

PUBLIC CHARGE: A THREAT TO IMMIGRANT FAMILIES

WHAT IS PUBLIC CHARGE?

Part of federal immigration law for over a hundred years, the “public charge” inadmissibility test was designed to identify people who may depend on the government as their main source of support. If the government determines that a person is likely to become a “public charge,” it can deny a person admission to the U.S. or lawful permanent residence (or “green card” status).

On August 14, the Department of Homeland Security (DHS) finalized dramatic changes to this long-standing policy. When seeking a visa or green card, a forward-looking test is applied - where an immigration officer assesses whether a person will be deemed a “public charge” in the future. This assessment is made upon a “totality of circumstances” assessment that considers the person’s age, health, family status, income and resources, education and skills. The rule adds specific standards to each of these factors, including a minimum income threshold, consideration of credit scores and history, and even an English proficiency standard. The rule also expands the public assistance programs that may be counted in a “public charge” determination, excluding anyone who is more likely than not to use certain health care, nutrition, or housing programs in the future. **The effective date, if not delayed by litigation, is October 15, 2019.**

PUBLIC CHARGE RULE WILL HARM HEALTH, WELL-BEING OF MILLIONS

The rule fundamentally changes who we are as a nation—transforming us from a country that welcomes people who plan to work hard and achieve a better life to one rigged in favor of the wealthy. It would also put the health and well-being of millions of people at great risk and violate core American values. 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. Once effective, the rule will make-and has already made-immigrant families afraid to seek programs that help them stay strong and productive and raise children who thrive. Since about one in four children in the U.S. have an immigrant parent, this issue touches millions and is critical for the nation’s future.



HOW THE PUBLIC CHARGE RULE HAS BEEN APPLIED

Under longstanding policy, the only benefits considered in determining who is likely to become a “public charge” are: 1) cash assistance for income maintenance, such as Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), and comparable state or local programs, and 2) government-funded long-term institutional care. Only people who are “primarily dependent” on these benefits are considered a public charge. The policy considers all of a person’s circumstances, including age, income, education and skills, health, family size, as well as whether a sponsor signed a contract (an “affidavit of support”) promising to support the immigrant. Positive factors can help applicants overcome any negative factors.



HOW PUBLIC CHARGE WOULD CHANGE

The final rule marks a significant and harmful change in policy that would fundamentally alter the immigration system and make immigrants fearful of receiving critical work supports like health care and nutrition programs that help families thrive and remain productive. Decades ago, the government clarified that immigrant families can participate in essential health and nutrition programs without fear that doing so would harm their immigration case. Once DHS' rule becomes effective, we will no longer be able to offer that assurance to many families.

The final rule targets key programs that help participants meet basic needs, such as:

- **Medicaid** (with exceptions for emergency services, and coverage of children under age 21 and pregnant women)
- **Supplemental Nutrition Assistance Program (SNAP)**
- **Public Housing, Section 8 housing vouchers, and Project-Based Section 8**
- **Cash assistance** under SSI, TANF or similar state, local or tribal programs

Under the rule, receipt of these programs for 12 months in a 36 month period will be considered a heavily weighed negative factor in deciding whether someone is likely to become a public charge. Receiving two of these programs, such as SNAP and Medicaid, in a single month, will be counted as two months. This is true even if someone is working and only receiving a modest supplemental benefit. (Being employed will be counted as a positive factor under the totality of circumstances test).

IF YOU WORK WITH IMMIGRANT FAMILIES, HERE'S WHAT YOU NEED TO KNOW

1. Some immigrant groups are not subject to “public charge.”

Some immigrants—such as refugees, asylees, survivors of domestic violence, and certain other protected groups—are not subject to “public charge” determinations and would not be affected by this proposed rule if they are seeking status through those pathways. The regulation also proposes to exclude benefits received by active duty service members, their spouses and children. Public charge is not a consideration when lawful permanent residents (green card holders) apply to become U.S. citizens.

2. Under the final rule, receipt of benefits by the individual - not their family members - is considered.

People can submit applications on behalf of their eligible family members without fear that they will be treated as receiving the benefits. We still expect that entire households will be harmed by the final rule, as there is *no way to target individual immigrants without hurting children, families, and communities.*

3. Only the benefits listed in the proposed rule may be considered.

Pell Grants, school meals, WIC, child care and other benefits not listed are not considered. Medicaid for pregnant women and children is not counted. State or locally funded non-cash benefits, including health care and nutrition programs, are not counted.

4. Benefits (other than cash assistance or long-term care) used before October 15, 2019 will not be considered in the public charge test.

And, the new test will apply only to applications postmarked or transmitted electronically on or after October 15, 2019. Between now and then, the current policy remains in effect. And it's possible that the new rule will be blocked or delayed before it goes into effect. Stay tuned!

5. You can still make your best case as an applicant.

Even with the rule change, applicants for admission or permanent residence can still make their best case to show why they are not likely to become a "public charge" in the future. Using benefits now can help you become healthier, stronger and more employable in the future.

6. Each situation is different.

People with questions should consult an immigration attorney or DOJ-accredited representative about their individual case. This online directory can help you search for local nonprofits that provide legal help and advice: ImmigrationLawHelp.org.

KEEP FIGHTING

The Center for Law and Social Policy (CLASP), National Immigration Law Center (NILC), and groups all over the country are working together to fight back against the public charge rule change. Our opposition needs to be strong because the stakes are high. If we want our communities to thrive, everyone in those communities must be able to stay together and get the care, services, and support they need to remain healthy and productive.

NOTE: The PIF Campaign is also separately tracking [potential changes](#) to the public charge ground of deportability that may be proposed by the Justice Department. These grounds are currently extremely narrow and have been applied infrequently. Stay tuned for any updates on how to fight back if this moves forward.



For more information and to stay up-to-date on any new developments and other related threats, go to our website at ProtectingImmigrantFamilies.org.