

PRESIDENT

Dan Stein

EXECUTIVE DIRECTOR

Bob Dane-

BOARD OF DIRECTORS

Donald A. Collins Jr., Chairman

Duane Austin

Douglas E. Caton, Maj. Gen., USAR (Ret.)

Kevin Donaleski

James Dorcy

Sarah G. Epstein

Dale M. Herder, Ph.D.

Frank Morris, Ph.D.

S. Blake Swensrud II

NATIONAL BOARD OF ADVISORS

The Hon. Brian Bilbray, Co-Chairman

Donald A. Collins Sr., Co-Chairman

The Hon. Louis Barletta

Sharon Barnes

Gwat Bhattacharjie

Gerda Bikales

J. Bayard Boyle Jr.

Hugh Brien

John Brock

William W. Chip, Esq.

Pat Choate, Ph.D.

Clifford Colwell, M.D.

Thomas Connolly

Alfred P. Doyle, M.D.

Dino Drudi

Paul Egan

Bob Eggle, Capt., USAR (Ret.)

Don Feder

Robert Gillespie

Otis W. Graham Jr., Ph.D.

Joseph R. Guzzardi

Robert E. Hannay

Hessie L. Harris

Sheriff Thomas Hodgson

Jon Honeck

Glenn Jackson

Carol Joyal

The Hon. Richard Lamm

Roy C. Lierman

Donald Mann

Jack Martin

K.C. McAlpin

Joel McCleary

Scott McConnell

James G. McDonald, Esq.

Paul K. Nachman

Peter Nuñez

Robert D. Park

Fred Pinkham, Ph.D.

Randall Pullen

Bruce S. Reid

Teela Roche

David P. Schippers, Esq.

The Hon. Alan Simpson

John Philip Sousa IV

John Tanton, M.D.

Alan N. Weeden

The Hon. Curtin Winsor Jr.

FAIR is a nonprofit public interest organization working to end illegal immigration, and to set levels of legal immigration that are consistent with the national interest.



FEDERATION FOR AMERICAN IMMIGRATION REFORM

December 10, 2018

Samantha Deshombres
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Ave N.W.
Washington, DC 20539

DHS Docket No. USCIS-2010-0012: Public Comment of the Federation for American Immigration Reform Regarding Inadmissibility on Public Charge Grounds

Dear Chief Deshombres:

The Federation for American Immigration Reform (“FAIR”) submits the following public comment to U.S. Citizenship and Immigration Services (“USCIS”) in support of the agency’s Notice of Proposed Rulemaking (“NPRM”), as published in the Federal Register on October 10, 2018. *See Inadmissibility on Public Charge Grounds*, DHS Docket No. USCIS-2010-0012, 83 Fed. Reg. 51114.

FAIR is a national, nonprofit, public-interest organization of concerned citizens who share a common belief that our nation's immigration laws must be enforced, and that policies must be reformed to better serve the national interest. FAIR examines trends and effects, educates the public on the impacts of sustained high-volume immigration, and advocates for sensible solutions that enhance America’s environmental, societal, and economic interests today, and into the future.

FAIR has over two million members and supporters of all racial, ethnic, and religious backgrounds, and across the political spectrum. The organization was founded in 1979 and is headquartered in Washington, D.C.



I. Relevant statutory provisions

Pursuant to Section 212(a)(4) of the Immigration and Nationality Act (“INA”), “Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.”

Pursuant to Section 237(a)(5) of the INA, “Any alien who, within five years after the date of entry; has become a public charge from causes not affirmatively shown to have arisen since entry is deportable.”

II. What is a “public charge”?

Generally speaking, a “public charge” is an individual who is likely to become dependent on government benefits for his/her survival.

For the purposes of adjudicating immigration benefits applications, USCIS currently defines a public charge as, “an individual who is likely to become “primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance, or institutionalization for long-term care at government expense.”¹

The U.S. Department of State uses a similar definition.²

U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement do not appear to have made any public guidance indicating how they apply the provisions of Section 212(a)(4) and 237(a)(5).

III. Why do we have public charge laws?

The colonists who settled the United States firmly believed that, except in exigent circumstances, failing to care for one’s self imposed an unfair burden on one’s neighbors.³ Accordingly, public charge laws were a central feature of public policy from the time the Thirteen Colonies were first founded.

The first public charge laws were enacted when Massachusetts was still a colony and were modeled on the poor laws in force in the United Kingdom at the time.⁴ Those laws

¹ “USCIS Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,” 64 FR 28689 (May 26, 1999).

² “Public Charge,” 9 FAM 302.8.

³ E. P. Hutchinson, *Legislative History of American Immigration Policy, 1798-1965* (Philadelphia: University of Pennsylvania Press, 1981), 410.

⁴ West at 390.

forbid the importation of new colonists who were likely to become public charges and prohibited the movement of paupers from one colony to another.⁵

Able-bodied members of the community were not typically assisted by taxpayers unless they also worked.⁶ And only children, the elderly and the sick (who were also without friends or family to care for them) were supported at taxpayer expense without being required to work.⁷

Rather than a condemnation of the poor, public charge laws reflected the colonists' belief that citizens were obligated to care for themselves instead of placing the responsibility for their sustenance on their neighbors. Such laws guaranteed that communities did not become overburdened by the need to care for those who were not willing to work in order to support themselves. They also ensured the availability of adequate resources to care for those truly in need.

Colonial notions of self-sufficiency and financial responsibility carried over into the new republic. The first comprehensive federal immigration law, the Immigration Act of 1882, barred the admission of "any person unable to take care of himself or herself without becoming a public charge."⁸ And, for well over a century, immigrants' admissibility to the United States was determined primarily based on their prospective ability to earn a living.

IV. Is immigrant self-sufficiency still a primary goal of U.S. immigration policy?

Immigrant self-sufficiency no longer appears to be a primary goal of U.S. immigration policy. However, it should be. In 1996 Congress referred to "a compelling government interest to enact new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant in accordance with national immigration policy."⁹ It acted on that compelling interest by:

- Requiring those who petition for a prospective immigrant to assume financial responsibility for that immigrant.
- Requiring petitioners to sign a legally binding affidavit of support acknowledging their financial responsibility.
- Empowered states to deny welfare benefits to most illegal aliens and lawful immigrants.

⁵ Daniel Horowitz, "Welfare for Immigrants Is Alien to Our Laws, History, and Traditions," *Conservative Review*, August 8, 2018, <https://www.conservativereview.com/news/welfare-for-immigrants-is-alien-to-our-laws-history-and-traditions/>

⁶ Thomas West, "Poverty and Welfare in the American Founding," Heritage Foundation, May 19, 2015, <https://www.heritage.org/poverty-and-inequality/report/poverty-and-welfare-the-american-founding>

⁷ Id.

⁸ Immigration Act of 1882, Section 2, <https://www.loc.gov/law/help/statutes-at-large/47th-congress/session-1/c47s1ch376.pdf>

⁹ 8 U.S.C. § 1601, Statements of National Policy Concerning Welfare and Immigration, https://www.law.cornell.edu/uscode/pdf/uscode08/lii_usc_TI_08_CH_14_SE_1601.pdf

- Barred illegal aliens from welfare programs that receive federal funds.
- Rendered immigrants ineligible for means-tested federal benefits for five years after admission to the United States.¹⁰

V. Why is it necessary to reinforce public charge rules?

In response to complaints from pro-alien groups that the public charge rules were “draconian” and “anti-immigrant,” the Clinton administration back-pedaled, redefining “public charge” to allow both legal and illegal aliens to collect most types of welfare benefits without penalty.

This action imposed a heavy financial burden that American taxpayers still shoulder to this day. Subsequently, the Obama administration further broadened the Clinton-era guidelines, making even more benefits available to foreigners who never paid into our social safety net.

Through this proposed rule, the Trump administration is simply restoring integrity to the public charge grounds of admissibility.

VI. Why is this proposed rule so important?

America’s social safety net is financed by taxpayers. Carelessly providing millions of dollars in benefits to people who never paid into our system is a recipe for financial disaster.

Opponents of the idea that immigrants should be self-sufficient would have us believe that only a small number of immigrants use public assistance programs and that they do so only temporarily.¹¹ But that simply does not add up with the available data, which shows that a high proportion of immigrants to the United States are dependent on safety-net benefits.¹²

According to a 2015 study conducted by the Center for Immigration Studies (“CIS”), over half of all immigrant-led households used at least one welfare program – compared to only thirty percent of native households.¹³ The same CIS report showed that forty-eight

¹⁰ Illegal Immigration Reform and Immigrant Responsibility Act (Public Law 104-208), <https://www.congress.gov/104/crpt/hrpt828/CRPT-104hrpt828.pdf> and Personal Responsibility and Work Opportunity Reconciliation Act (Public Law 104-193) <https://www.congress.gov/bill/104th-congress/house-bill/03734>

¹¹ Reihan Salam, “Don’t Exaggerate the Effects on Immigrant Admissions of Tightening the Public-Charge Rule,” *National Review*, August 24, 2018, <https://www.nationalreview.com/corner/immigration-public-charge-rule-tightening/>

¹² Jeanne Batalova, Michael Fix and Mark Green berg, “Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families’ Public Benefit Use,” Migration Policy Institute, June 2018, [file:///C:/Users/obrienm/Downloads/ProposedPublicChargeRule_FinalWEB%20\(1\).pdf](file:///C:/Users/obrienm/Downloads/ProposedPublicChargeRule_FinalWEB%20(1).pdf)

¹³ Steven A. Camarota, “Welfare Use by Immigrant and Native Households: An Analysis of Medicaid, Cash, Food, and Housing Programs,” Center for Immigration Studies, September 10, 2015, <https://cis.org/Report/Welfare-Use-Immigrant-and-Native-Households>

percent of households headed by immigrants who have been in the country for more than two decades continue to access at least one welfare program.¹⁴

A December 2, 2018 follow-up study found that while there has been a slight increase in the use of safety-net benefits by non-citizen households. According to CIS, 63 percent of non-citizen households now access welfare programs, compared to 35 percent of native households.¹⁵

And, according to data from the Census Bureau's Survey of Income and Program Participation ("SIPP"), by the year 2030, more than 13 million immigrants will use welfare and 7.5 million immigrants will be enrolled in Medicaid – placing a major strain on an already ailing program.¹⁶

The fact is, if we keep allowing immigrants to access our social welfare programs before they pay into the system, eventually there will not be any benefits left to give to the U.S. citizens those programs were intended to assist.

VII. The number of immigrants on welfare is too high, and rising

According to 2014 SIPP data, approximately 50 percent of households headed by an immigrant used some form of welfare for either the head of household or another person residing in the household. The survey also indicated that approximately 90 percent are likely to remain on some form of welfare after 20 years, based on historical numbers.¹⁷

For Medicaid alone, the same SIPP survey suggests that nearly 80,000 new immigrants enroll in the program each year. The average annual cost-per-enrollee for Medicaid was \$5,736 in Fiscal Year 2014, according to the Kaiser Family Foundation.¹⁸

If the proposed rule is implemented by 2020, the United States could see up to 1.1 million fewer immigrants enrolled in Medicaid by 2030, based on current population trends. Considering the average cost-per-enrollee, that could lead to a gross savings as high as \$6.4 billion in the same time period. These cost savings could increase exponentially if other popular welfare programs are considered.

¹⁴ Id.

¹⁵ Steven A. Camarota and Karen Zeigler, "63% of Non-Citizen Households Access Welfare Programs," Center for Immigration Studies, December 2, 2018, <https://cis.org/Report/63-NonCitizen-Households-Access-Welfare-Programs>

¹⁶ "2014 Survey of Income and Program Participation," U.S. Census Bureau, <https://www.census.gov/programs-surveys/sipp/data/2014-panel.html>

¹⁷ U.S. Census Bureau, "Survey of Income and Program Participation," Accessed December 2018, <https://www.census.gov/programs-surveys/sipp/data/2014-panel.html>.

¹⁸ "Medicaid Spending per Enrollee (Full or Partial Benefit)," *Kaiser Family Foundation*, Accessed December 2018, <https://www.kff.org/medicaid/state-indicator/medicaid-spending-per-enrollee/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

VIII. Recommendations

FAIR supports the proposed rule overall, and encourages USCIS to consider the following recommendations:

I. Include additional welfare programs

The proposed rule preserves access to a number of welfare benefits that immigrants often receive for themselves and/or their children. One such program is the Children's Health Insurance Program ("CHIP"), which provides low-cost health coverage to children and families that earn too much money to qualify for Medicaid but still need assistance to pay for healthcare. CHIP imposes a significant burden on the American taxpayer, and because CHIP benefits relate to a basic need, receipt of said benefits reflects a lack of self-sufficiency – typically indicating that an immigrant is working in a low-skill, low-wage job and relying on the American taxpayer to cover the gap between wages earned and the cost of living.

It does not make sense to adopt policies that require prospective immigrants to be able to provide for themselves and their families until they have paid into the social safety-net, but then preserve access to many of the programs that cost the American taxpayer the most. FAIR encourages USCIS to not only include the CHIP program in the final rule, but also to carefully examine the extensive number of other programs that will remain available to immigrants if the rule is implemented as proposed.

II. Include an emphasis on education

When determining whether or not an immigrant is likely to become a public charge, examining the level and quality of the education attained by a prospective immigrant can help estimate how likely an immigrant is to become reliant on public assistance.

According to a study conducted by CIS, 76 percent of immigrant households headed by a high school dropout accesses one or more welfare programs, compared to only 26 percent of immigrant households headed by a college graduate.¹⁹

Prioritizing higher education in our immigration process would help reduce the likelihood that a large number of immigrants will end up on federal welfare rolls. Those immigrants with a high school education or less should not qualify for a

¹⁹ Steven Camarota, "Welfare Use by Legal and Illegal Immigrant Households," *Center for Immigration Studies*, September 2015, https://cis.org/sites/cis.org/files/camarota-welfare-illegals_1.pdf.

green card unless the applicant holds a skill(s) that is in high demand and can be expected to earn a high enough salary that it largely eliminates the possibility of qualifying for any welfare program. The possession of a marketable job skill should reasonably ensure that that a particular immigrant will earn at least three times the federal poverty rate for the foreseeable future, keeping him/her from needing taxpayer-funded assistance.

III. Increase the public charge bond amount

Section 213 of the INA allows for the admission of aliens who are otherwise inadmissible on public charge grounds provided that the prospective immigrant's sponsor signs an affidavit of support and posts a "suitable and proper bond."²⁰ At present, bonds are rarely required, and financial sponsors are rarely held to the obligations they accepted when executing an affidavit of support.²¹

Requiring a minimum public charge bond of \$10,000 for those who want to sponsor an immigrant who would otherwise be inadmissible on public charge grounds is a good start. However, it may not be enough for the government to recoup its costs. FAIR recommends that the bond amount be raised to \$25,000, particularly for the least educated or those with the most dependents, as these individuals are more likely to become a fiscal burden on taxpayers.

IV. Emphasize income levels, not just employment

More than 85 percent of immigrant households that access one or more of the nation's welfare programs have at least one employed member.²²

Since employment alone is not an accurate indication of one's ability to support himself/herself or their family, it should not be the primary deciding factor in whether or not an immigrant is likely to become a public charge. Instead, the primary focus should be on whether or not an immigrant can demonstrate an ability to earn a wage equal to at least three times the federal poverty level.

IX. Conclusion

In conclusion, FAIR supports the administration's common sense, long overdue changes to the public charge rules per "Inadmissibility on Public Charge Grounds" as published in the Federal Register on October 10, 2018. While the changes could go further, particularly by including additional welfare programs used by immigrants, the proposed

²⁰ U.S. Citizenship and Immigration Services, "Posting, Cancellation and Breaching of Public Charge Bonds." Accessed December 2018, <https://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-20791/0-0-0-20802.html>.

²¹ U.S. Department of State, "9 FAM 302.8 (U) PUBLIC CHARGE - INA 212(A)(4)," Accessed December 2018, <https://fam.state.gov/fam/09fam/09fam030208.html>.

²² Ibid 3.

rule is still an enormous improvement over the status quo and a win for the American taxpayer.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dan Stein', written in a cursive style.

Dan Stein
President