Public Charge Proposed Rule Change

Frequently Asked Questions

What is the public charge rule?

Part of federal immigration law for over a hundred years is the “public charge” test. It is 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 legal admission to the U.S. or lawful permanent residence (a green card).

On October 10, the Department of Homeland Security (DHS) proposed to change this long-standing policy by shifting the focus from determining if an applicant is likely to become “primarily dependent” on government assistance to someone “who receives benefits”. The proposed test adds specific standards for income, health, age, and English proficiency. It also expands the types of benefits that are counted in a public charge determination. Under the current rule, benefits considered in the public charge test are: Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), and government-funded long-term institutional care.

What programs does the proposed rule add?

The proposed public charge rule adds the use of the following benefits:

- Non-emergency Medicaid
- Supplemental Nutrition Assistance Program (SNAP) known as food stamps
- Medicare Part D pharmacy subsidies
- Housing support (e.g., Section 8 vouchers, public housing)

Does the public charge test affect green card holders?

No. Public charge is NOT a consideration when lawful permanent residents (green card holders) apply for citizenship or renew an expired green card.

However, under both current law and the proposed rule, green card holders who are outside the U.S. for more than 180 consecutive days (6 months) may be subject to a
determination of admissibility, including a public charge assessment, when seeking to re-enter the U.S and should consult with an immigration attorney prior to departure.

Will the new rules be retroactive?

Only for cash assistance and long-term care. Other benefits used before the final rule is published will NOT be used against an immigration applicant.

Does the public charge test include my dependents’ use of benefits? No.

Receipt of benefits by dependents and other household members will NOT count as a public charge.

Who is exempt from the public charge rule?

The public charge test does NOT apply to:
• Refugees and asylees
• Survivors of trafficking, domestic violence, or other serious crimes (T or U visa applicants/holders)
• Self-petitioners under the Violence Against Women Act (VAWA)
• Special immigrant juveniles
• People applying for U.S. Citizenship
• People renewing an expired green card

What can I do?

These changes are not yet final and the public has a chance to weigh in before implementation. You can learn more about how to make public comments here https://protectingimmigrantfamilies.org/#take-action

When does the proposed rule become final?

After the Department of Homeland Security (DHS) reads the public comments received on the proposed rule, they plan to issue a final public charge rule that will have an effective date at least 60 days after the date the final rule is published.

Those who are not sure about their prospects for obtaining or adjusting to lawful immigration status in the future should seek legal help.