

# Happening Now!

Answers & Updates to Pressing Questions & Concerns about Public Charge, COVID-19 & Census Outreach

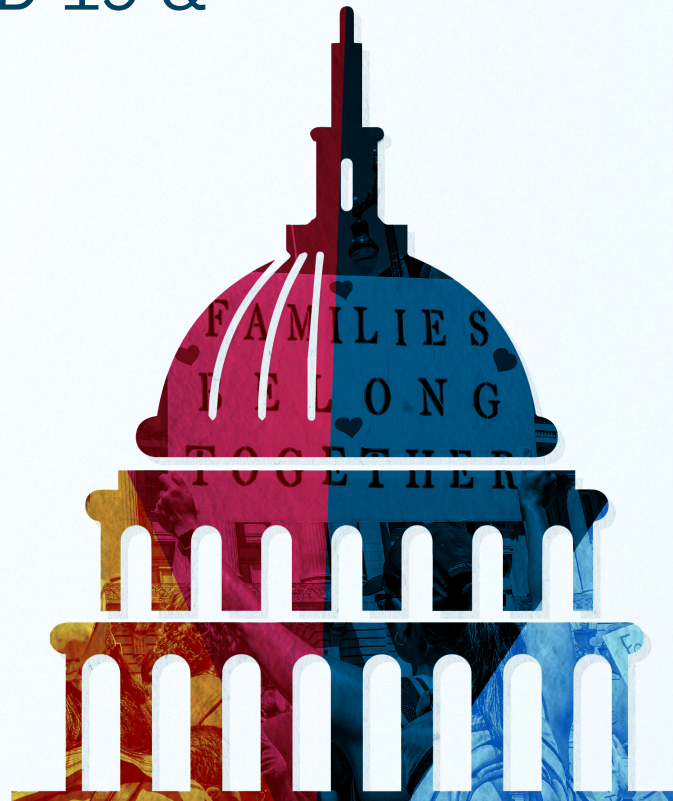


**IMMIGRANT LEGAL RESOURCE CENTER**  
1458 HOWARD ST. | SAN FRANCISCO, CA 94103



**Libraries Helping Immigrants**

**May 13, 2020**



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# Immigrant Legal Resource Center





# Agenda

- **Covid-19, Immigration Closures**
- **Federal and State Aid for Immigrants**
- **Census 2020**
- **The New DHS Public Charge Rule**
- **Covid-19 and Public Charge**
- **Public Charge and Permanent Residents**
- **Questions?**



# COVID-19 and Immigration Closures

- USCIS offices are closed through at least June 4th
- Naturalization ceremonies/appointments suspended
- Fingerprint offices closed (ASC sites)
- Limited emergency services available, affirmative filings can be mailed



# COVID-19 and Immigration Closures

- All non-detained hearings scheduled through May 29, 2020 are postponed
- Detained hearings are going forward, but some judges out. Courts are allowing telephonic appearances and e-filing
- State Department suspended routine visa services in all countries worldwide
- Employment authorization: extensions will be processed using previously submitted biometrics
- RFEs and NOIDs dated March 1 – July 1, 2020 have automatic 60-day extension



# **Federal Responses for Immigrants:**

## **CARES Act: Economic Impact Payments ("Stimulus Checks")**



# Federal Responses for Immigrants: CARES Act: Economic Impact Payments ("Stimulus Checks")

- The Coronavirus Aid, Relief, and Economic Security Act (H.R. 748), also known as the **CARES Act**, passed on March 27
- **Economic Impact Payments (EIP)** was one part of the CARES Act
- **Basic Qualifications:**
  - Everyone in Tax Filing Unit Must Have Valid Social Security Number **AND** Must Be a U.S. Citizen, Lawful Permanent Resident, or physically present in the United States for a certain amount of time within the past five years



# Federal Responses for Immigrants: CARES Act: Economic Impact Payments ("Stimulus Checks")

- Who is prevented from receiving benefits?
  - Any individual who files taxes with an **Individual Tax Identification Number (ITIN)** instead of a **Social Security Number (SSN)**
  - **Mixed-Status Families Joint-Filers** where one has a SSN and the other has an ITIN (or dependent children with an ITIN)
  - **Dependent children ages 17-24**



# **State Responses for Immigrants:**

## **Unemployment Insurance and Other Aid**



# State Responses for Immigrants: Unemployment Insurance

- Varies by state, but general qualifications:
- Must have earned enough wages during the **base period** to establish a claim, and be:
  - Totally or partially unemployed.
  - Unemployed through no fault of your own.
  - Physically able to work.
  - **Available for work (work authorization at time they were working and when receiving benefits).**
  - Ready and willing to accept work immediately.



# State Responses for Immigrants: Other Aid

- States looking for alternatives for undocumented immigrants who do not qualify
- California:
  - **Disaster Relief Fund: \$125 million in funds**
  - Undocumented persons ineligible for other aid can receive a one-time cash benefit of **\$500 per adult with a cap of \$1,000**



# Census 2020

## How To Make Sure Immigrants Are Counted





# Census 2020: Why is it important?

**More Money For Programs!**

**\* More than \$675 Billion**



School lunch for students



After School Programs



Community Health Clinics



Government Representation!





# Census 2020



**The Census Bureau is  
Not ICE**



**The Census Bureau Is  
Obligated By Law to  
Protect Census  
Information**



**ICE Cannot Obtain or  
Use Census Information**





# Census 2020



The Census 2020  
Will Not Ask If You  
are a U.S. Citizen!





We Won,  
The Supreme Court  
Prevented the  
Government from  
Adding That Question

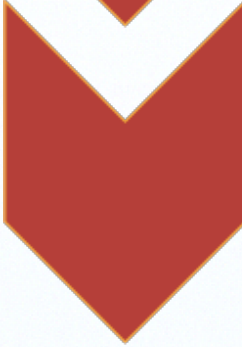
**WE ALL**   
**COUNT** 



# Census 2020: COVID Revised Timeline

- 
- **March 12 – October 31**  
Each Household Receives Invitation to Participate  
\*For the first time, the majority fills it out online  
(computer or phone)

- 
- Survey will First Ask for Address Verification and Demographics about Individuals (Available in 12 languages)

- 
- **58.7%** response rate so far, hard-to-count even lower

**WE ALL**   
**COUNT** 



# Public Charge

## Public Charge as a Ground of Inadmissibility



# Where Public Charge Comes Into Play

Do I qualify for a benefit or public program?



→ If I use the program will it affect my immigration status or options?



Even if I'm not worried about legalizing my status, will they use information to deport me?



# By Statute: INA § 212(a)(4)

“Any [noncitizen] 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.”



# Public Charge is One of Multiple Grounds of Inadmissibility





# Public Charge as a Ground of Inadmissibility

A test applied *only* at certain points:

When a person

- Applies to enter the United States (seeks a visa)
- Applies to become an LPR through adjustment of status or consular processing (immigrant visa)



# What are the immigration goals?

*Many forms of relief or statuses have no public charge test:*

- **Refugee and asylee**
- **Special Immigrant Juvenile Status**
- **U nonimmigrant status**
- **T nonimmigrant status**
- **DACA** renewal
- **TPS**
- **Naturalization**
- **Applying for a green card through cancellation of removal**
- **Applying for a green card through special statuses like asylee, SIJS, VAWA, U, T**
- **Others** (Amerasians, Afghan and Iraqi military translators, certain Cuban and Haitian adjustment applicants, certain Nicaraguans and Central Americans under NACARA, registry applicants, Soviet and Southeast Asian Lautenberg parolees)

**But public charge  
does apply  
if seeking green card  
through USC or LPR  
petitioning family  
member!**



# Reminder: LPRs and Public Charge Inadmissibility

- There is *no* public charge inadmissibility test when a permanent resident:
  - Applies for naturalization (N-400)
  - Renews their green card (I-90)
  - Applies to lift the conditions on their permanent residency (I-751)



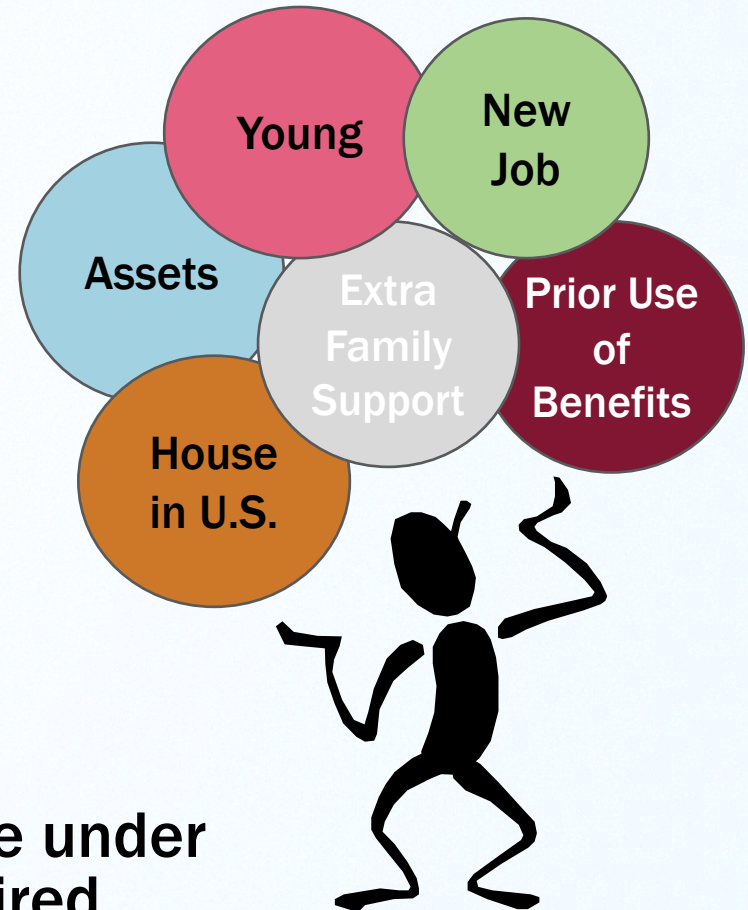
# Assessing Future Likelihood: Totality of the Circumstances

## Officers required to consider:

- ✓ Age
- ✓ Health
- ✓ Family status (household size)
- ✓ Assets, resources, and financial status
- ✓ Education and skills

## May also consider:

- ✓ Affidavit of support – inadmissible under 212(a)(4) if no I-864, where required
- ✓ Other factors





# February 24 - Effective Date

- New DHS rule applies to adjustment applications submitted **on or after Feb. 24, 2020**
  - Adjustment applications *already pending* by Feb. 24, 2020 will be decided based on 1999 guidance
  - Considers newly-added benefits **on or after Feb. 24, 2020**
  - Requires new Form I-944 for applications submitted **on or after Feb. 24, 2020**
- New DOS rule applies to consular cases with interviews **on or after Feb. 24, 2020**
  - May be asked to complete new Form DS-5540 and will be evaluated under the new DOS rule
  - Consular officials are instructed to not deny a case based on public charge without giving applicants an opportunity to fill out the DS-5540 and provide supporting documentation, if they have not already done so



# Changes Effective February 24

New definition of “public charge”

Additional public benefits included

Totality of circumstances test has new detailed negative factors that make it harder for low- and moderate-income people to pass



# Definition of Public Charge

**Someone who is likely to become primarily dependent on the government to support themselves**



**An immigrant “who receives one or more public benefits . . . for more than 12 months in the aggregate within any 36-month period”**



# Benefits that Count in New Rule

- Cash assistance (SSI, TANF, General Assistance)
- Long-term institutionalized care paid for by Medicaid
- **Medicaid (federally-funded programs)**
  - **NOT including:**
    - Emergency services
    - School-based benefits to children
    - Use by immigrant children under 21 years of age
    - Use by immigrants during a pregnancy and up to 60 days after
- **Food Stamps - SNAP (federally-funded)**
- **Section 8 housing assistance and project-based rental assistance**
- **Subsidized housing**



# Programs Not Included

List of Benefits Included in New Rule is Exhaustive!

Everything else DOES NOT count towards public charge, including, BUT NOT LIMITED TO:

- Children's Health Insurance Program (CHIP)
- Medicaid used by children under 21 years of age
- Emergency and school-based Medicaid
- Medicaid for pregnancy and up to 60 days after pregnancy
- Emergency and disaster relief
- WIC
- Public health services
- School-based nutrition services like free and reduced meals
- Public education, including Head Start
- Earned benefits, such as unemployment, social security retirement, workers compensation
- Tax credits
- ANY other federal, state, or local benefit that is not listed in the new rule



# Programs Not Included

## State-Funded Programs Do NOT Count!!

- ✓ Health programs funded by state or local governments (e.g., California's extension of Medi-Cal for children up to age 26)
- ✓ Housing assistance funded by state or local governments
  - **\*\*BUT REMEMBER: state, local, and tribal cash assistance programs COUNT**

## Benefits Used by Family Members Do NOT Count

- But beware, it signals low-income—watch out for other factors,
- See discussion on sponsor's ability to pay



# New Rule - Public Charge Exemptions

- Benefits received by an individual when they are present in the U.S. in an immigration category that is exempt from public charge inadmissibility
- Benefits received by members of the U.S. Armed Forces, Ready Reserve, and their spouse or child(ren)
- Benefits received by children of U.S. citizens who will automatically acquire citizenship or who are entering the U.S. to attend an interview under INA § 322



# New Rule - Public Charge Exemptions

- Refugees and asylees (and at related adjustment)
- Special Immigrant Juvenile Status (and at related adjustment)
- U nonimmigrant status, AND
  - Adjustment under 245(m)
  - Adjustment under 245(a) while in valid U status\*
- VAWA self-petitioners (and at related adjustment)
- T nonimmigrant status, AND
  - Adjustment under 245(l)
  - Adjustment under 245(a) with pending prima facie T application OR while in valid T status
- TPS applicants
- Many others (Amerasians; Afghan and Iraqi military translators; certain Cuban and Haitian adjustment applicants; certain Nicaraguans and Central Americans under NACARA; Registry applicants; Soviet and Southeast Asian Lautenberg parolees; qualified aliens under INA § 212(a)(4)(E)(iii))

# The Takeaway on Benefits

Most undocumented immigrants do not qualify to use benefits included in the new rule

If someone is on a path to green card with a public charge test, then likely not using any of these benefits or if they are, it's because they're in an exempt category

Including these benefits in the rule is a political tactic

- Promotes misperception that immigrants are using public benefits
- Creates intentional chilling effect (included in cost-savings analysis)



# The Takeaway on Benefits



**Immigrants  
who qualify  
to receive  
these  
benefits**

**Immigrants  
subject to  
public charge  
test**



# New Rules: Totality of the Circumstances

- **Age:** negative if not working age (18-61)
- **Health:** negative if diagnosed with medical condition requiring extensive medical treatment, institutionalization, or that interferes with work/study
- **Family status:** larger “household” requires more income to meet 125% of FPG to support all dependents at that level
- **Financial resources:** positive factor if “household” income is 125% of FPG
- **Education and skills:** looks at employment history, HS diploma or GED, English proficiency, or providing care in home
- **Other factors:** whether applicant can support themselves during the expected period of admission (temporary vs. permanent)



# COVID-19

- People need to get the care and services they need!
- Emergency Medi-Cal use is exempt from public charge
- USCIS has issued a statement:
  - COVID-19 treatment will not impact public charge: “USCIS will neither consider testing, treatment, nor preventative care (including vaccines, if a vaccine becomes available) related to COVID-19 as part of a public charge inadmissibility determination”;
  - “The Public Charge rule does not restrict access to testing, screening, or treatment of communicable diseases, including COVID-19.”



# COVID-19

- Someone who lives and works in a jurisdiction where disease prevention methods such as social distancing or quarantine are in place, or where the immigrant's employer, school, or university voluntarily shuts down operations to prevent the spread of COVID-19:
  - Can submit a statement with his or her application for adjustment of status to explain how such methods or policies have affected the factors considered.
  - “For example, if the alien is prevented from working or attending school, and must rely on public benefits for the duration of the COVID-19 outbreak and recovery phase, the alien can provide an explanation and relevant supporting documentation. To the extent relevant and credible, USCIS will take all such evidence into consideration in the totality of the alien's circumstances.”



# COVID-19

- **Emergency Funds?**

- Funds and food given to everyone in an emergency do not count in public charge determination
- Good arguments even emergency funds based on income level not cash aid
- Stimulus checks are tax benefit and do not count
- Unemployment is an earned benefit and does not count against a person in public charge



# LPRs and Public Charge Inadmissibility

- Generally, permanent residents are only subject to **public charge inadmissibility ground** if they spend more than **180 consecutive days** outside of the U.S. and then seek to reenter the U.S.
  - See INA 101(a)(13)(C)
- **Advanced:** Some permanent residents facing deportability apply for re-adjustment as a defense. These folks would have to overcome public charge inadmissibility.



# **LPRs and Public Charge Deportability**

- Very hard for gov't to prove, rarely applied – only a few times in 100 years
  - Must become a public charge within five years of entry, based on factors that pre-date the entry
    - ☐ Receipt of benefits must create a debt (most don't);
    - ☐ Agency must sue within 5 years, win judgment; and
    - ☐ Immigrant must refuse to repay
  - Even if asked to pay, would still be able to show that immigrant's need for services is based on factors that arose after entry (e.g., lost job, became pregnant, ill, had an accident)
- ***Watch this space! New proposed rule coming soon***



# Important Messages

Public charge does not apply to everyone, especially U.S. citizens and most current permanent residents!

The new changes mostly affect people applying for a green card through a family member or employer, and applying for certain visas

The new public charge changes do not affect eligibility for public benefits – everyone can still apply for the services available to them

For many, families do not need to stop important services now

Every family needs a case-by-case evaluation for what their immigration options and goals are



# Questions?



# Thank you for attending!

Please complete our survey

Make sure you received all materials

**MCLE forms will be emailed to qualifying attendees within one day of the webinar.**



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