

# Public Charge: What Does It Mean for the HIV Community?

**African Services Committee | HIV Power Shift | HIVenas Abiertas  
Positive Women's Network-USA | US People Living with HIV  
Caucus**

**Wed October 3 2018**

# Agenda

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**Welcome and Introductions**

**What is Public Charge? History and Current Policy**

- Priscilla Huang, National Health and Law Program (NHELP)

**What Does Public Charge Mean for the HIV Community?**

- Amanda Lugg, African Services Committee

**Fighting the Administration's Public Charge Rule**

- Jackie Vimo, Protecting Immigrant Families



**Priscilla Huang** is a senior attorney in NHeLP's Los Angeles office. She focuses on reproductive health and justice issues in Medicaid and the private insurance market

Priscilla has a background in reproductive justice, racial and ethnic health disparities, and immigrant health care access. Prior to joining NHeLP, Priscilla was a consultant and senior advisor with the White House Initiative on Asian Americans and Pacific Islanders, where she spearheaded various federal interagency efforts on improving language services and data collection and reporting.



**Amanda Lugg** is the Director of Advocacy at African Services Committee, a community-based organization in NYC that provides health, housing, legal and social support services to over 10,000 immigrants each year. Amanda works at the intersection of healthcare and immigration by advocating for sound and effective public policy that ensures affordable and quality healthcare for immigrant and asylum-seeking populations, in particular for those impacted by HIV/AIDS and other chronic health and human rights challenges.



**Jackie Vimo** is a policy analyst who oversees the Economic Justice Program at the National Immigration Law Center (NILC), a national organization that engages in policy analysis, litigation, education, and advocacy to defend and advance the rights and opportunities of low-income immigrants and their families. Jackie has been working for almost two decades on a broad range of issues, including public health, HIV/AIDS, worker rights, LGBTQ rights, access to higher education, immigrant rights, and anti-poverty policy.

# Public Charge: History and Current Policy

Priscilla Huang  
October 3, 2018

*Portions of the presentation were adapted with permission from  
the National Immigration Law Center*

# What is Public Charge?

A person who is *likely to become primarily dependent of the government for financial and material support.*

An individual found likely to become a public charge may be denied admission to the U.S. or LPR status. In rare circumstances, public charge can be a basis for deportation.

# History of Public Charge

- Origins in slave laws
- Immigration and Nationality Act (INA) of 1882
- Excluded:
  - Irish Catholics
  - Chinese and other Asians
  - People with disabilities
  - LGBTQ people
  - Unmarried women
  - People with HIV



# Who is subject to public charge?

A public charge assessment is made when an individual:

- **Applies to enter the U.S.** from abroad, or
- **Applies to adjust their status** to become a Lawful Permanent Resident (LPR) from within the U.S.
  - *No public charge test when applying to become a U.S. citizen.*
- Deportation based on public charge is **rare**

Many humanitarian immigrants are exempt.



# What benefits are considered?

Since 1999, only two types of benefits are considered:

## **1. Cash assistance for income maintenance**

- TANF, General Assistance, or SSI

## **2. Institutionalization for long-term care at government expense other than imprisonment**

- Long-term care in a nursing home or mental health institution

# How is a public charge determination made?

## **Totality of the circumstances test:**

- Age
- Health
- Family status
- Financial status
- Education and skills
- Affidavit of support

# Public Charge: What Does It Mean for the HIV Community?

Amanda Lugg  
Director of Advocacy  
African Services Committee  
October 3<sup>rd</sup> 2018

# African Services Committee

- *African Services is a multi-service human rights agency based in Harlem and dedicated to assisting immigrants, refugees and asylees from across the African Diaspora.*
- *Our programs address the needs of newcomers affected by war, persecution, poverty, and global health inequalities.*
- *We provide health, housing, legal, educational, and social services to thousands of people each year.*
- *African Services also works on the frontlines of the global AIDS epidemic; operating three clinics in Ethiopia.*

# What We're Seeing

Amanda Lugg, "Newly Proposed 'Public Charge' Rule could be devastating to HIV-Positive Immigrants," *TheBody.com*, May 16, 2018.

# Protecting Immigrant Families Campaign (PIF)

- [www.protectingimmigrantfamilies.org](http://www.protectingimmigrantfamilies.org)
- Speak up, Shout out on Social Media using #ProtectFamilies
- Sign on to PIF opposition statement on campaign website

# Protecting Immigrant Families

Working Together to Fight the Administration's Proposed  
Public Charge Rule Changes

JACKIE VIMO, NATIONAL IMMIGRATION LAW CENTER



# Overview

- 1) **PROPOSED** Changes to Public Charge
- 2) **IMPACT** of proposed rule change
- 3) **MESSAGING** for policymakers and families

**NEW THREAT:** PROPOSED CHANGE + MESSAGING



# PUBLIC CHARGE: WHAT'S HAPPENED?

- Threats have been leaked since start of Trump Administration
- Changes made to **Foreign Affairs Manual (FAM)** in January 2018
  - Shifts focus SPONSOR → APPLICANT

- Text of NPRM released on DHS website Saturday 9/22, 6.30pm EDT:
  - ✓ Broadens concept of public charge to cover families combining work and public help
  - ✓ Counts food, health and housing programs
  - ✓ Makes it easier to penalize families under “totality of circumstances” test

# NPRM: CHANGES CONCEPT OF PUBLIC CHARGE

- Current definition: “primarily dependent on the Government for subsistence.”
- Proposed definition: “Public charge means an alien who receives one or more public benefits, as defined in paragraph (b) of this section.”



Adds programs that can be counted

- **FOOD STAMP:** Supplemental Nutrition Assistance Program (SNAP)
  - **MEDICAID:** Non-Emergency Medicaid
  - **MEDICARE PART D:** Low-Income Subsidies
  - **HOUSING ASSISTANCE:** Section 8 vouchers and project-based subsidies, and public housing
- > CASH and LONG-TERM CARE/institutionalization still counted

# EXEMPTIONS

- Green card holders 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, and several other categories of non-citizens

## NPRM: TOTALITY OF CIRCUMSTANCES

- Adds criteria and evidence for each element under “totality of circumstances” test.
- Net effect is to add lots of negative factors that can be taken into effect, very few positive factors.

### Non-exhaustive list of factors

- Benefit receipt
- Health conditions and insurance
- Age (too old or too young)
- Employment status
- Income under 125 percent of FPL for size of household
- Education and English language proficiency
- Credit score
- Fee waivers for immigration benefits



- Affidavit of support is a positive factor, but not “heavily weighed” or “outcome determinative”
- DHS will assess what weight to give to affidavit based on:
  - Sponsor’s income, assets, resources and financial status
  - Relationship to applicant and whether living together
  - Potential for scrutiny of sponsors, interviews
- Lack of AOS will result in denial based on public charge



- Heavily weighed negative factors:
  - Not a student, authorized to work, but no current/recent employment, or no “reasonable prospect” of future work
  - Current receipt of public benefits
  - Receipt of public benefits within 36 months of application
    - NOTE: Not retroactive before final rule is effective
  - Diagnosis of medical condition that is “likely to require extensive treatment” or will interfere with ability to work or support self and uninsured without the “prospect of private health insurance”.



# NPRM: POSITIVE FACTORS

- Heavily weighed positive factors:
  - Non-citizen is currently employed with an annual income of at least 250% of federal poverty level for household size:
    - For family of 4, is nearly \$63,000 in 2018
    - Note: Median household income in U.S. was \$61,400 in 2017
  - Household assets of at least 250% of FPL
- No statutory basis for this threshold.



# CONCERNS ABOUT CURRENT BENEFITS USE

## Rule not retroactive

- Noncash benefits used *before* public charge rule is finalized are not likely to be used as a factor in a public charge determination for an individual or family member.

# IMPACT OF PROPOSED CHANGE + MESSAGING



## NPRM: VAST OVERREACH



**LIN 3**  
**U.S.-BORN CITIZENS WOULD STRUGGLE  
TO MEET STANDARD OF EXTREME  
TRUMP RULE FOR IMMIGRANTS.**

CENTER ON BUDGET AND POLICY PRIORITIES | CBPP.ORG

- NPRM sets low standard for threshold level of receipt, versus “primarily dependent”
- Expands to programs that supplement earnings for low-income working families
- Fundamentally not what meant by “public charge” when concept was created

## NPRM: Harm to children

- The receipt of public benefits by U.S. citizen children will not directly be a factor in a parents' public charge test. If a child is an immigrant, his/her own use of benefits counts toward his/her own public charge determination.
- Still hurts children, because their health and well-being is inextricably linked to their parents.
- When adults are denied green cards, families are destabilized and sometimes separated.



# IMPACT

- o **1 in 4 children** have an immigrant parent



- o As many as **26 million** people in families with immigrants might be chilled from participating in programs that make their families healthier and stronger.

# KEY TAKEAWAYS

- The Administration's proposal is an affront to our values of welcoming immigrants who come to America in search of a better life.
- If implemented, it would make us a sicker, weaker, less healthy nation.
- But it's just a proposal - and we can fight it.
  - We've known that it was coming for a while, and we're prepared.
  - Hundreds of groups from the immigrant, anti-poverty, anti-hunger, health, housing, faith and other communities have come together under the Protecting Immigrant Families campaign.
  - We need you to join us.

# Key Public Messages

## Message Must Haves:

- **Start with a shared value:** How you live your life and contribute to your community should define you in this country, not how you look or how much money you have.
- **Explain how Trump's proposed regulation is an affront to those values.** This regulation puts the wealthy ahead of families who've waited years to be reunited.
- **Call for people to speak out and fight back.** People can share their stories and spread the word. And when the time comes, people should send a comment!

# FIGHTING THE CHILLING EFFECT

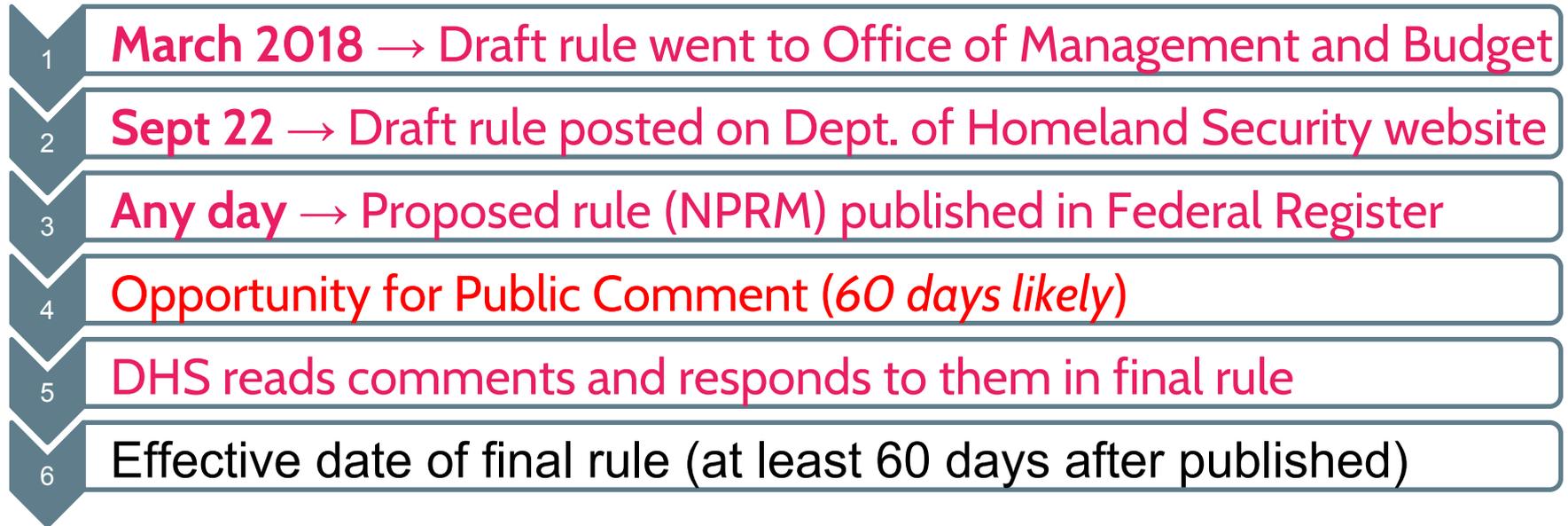
- Even before the rule is released, we're already hearing stories of people missing doctors' appointments or withdrawing their children from WIC because of fear.
- Important to make sure people understand key points:
  - Many groups of immigrants are not subject to a public charge determination
  - Receipt of benefits that are newly countable prior to the final rule being published and effective will not be held against people.
  - Only the individual's use of benefits will directly be taken into account, not receipt by family members.
  - Only use of listed programs counts, not other programs (e.g. not WIC, Head Start, Pell grants, school lunches, meals on wheels).

# MESSAGING TO FAMILIES

- The rules for immigrants who apply for a green card in the U.S. (who are not processed abroad) **have not changed.** Receipt of non-cash public benefits for which you are eligible currently are not considered when you obtain a green card in the U.S.
- Public charge test considers **totality of the circumstances.**
  - Families need to make *individual determinations*
  - May want to consult lawyer or BIA-accredited representative
  - Using health care and nutrition benefits can help you be stronger and healthier
- For individuals currently receiving public assistance, there may be **no advantage to terminating benefits at this time**
- You are not alone, and there is still time to fight back.



# PROPOSED RULE: TIMELINE



# Rally Action Against Public Charge NYC 9/24/18



# Rally Action Against Public Charge NYC 9/24/18



# Public Comment Timeline

- Proposed rule published in Federal Register for public inspection.
- Proposed rule published for public comment on Regulations.gov
- 60 day opportunity for Public Comment
- DHS reads and considers all comments
- Final rule published in the Federal Register
- Another 60 days before it goes into effect

# ACT UP, WRITE BACK!

- Help us reach PIF's goal of 100,000 Public Comments!
- Who can comment?
  - Anyone!
  - Individuals, organizations, community providers
  - Elected officials, including members of Congress
- How to comment?
  - Submit comment on [Regulations.gov](https://www.regulations.gov).
  - Through PIF comment microsite – [ouramericanstory.us](https://ouramericanstory.us)
- What to say?
  - Templates available soon

# Questions??

Jackie Vimo  
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**Thank you and get involved!**

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**Protecting Immigrant Families**

**[www.protectingimmigrantfamilies.org](http://www.protectingimmigrantfamilies.org)**

**Sign up for action alerts at**

**<https://www.pwn-usa.org/get-involved-2/>**

**[www.pwn-usa.org](http://www.pwn-usa.org)**

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