



Legislation Text

File #: 18-741, **Version:** 1

Receive a presentation on the federal proposed change in the public charge rule that will allow non-cash benefits to be considered in determining whether someone is a public charge and thus prevent someone from adjusting immigration status; Receive public comments regarding the proposed rule change; Direct staff to draft and submit public comment responses consistent with opposing the proposed regulations during the 60-day public comment period, which spans from publication of the proposed rule change in the Federal Register on October 10, 2018, through December 10, 2018; and Consider adopting a resolution to declare the Board's opposition to the proposed rule change to 'public charge' determinations and express the potential harm it would cause to Solano County and its residents

Published Notice Required? Yes ☐ No ☒
Public Hearing Required? Yes ☐ No ☒

DEPARTMENTAL RECOMMENDATION:

It is recommended that the Board of Supervisors:

1. Receive a presentation on the federal proposed change in the public charge rule that will allow non-cash benefits to be considered in determining whether someone is a public charge and thus prevent someone from adjusting immigration status; and
2. Receive public comments regarding the proposed rule change; and
3. Direct staff to draft and submit public comment responses consistent with opposing the proposed regulations during the 60-day public comment period, which spans from publication of the proposed rule change in the Federal Register on October 10, 2018, through December 10, 2018; and
4. At the request of Supervisor Monica Brown, consider adopting a resolution opposing the proposed rule change to 'public charge' determinations and express the potential harm it would cause to Solano County and its residents.

SUMMARY:

On October 10, 2018 the Department of Homeland Security (DHS) published proposed changes to the 'public charge' rules in the Federal Register. "Public charge", a long-standing provision in U.S. immigration law, is a test used by U.S. Citizenship and Immigration Services (USCIS) as a factor in determining who will be granted entry into the United States, who can renew certain temporary visas and who can obtain Lawful Permanent Residency (LPR) - also known as a green card. Currently, financial factors taken into consideration only includes the receipt of cash benefits or institutionalization for long-term care at government expense. Current federal guidelines do not allow federal officials to consider the use of non-cash benefits, such as nutrition assistance, housing subsidies, or healthcare programs such as Medicaid (Medi-Cal in California), in public charge assessments. While the proposed public charge changes are primarily directed toward those applying for Lawful Permanent Residency (LPR) or adjusting or extending visas for those already in the United States, there could be an overall chilling effect of causing uncertainty and confusion among the entire community of immigrant families about using public programs for themselves and their children. Not only would disenrollment or foregone enrollment lead to worse health outcomes and greater poverty risk for the immigrant

families foregoing benefits, but public health at-large could be affected by sicker individuals in the community, increased emergency room use and uncompensated care.

FINANCIAL IMPACT:

The cost for preparing this report is nominal and absorbed in the District 2 FY2018/19 Adopted Budget.

DISCUSSION:

On October 10, 2018 the Department of Homeland Security (DHS) published proposed changes to the 'public charge' rules in the Federal Register. Public charge is a term used in immigration law to describe someone who is likely to become dependent on the government for subsistence. "Public charge", a long-standing provision in U.S. immigration law, is a test used by U.S. Citizenship and Immigration Services (USCIS) as a factor in determining who will be granted entry into the United States, who can renew certain temporary visas and who can obtain Lawful Permanent Residency (LPR) - also known as a green card. Public charge does not apply to some categories of immigrants such as refugees, persons granted asylum and certified trafficking victims. In addition, there is no public charge test when individuals apply for naturalization (citizenship).

At its regularly scheduled meeting on November 5, 2018, the Solano County Legislative Committee discussed the proposed public charge rule. A copy of the Legislative agenda and materials pertaining to the item can be accessed via the following link:

<http://www.solanocounty.com/civicax/filebank/blobdload.aspx?BlobID=29424>

In addition, the link below provides access to the 183-page proposed public charge rule as published in the Federal Register on October 10, 2018:

<https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds>

Until now, financial factors taken into consideration only included the receipt of cash benefits or institutionalization for long-term care at government expense. Current guidelines do not allow federal officials to consider the use of non-cash benefits, such as nutrition assistance, housing subsidies, or healthcare programs such as Medicaid (Medi-Cal in California), in public charge assessments. However, the proposed rules expand the definition of 'public charge' to include those non-cash benefits.

In addition, the proposed rule suggests factoring in the income of applicants for the first time. Earning less than 125 percent of the federal poverty level (\$25,975 for a family of three) would count against applicants, while earning more than 250% of the federal poverty level (\$51,950 for a family of three) would give them a boost.

The DHS' revised policy "Inadmissibility on Public Charge Grounds" proposes expanding the types of benefits that could be used as grounds to reject a legally present immigrant's application to keep his/her legal status to stay in the U.S. or to become a lawful permanent resident (obtain a green card). Programs that would be included are: Supplemental Nutrition Assistance Program (CalFresh in California); Non-Emergency Medicaid (Medi-Cal in California); Low Income subsidies under Medicare Part D; Section 8 Vouchers and project-based subsidies, and public housing. Under current law, receipt of these services are not considered as factors in determining public charge. The proposed rule does not give a definitive answer on whether enrollment in the Children's Health Insurance Program (CHIP) could jeopardize green card applications, instead soliciting specific feedback on that question.

The public charge test has been in place for decades, however the new proposed rule changes takes this

principle in a new direction, and, if adopted, the new public charge tests would ultimately punish lawful, working immigrants for accessing non-cash health, nutrition, and housing support programs that are designed to help families succeed and thrive in Solano County. The proposed rule changes could have a negative direct impact on the well-being of immigrant families in Solano County who lawfully receive this assistance.

Most people, as well as immigrants, who access CalFresh (nutrition assistance), Medi-Cal (health coverage), and housing assistance are working families. These programs help them stay healthy and productive. These supports for working families are especially important in our high-cost area, with many immigrants holding lower-paying jobs. Access to critical benefits is often necessary for a short time in order to help immigrants become assimilated and ultimately prosper. In some cases, the proposed public charge changes may lead some immigrant families to feel they must choose between getting food, health care, and services they need, and their ability to obtain lawful permanent resident status (green card), and ultimately citizenship, that they are legally on track to achieve.

The proposed changes to the public charge rules may also indirectly impact health and economic factors for the community as a whole. Nearly 20 percent of Solano residents were born outside of the United States, a figure that represents the area's diverse population. Thirty seven percent (37%) of the children in Solano County (age 0-17) live with at least one parent who was born outside of the United States. The parents include naturalized citizens, green card holders, and those who are aiming to become citizens. The children are largely U.S. citizens.

The proposal itself has caused a chilling effect on the use of programs. H&SS and the Food Bank of Contra Costa and Solano County already report an increase in client confusion and concerns regarding public charge. Not only would disenrollment or foregone enrollment lead to worse health outcomes and greater poverty risk for the families foregoing benefits, but public health at-large could be affected by sicker individuals in the community, increased emergency room use and uncompensated care. Sicker individuals are less productive economically, and sicker children are known to have greater difficulty in school. There would be economic impacts as well: decreased revenues to health care providers, pharmacies, grocery and other retailers as a result of these impacted families foregoing nutrition assistance and medical coverage; and increased costs for organizations serving the immigrant community.

When the 60 day comment period expires on December 10, 2018, DHS will review the comments and possibly make revisions before issuing final regulations. Nothing will change until the final rule goes into effect. The process is expected to stretch into 2019. Solano County and H&SS staff are coordinating to draft and submit public comment responses in opposition to the proposed regulations during the 60-day public comment period.

Solano County remains committed to delivering important public services and benefits to every one of our residents, regardless of immigration status. Currently, there are no new laws affecting the way H&SS determines eligibility to public assistance benefits. H&SS continues to process applications and renewals of benefits as the department did before. As of today, the proposed rule changes to public charge, if adopted, will not impact eligibility for public benefit programs. However, if adopted, the regulations could change the ability for specific immigrant families to adjust their immigration status if those households choose to lawfully access non-cash nutrition assistance, health coverage, or housing support programs.

In light of the confusion, questions, and concerns, H&SS has begun to disseminate communication to staff and is in process of drafting a plan for maintaining timely and accurate communication to ensure public facing staff are informed and able to refer the public toward relevant legal resources regarding public charge. H&SS staff, including eligibility workers, should not be providing advice regarding immigration consequences of participating in public benefits. Every individual's circumstances are unique and immigration advice should be provided by a qualified legal professional. There are many factors which determine whether an individual may be considered a public charge.

In addition, H&SS has begun to post public education materials and continues to draft additional materials. H&SS is currently drafting a plan for maintaining timely and accurate information and plans to collaborate with relevant stakeholders on community outreach to inform the public with the goal to minimize miscommunication and the potential chilling effect.

In addition to the discussion at the Legislative Committee on November 5, 2018, Supervisor Monica Brown is requesting the Board of Supervisors consider adopting a Resolution opposing the proposed rule change to 'public charge' determinations to express the potential harm it would cause to Solano County and its residents.

Next Steps

At the Board of Supervisors direction, staff will work with the County's federal advocacy team, Paragon Government Relations in Washington, D.C., to draft public comments consistent with the Board's direction. Staff will bring the proposed comments back to the Board on December 4, 2018 for approval prior to submitting them to the Federal Register during the 60-day public comment period, which ends on December 10, 2018.

ALTERNATIVES:

The Board could choose not to approve the recommendations. This is not recommended. While the proposed changes to the 'public charge' rules are targeted primarily to those applying for Lawful Permanent Residency (LPR) for those already in the United States, if adopted, there could be an overall chilling effect causing uncertainty and confusion among the entire community of immigrant families about using public programs for themselves and their children. This potentially could have larger public health impacts should these families decide to forego the use of nutrition assistance, health coverage, and housing assistance programs.

The Board could choose not to approve this resolution. That is not recommended as the proposed rule change will impact immigrant families in Solano County. Opposing this rule change will help to ensure immigrants feel safe when accessing government services.

OTHER AGENCY INVOLVEMENT:

None.

CAO RECOMMENDATION:

APPROVE DEPARTMENTAL RECOMMENDATION