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Background on Public Charge: H.R. 7052: No Federal Funds for Public Charge Act of 2018

Source: www.ProtectingImmigrantFamilies.org

A “public charge” is currently defined as a person who is or is likely to become primarily dependent on the government for support. When a non–U.S. citizen applies for a visa to enter the U.S. or for lawful permanent resident status (to get a “green card”), a U.S. government official will look at the person’s life circumstances to see if the person is likely to depend on government programs in the future.

In making this public charge determination, the government must look at all a person’s circumstances to determine if the person is likely to depend on the government for cash assistance or long-term care *in the future*. This “totality of the circumstances” test is forward-looking and not based solely on what happened in the past. The consular or immigration officer making this determination considers the person’s age, health, family and financial status, education, and skills. If the officer determines that the person is likely to become a public charge, the officer can refuse to grant the person’s application to enter the U.S. or get a green card.

The U.S. government’s policy on public charge already has changed in some ways for people seeking a visa or a green card at consular offices outside of the U.S. In January 2018, the U.S. State Department revised its Foreign Affairs Manual (FAM) section on public charge. The FAM provides guidance to government officers at U.S. embassies and consulates who decide whether to grant a person permission to enter the U.S. The new instructions do not change the definition of public charge but allow for consideration of other factors, such as the use of public benefits by applicants, their family members and/or their sponsor. It’s important to know that while new instructions are being applied at consulates abroad, public charge policies have **not changed** for decisions made by immigration officers in the U.S. For more information on this, see the Protecting Immigrant Families publication [Changes to “Public Charge” Instructions in the U.S. State Department’s Manual](#).¹

On October 10, 2018, the Trump administration published a proposed rule that would change “public charge” determinations for immigrants seeking adjustment of status in the United States. It would apply a similar test to people seeking to extend or change their nonimmigrant visas in the U.S. The proposed rule would broaden the definition of “public charge” to include immigrants who use one or more government programs listed in the proposed rule. The proposed rule also adds specific requirements to the public charge test for income, health, age, and even proficiency in English.

Right now, this is just a proposal to change the public charge policy that is currently in place. Before it can finalize the proposed rule, the government must review all of the more than 216,000 comments submitted on the proposed rule. This process, along with the possibility that Congress will review the proposal, may delay finalization of the rule. The process could take several months. In fact, some proposed rules are never finalized. If the rule is finalized, it will not take effect until weeks or months after the final version is published.



Other Helpful Information to Share with Immigrant Families as Needed

Use of public benefits alone will not make you a public charge.

Immigration officials must look at all your circumstances in determining whether you are likely to become a public charge in the future. This includes your age, health, income, assets, resources, education/skills, family you must support, and family who will support you. Positive factors, like having a job, can be weighed against negative factors, like having used certain public benefits.

The public charge determination is a forward-looking test.

Health care, nutrition, and housing programs can help you and your children remain strong, productive, and stable. Even if the rules change, you will have a chance to show why you are not likely to rely on certain benefits in the future.

Some immigrants are exempted by law from the public charge test.

Exempt immigrants (or those eligible for a waiver) include: refugees; asylees; survivors of trafficking, domestic violence, or other serious crimes (T or U visa applicants/holders); VAWA self-petitioners; special immigrant juveniles; and certain people paroled into the U.S. And lawful permanent residents (green card-holders) are not subject to the public charge test when they apply for U.S. citizenship. These laws will remain in place, even if the proposed regulation is finalized.

The proposed rule is not retroactive.

Under the proposal, benefits previously excluded from the public charge determination (such as Medicaid and SNAP, the Supplemental Nutrition Assistance Program) will be considered only if those benefits are received after the final rule is published. Using benefits now can help you or your family members become healthier, stronger, and more employable in the future.

Your personal information is safe.

Federal and state laws protect the privacy of people who apply for or receive health care coverage, nutrition, economic support, or other public benefits. Applications for public programs should not request information about the immigration status of nonapplicants in the household. Benefit agencies may share information with other government agencies only for purposes of administering their programs, with limited exceptions. You can provide only the information necessary and should not misrepresent anything when completing public benefit applications or dealing with any government agency.

We'll keep fighting this attack.

This proposal is not only cruel, but advocates will use every tool at their disposal — including in the courtroom — to stop it. Organizations and advocates are already preparing legal challenges, and state governments are also planning to sue if the administration goes further.

FOR MORE INFORMATION AND RESOURCES, VISIT

www.ProtectingImmigrantFamilies.org