the affidavit of support, which certain applicants are required to submit as part of proving that they are not likely to become a public charge.

Chapter 5, The Affidavit of Support, covers the affidavit of support requirement, including who is subject to it and what it entails, various ways to meet the financial requirements, and different types of sponsors. It also covers the serious legal responsibilities a person takes on when they sign an affidavit of support and how long these obligations last. Finally, this chapter covers who qualifies for an exemption to the affidavit of support requirement in family-based cases.

Chapter 6, Affidavit of Support Process, covers the affidavit of support process, completing the application forms and collecting the supporting documents, and includes an explanation of the different affidavit of support forms (Form I-864, I-864W, I-864A, I-864EZ) and when to use them.

Chapter 7, Public Charge and Consular Processing, covers the Foreign Affairs Manual guidance on public charge inadmissibility in the consular processing context, as well as special considerations involving visa refusals and provisional waiver revocations.

Chapter 8, Public Charge as a Ground of Deportability, provides an overview of the public charge deportability ground including the requirements for DHS to prove deportability as a public charge and how it is used.

Chapter 9, Considerations for Lawful Permanent Residents and Naturalization Applicants, examines when and how the public charge ground of inadmissibility might apply to lawful permanent residents (LPRs), including LPRs seeking to naturalize (apply for U.S. citizenship).

The **Appendix** at the end of this manual provides sample materials and other referenced resources.

§ 1.3 Staying Informed and Getting Involved

As of this manual's writing, for the vast majority of people, nothing has changed regarding public charge—the statute and regulations regarding public charge have not changed. While the Foreign Affairs Manual (FAM) on public charge inadmissibility in consular processing cases has changed, this only affects a subset of people applying for green cards at U.S. consulates abroad.

However, the January 2018 changes to the FAM and the October 2018 NPRM indicate changes to how the public charge inadmissibility ground is interpreted by U.S. Citizenship and Immigration Services may be coming. To stay informed, you can visit the Immigrant Legal Resource Center's public charge page at <https://www.ilrc.org/public-charge> for training information, fact sheets, and resources.

We also suggest you consider joining the Protecting Immigrant Families, Advancing Our Future ("PIF") campaign. In 2017, this campaign was created by the Center for Law and Social Policy (CLASP) and the National Immigration Law Center (NILC) to bring together leading advocates for immigrants, children, education, health, anti-hunger, anti-poverty, and faith communities to defend against changes to public charge that threaten the health and well-being of immigrants and their families in this country.

The PIF campaign is made up of hundreds of diverse organizations and develops innovative advocacy strategies, distributes educational resources, and keeps allies informed of current and potential policies that impact immigrant families. In 2018, the campaign helped generate the more than 250,000 comments that were submitted in response to the October 2019 NPRM.

For more information about the PIF campaign, go to <https://protectingimmigrantfamilies.org/>.

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