



Understanding the Changes to the “Public Charge” Rule- Inside the U.S.

On January 27th, 2020 the U.S. Supreme Court set aside a preliminary injunction that prevented the Department of Homeland Security’s (DHS) ‘public charge’ rule from taking effect nationwide. DHS proposed changes to the public charge rule on October 10, 2018, and the final rule was issued on August 14, 2019. Despite receiving over 260,000 public comments opposing the changes, the final rule closely mirrored the proposed rule. Several law suits challenging the rule were filed, and the rule was then put on hold by the courts. However, the Supreme Court’s January 27th decision lifts this hold, and the DHS rule now **goes into effect February 24th, 2020**. The new policy, **taking effect February 24, 2020**, will apply to people applying for a green card **after that date and only to people living within the United States or filing applications within the United States**.¹

This new rule replaces long-standing policy about the meaning and application of the ‘public charge’ provisions of immigration law. The changes make it harder for low and moderate-income immigrants to gain Lawful Permanent Resident (LPR)/green card status. The new changes have caused fear about using public benefits among immigrant families, even though the new changes do not apply to all immigrants. For example, public charge is not a consideration when a LPR/green card holder applies for citizenship. It is important to combat this ‘chilling effect’ by providing families with accurate information.

What is Public Charge?

Part of federal immigration law, 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 finds that a person is likely to become a public charge in the future, it can deny the person’s application for LPR/green card or admission to the United States. When making a public charge determination, immigration officials look at use of public benefits as well as various factors of an applicant, including their age, health, family status, education, skills, and financial status. These factors are referred to as the “totality of circumstances”.

Who does Public Charge apply to?

The rule primarily affects non-citizens who are applying for LPR/green card status through family-based petitions within the United States. For example, the rule would apply to an individual with work authorization who marries a U.S. citizen and is seeking LPR/green card status. It will also affect LPR/green card holders who leave the U.S. for more than 6 months and seek to reenter. And, the rule will affect persons seeking to extend temporary non-immigrant visas and those seeking to change visa categories (e.g., from student visa to work visa).

¹ The Department of State (DOS) makes decisions on applications for lawful permanent residence that are filed from outside the U.S. Currently the rules are different, but DOS published an interim final rule on Oct. 11, 2019, to align the criteria with the DHS public charge rule. DOS is also seeking to start using the new criteria as of February 24, 2020, when the DHS rule goes into effect.

Who is excluded from Public Charge?

Public charge **does not apply to:**

- LPR/green card holders applying for citizenship
 - LPR/green card holders can receive SNAP, Medicaid, and other benefits for which they are eligible without jeopardizing their application for U.S. citizenship.
- Certain groups of non-citizens including: refugees, asylees, survivors of trafficking and other serious crimes, self-petitioners under VAWA, special immigrant juveniles, certain people paroled into the US, and several other categories of non-citizens.
 - Individuals with these statuses can also receive public benefits without jeopardizing their immigration status.

In addition, when making a public charge determination, immigration officials will not consider public benefits received by an applicant’s family members.

What are the new changes to Public Charge?

There are two major changes to public charge under the new policy: **1)** expanding the types of public benefits considered in the public charge test, and **2)** introducing positive and negative weighted factors within the totality of circumstances determination.

1) Public benefits

Under the old public charge rule, only cash support – SSI, RI Works (TANF) benefits, and Medicaid for long-term care were considered in the public charge determination. Under the new rule, receipt of additional public benefits will be considered. This chart shows the benefits that will be considered.

Benefits <u>Included</u> for Public Charge	Benefits <u>Excluded</u> for Public Charge
<ul style="list-style-type: none"> • Cash support – SSI and RI Works (TANF) • SNAP • Housing Assistance (Public housing, Section 8 housing vouchers, and rental assistance) • Medicaid, except for coverage for children under 21, pregnant women, including 60 days post-partum, and Emergency Medicaid (Emergency Medicaid covers services provided in a hospital). 	<p><i>Any benefit not on the ‘included list’ will not be counted. These include, but are not limited to:</i></p> <ul style="list-style-type: none"> • WIC • School breakfast and lunch • LIHEAP • Tax credits to help pay for coverage purchased through HealthSource RI • Pell grants and student loans • In-state tuition assistance • Tax credits – including the Earned Income Tax Credit and Child Tax Credit • Transportation vouchers • Any benefit not on the list in the left column • Benefits received by an applicant’s family members*

In making public charge determinations for applications filed on or after February 24, 2020, cash assistance and Medicaid for long-term care received prior to that date will be considered, but receipt of the new benefits will only be counted if received after February 24, 2020.

2) Totality of Circumstance

Immigration officials will use the totality of an applicant's circumstances when determining public charge. No single factor will determine if the applicant is a public charge.

Category	Positive weighted factor	Negative weighted factor
Age	Between ages 18-61	Too old (older than 61)/too young (younger than 18)
Health	Good health, private unsubsidized health insurance	Medical condition that will require extensive treatment and/or interfere with employment/education
Family Status	Smaller household	Larger household
Income and Financial Status	Income above 250% of federal poverty level (FPL) (\$31,900 for a single adult)	Income below 125% FPL (\$15,950 for a single adult)
Education and Skills	High school degree, occupational skills/certifications/licenses, proficient in English, history of employment, caretaker for ill family member/family member with a disability	No high school degree, not proficient in English

Affidavit of Support: An affidavit of support is a positive factor, but not determinative as it was under the old policy. Under the old policy, a green card/visa applicant could avoid a public charge determination by submitting an affidavit of support that showed he or she had friends/family with sufficient financial resources to avoid using government assistance. Under the new policy, the affidavit of support is just one factor to be considered.

Fight the Fear Factor

It is important for immigrant communities to understand who will and will not be affected by the new rule so that immigrants do not unnecessarily forego getting the benefits they need to support themselves and their families. Many families are already afraid to apply for benefits for which they or their children are eligible, and the new rule adds to this fear. Parents should not be afraid to apply for benefits for which their citizen children are eligible. Additionally, green card holders will not be affected by the rule (unless they plan to leave the country for 6 months). The rule will also not affect refugees, asylees, and victims of domestic violence applying for status under VAWA.

For more information, see:

- **The Economic Progress Institute-** <http://www.economicprogressri.org/immigrant-issues>
- **The Immigrant Coalition of RI-** <http://immigrantcoalitionri.org>
- **Protecting Immigrant Families-** <https://protectingimmigrantfamilies.org/>
- **Dorcas International Institute-** <https://diiri.org/citizenship-immigration/>, Dorcas provides free immigration consultations, walk-ins are available Mon, Tues, Wed, & Fri (9 a.m. - 1 p.m), and Thurs (3 p.m. - 7 p.m.). Location: 645 Elmwood Ave., Providence; Contact: 784-8663.