

Key Points for Assistants to Help Clients Understand The Final Public Charge Rule

This handout is for people working directly with clients to help explain specific aspects of the proposed public charge regulation. Background information is available here:

<https://protectingimmigrantfamilies.org/resources/>

This document is not intended to provide legal advice.

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Talking points to share with clients

- The final rule is scheduled to go into effect on February 24, 2020. The rule and updated public charge test will not be applied to applications submitted before this date.
- Benefits used by family members will not be considered in the public charge test. The only benefits considered are those used by the applicant themselves.
- Using benefits may prevent families from experiencing major financial hardship and should be used in some circumstances.
- Laws protect the privacy of people who apply for or receive help from public programs. With limited exceptions, benefit agencies can only share information with other government agencies for administrative purposes. In addition, individuals applying for benefits for children or other household members are not required to provide their immigration status – only the applicant must provide their immigration status.
- Get help to decide what's best for your family. If you can, consult with an immigration attorney or BIA-accredited representative about your own situation.
- It is important to note that the information here relates to individuals applying within the U.S. For those applying for a Green Card or visa outside the U.S. (at a consular office abroad), different rules apply. For advice on whether you will need to go through a consular office and how those rules apply in your case, please reach out to an immigration attorney.



When the public charge test is applied

When an individual applies for a visa to enter the U.S. temporarily or permanently



When an individual who is in the U.S. applies for an adjustment of status to Lawful Permanent Resident (i.e. Green Card holder)



When a Lawful Permanent Resident reenters the U.S. after being abroad for more than 6 consecutive months



The final regulation does not apply to all immigrants or all public benefits

Immigration statuses *not* affected

- Lawful Permanent Residents applying for citizenship
- Refugees
- Asylees
- Survivors of domestic violence, trafficking, and other serious crimes (U and T visa holders)
- Special Immigrant Juveniles
- Violence Against Women Act (VAWA) self-petitioners
- Certain people paroled into the U.S.
- Benefits received by active duty service members, and by their spouses and children

Public benefits *not* included

- Benefits received by immigrant's family members
- Supplemental Nutrition Assistance Program for Women Infants and Children (WIC)
- Emergency Medicaid
- School-based Medicaid services (e.g. the Individuals with Disabilities Education Act)
- Medicaid services used by children under 21 and pregnant women up to 60 days postpartum
- Child Health Plan *Plus* (CHP+)
- Advanced Premium Tax Credits
- Cost Sharing Reductions
- Medicare, including Use of Low-Income Subsidy (LIS) for Medicare Part D prescription drug coverage
- Colorado Indigent Care Program (CICP)
- Sliding Fee Discount Program at National Health Center Corps certified sites
- Energy Assistance (LEAP)
- Free/Reduced Price School meals
- Transportation vouchers or non-cash transportation services
- Non-cash TANF benefits
- Federal Earned Income Tax Credit and Child Tax Credit
- Disaster relief
- Pell grants and student loans
- Social Security retirement benefits*
- Veteran's benefits

Any program not explicitly listed in the rule

*Specific related programs *are* included: Social Security Income (SSI).



Factors that will be considered as part of the Public Charge test

The public charge test considers many factors. No one factor determines the outcome of the test. This determination is referred to as the “**totality of circumstances.**” The final rule requires immigration officials to assign positive or negative weights to each of the factors. Positive factors include being aged 18-60, being in good health, having a small family size, having higher education/skills, private and unsubsidized health insurance, and income above 250 percent of the federal poverty level (FPL). Negative factors include the receipt of designated benefits in the past, an income below 125 percent of the FPL, being younger than 18 or older than 60, having a limited English ability, having less than a high school education, serious health conditions that will require long term care or impede the ability to work, go to school, or care for themselves, a poor credit history, and others.

Considerations in the Final Rule*

- Age
- Health
- Family status
- Income and resources
- Education and skills
- Sponsorship/Affidavit of support
- Use of federally funded Medicaid (excluding emergency, school-based, and care for children under 21 and pregnant women)
- Use of federal housing assistance (Section 8 housing/rental assistance and public housing)
- Use of Supplemental Nutrition Assistance Program (SNAP, also called Food Stamps)
- Use of federal, state, local, and tribal cash assistance for income maintenance programs (e.g. SSI, TANF)

* Only the benefits included in this list can be considered under the rule



Frequently Asked Questions

How will use of public benefits be measured in the final rule?

Use of any level of the designated benefits will be considered a negative factor in a public charge assessment. The standard created by the new rule is whether someone is more likely than not to use Medicaid, SNAP, federal housing programs, or state or federal cash assistance for 12 months in a 36-month period (with use of two benefits is one month counting as two months). If someone uses 12 months or equivalent of benefits, which is unlikely because people are generally not eligible for the programs before receiving a Green Card, that will count heavily against them.

Is the public charge assessment new?

No, public charge tests have been used in immigration decisions for over a hundred years. What is changing is the definition of a public charge and the factors that can be considered in deciding if a person is likely to become a public charge. Previously, only cash assistance for income maintenance programs and institutionalization for long term care at government expense were considered in a public charge test. The new test also includes financial, health, and other factors that will make it harder for people to get an immigration application approved. These standards will apply regardless of whether the Green Card applicant has ever used public benefits.

How does the proposal change the definition of public charge?

Until February 23, 2020, the public charge test asks whether someone is likely to rely on government cash assistance or institutionalization for the majority of their support. Under the changes that are set to go into effect on February 24, 2020, the test will ask whether someone is more likely than not to use 12 months of public benefits in a 36-month period (with use of 2

benefits in one month counting as 2 months, etc.). “Public benefits” as used in the proposed definition would only refer to those programs explicitly included in the rule (i.e. state and federal cash assistance, federal housing assistance, SNAP, and Medicaid).

Will using benefits before February 24 impact my client’s ability to adjust their status later?

No. Using the benefits newly listed in the final public charge rule (i.e. federal housing assistance, SNAP, and Medicaid) before February 24, 2020, will not factor into a public charge determination. Use of cash assistance programs counts under the current rule, so use of those programs could impact an immigration determination. Starting February 24, 2020, staying enrolled in Medicaid, SNAP, and federal housing programs could impact an individual’s ability to adjust immigration status. However, people seeking adjustment of status generally will not have been able to qualify for those benefits because being a Lawful Permanent Resident is an eligibility requirement for most populations. In addition, benefits used by refugees, asylees, and other humanitarian immigrants and service members and their families are not included in the test and Medicaid used by pregnant woman and children are not considered in the test.

What happens if a person is determined likely to become a public charge?

Under current rule, and the rule going into effect on February 24, 2020, if immigration officials determine an individual is likely to become a public charge in the future, the individual’s application for admission or adjustment of status may be denied. The public charge determination does not impact the individual’s current status but could impact his or her ability to enter or remain in the U.S. legally once their visa status expires.

Is a dependent’s or family member’s use of benefits considered in a person’s public charge test?

No, only the applicant’s use of benefits is considered under the new rule for applicants within the U.S. For example, if a citizen child receives SNAP, this will not affect their immigrant parent’s application. Rules currently differ for those applying outside of the U.S.; however, proposed rules from the State Department would align the processes in the future.

When will this rule go into effect?

The final rule goes into effect on February 24, 2020.

Is there a list of immigration lawyers in Colorado?

Yes, you can find Colorado immigration lawyers listed here:
<https://www.immigrationlawhelp.org/search?state=CO>

Where can I go for additional resources?

- Covering Kids and Families is posting resources **for assisters** here:
<https://ckf.cchn.org/public-charge-resources/>
- Protecting Immigrant Families **national campaign** resources available here:
<https://protectingimmigrantfamilies.org/faqs/>

This handout was created by Colorado Covering Kids and Families and reviewed by lawyers at the Colorado Center on Law and Policy.



