

# Update on “Public Charge” in Immigration Law

February 2020

## **INTRODUCTION**

On August 14, 2019, the U.S. Department of Homeland Security (DHS) issued a final rule redefining who qualifies as a “**public charge**” under U.S. immigration law. The rule was set to take effect on October 15, 2019, but implementation was temporarily halted due to several federal lawsuits. On January 27, 2020, the U.S. Supreme Court ruled that the new public charge rules could go into effect while the litigation continues in the lower courts. As such, DHS announced that they would begin implementing the new rule as of **February 24, 2020**.

The new rule has created much **fear and confusion** among service providers and clients alike. Many frightened families have disenrolled from benefits or refused to participate in aid programs for which they may remain eligible and which may be necessary for them to survive and thrive. But many noncitizens are exempt from the public charge test and remain eligible for these programs.

## **WHAT IS “PUBLIC CHARGE”?**

A test to determine if someone who is applying for Lawful Permanent Residence (green card) through a relative or a visa to enter the U.S. is likely to depend on public benefits in the future.

## **WHO DOES THE PUBLIC CHARGE TEST AFFECT?**

It only applies to people applying for permanent residence (green card) through a relative or for a visa to enter the U.S. No other types of immigration cases are affected, including applying for naturalization (U.S. citizenship)!

## **WHAT DOES THE NEW PUBLIC CHARGE RULE SAY?**

The new rule sets a stricter test for people to show they will not depend on public benefits in the future. An immigration officer will consider different factors, including family income, enrollment in certain public benefits programs, and how likely the applicant is to be or remain employed.

## **WHEN WILL THE NEW RULE TAKE EFFECT?**

The new rule will take effect for applications submitted on or after February 24, 2020; no benefits received before that date will be considered when determining if someone is likely to become a public charge. But several federal lawsuits challenging the rule remain pending and so may impact continuation of the rule in the future.

## **DOES THE NEW RULE AFFECT INDIVIDUALS’ ELIGIBILITY FOR ANY PUBLIC BENEFITS?**

No! The new public charge rule does not change eligibility for any public benefits programs; if someone qualified for certain benefits before, they are still eligible even after 2/24/20.

## **WHO IS NOT AFFECTED BY PUBLIC CHARGE?**

Many categories of immigrants/noncitizens do not have to worry about public charge rules:

- Refugees and asylees
- People with a U visa, T visa, VAWA (protection under the Violence Against Women Act), or SIJS (Special Immigrant Juvenile Status)
- Applicants for DACA (Deferred Action for Childhood Arrivals) or TPS (Temporary Protected Status)
- The majority of lawful permanent residents (green card holders)
- U.S. citizens

## **IF A LAWFUL PERMANENT RESIDENT (LPR) WANTS TO APPLY FOR U.S. CITIZENSHIP, WILL IT HURT THEIR APPLICATION IF THEY USE BENEFITS?**

No! There is no public charge test for naturalization (the process of applying for U.S. citizenship). LPRs who travel outside the U.S. for 6+ months at a time could be subject to public charge rules.

## **WHAT IF AN APPLICANT'S CHILD OR OTHER FAMILY MEMBER RECEIVES PUBLIC BENEFITS?**

The rule only considers benefits received by the person applying for permanent residence or the visa; benefits received by family members, such as U.S. citizen children, will not count against the applicant.

## **ARE ALL PUBLIC BENEFITS PART OF THE RULE?**

No! Only 9 benefits programs are part of the rule:

- Supplemental Security Income (SSI)
- Temporary Assistance to Needy Families (TANF)
- State or local general relief or general assistance
- Long-term institutionalization paid for by the government
- Medicaid
- Supplemental Nutrition and Assistance Program (SNAP, "food stamps")
- Section 8 Housing Choice Voucher Program
- Section 8 Project Based Rental Assistance
- Public Housing

Most people applying for LPR status are already not eligible for these programs; if they are eligible, they are generally exempt from the public charge test. Additionally, many other benefits, such as Special Supplemental Nutrition for Women, Infants and Children (WIC), public education and Head Start, free or reduced school meal programs, Children's Health Insurance Program (CHIP), and others are not part of the public charge rule. Eligible families should continue to receive these important benefits!

## **WHAT SHOULD I DO IF I HAVE QUESTIONS?**

Never give out legal advice if you are not a lawyer or DOJ Accredited Representative! Doing so could result in the unauthorized practice of law, which carries civil and criminal penalties; additionally, giving someone the wrong advice, even when well-intentioned, can cause major problems in their immigration case. Clients with questions about their specific situations should consult with an immigration attorney – they can contact **CCDA's Hogar Immigrant Services – Legal** program at **(703) 534-9805**, or ask us for additional referrals to other reputable lawyers and nonprofit organizations in the area.