

FAQ: New Public Charge Rule--Aug 28, 2019

What does “public charge” mean? In immigration law, a “public charge” refers to a person who is primarily dependent on the government for subsistence. On August 14, 2019, the Trump administration published new regulations that broaden the definition of a public charge. The new definition now includes immigrants ***who use or receive, or are likely to use or receive, one or more public benefits, including non-cash benefits.***

What is a “public benefit”? A “public benefit” is any cash benefits from the government for income maintenance, or the use of any benefits from qualifying programs (see below.) Only public benefits received by the ***intending immigrant for their own benefit***, or ***where the intending immigrant is listed as a beneficiary of the benefit***, are considered as a public charge determination. (Taking out Medicaid for a U.S. Citizen child as a non-citizen parent does not count as receiving public benefits, for instance.)

What happens if you are found to be a “public charge”? Applicants for “adjustment of status” (or a “green card”) who are not exempt from the new rule will now have to file Form I-944, Declaration of Self-Sufficiency, with their initial application. If they are found likely to be a public charge after submitting the form, they can submit additional evidence before being found ineligible.

Applicants applying for admission will face tougher consequences if they be found to be inadmissible on public charge grounds. This determination is made after the consular interview abroad in the applicant’s home country, so the applicant cannot enter or return to the United States until the public charge determination is overcome.

For applicants who were not required to obtain a provisional waiver for unlawful presence before the consular interview, the applicant can submit a new Affidavit of Support with new co-sponsors, and/or joint sponsors, as well as additional documentation evidencing the sponsor’s income, prior tax payments, and the applicant’s own self-sufficiency.

For applicants who were required to obtain a provisional waiver for unlawful presence before the consular interview, the provisional waiver will be revoked if they are found inadmissible on public charge grounds. They would need to start over and file the unlawful presence provisional waiver from abroad and wait for it to be granted.

Applicants who are initially determined likely to become a public charge by immigration officials may be offered the opportunity to post a public charge bond of at least \$8,100,

which will be cancelled only upon the immigrant's death, permanent departure, five years as a Lawful Permanent Resident, or naturalization.

Who is exempt from the new rule? Those who already have a pending application with immigration postmarked before October 15, 2019 are not subject to the new rule. Those who are exempt include: refugees, asylees, Special Immigrant Juveniles (SIJs), certain trafficking victims (T-Visa holders), victims of qualifying criminal activity (U-Visa holders), or victims of domestic violence (VAWA self-petitioners).

For public benefits that are okay to use, see the websites below.

Which public benefits are NOT okay to use?

- Cash benefits for income maintenance
- Supplemental Security Income (SSI)
- Temporary Assistance to Needy Families (generally)
- Section 8 Housing Assistance under the HCV Program, Section 8 Project-Based Rental Assistance, and certain forms of subsidized housing
- Certain Medicaid benefits
- Housing assistance and food assistance under the Supplemental Nutrition Assistance Program (SNAP)

How does immigration decide when you are a "public charge"? The new rule requires that immigration officials use a "totality of circumstances" to making decisions about public charge. Immigration officials will be looking at whether the applicant 1) has the ability to make a living; 2) is meeting basic needs by the sufficiency of the household's income, assets, and resources; 3) has a legally-sufficient Affidavit of Support and has a sponsor actually willing to support them; and 4) has the ability to overcome receipt of public benefits above the designated threshold. See the full article for further information on the Affidavit of Support (Form I-864). The more positive and heavily weighed positive factors an applicant has, the more likely that they will not be found a public charge. Having a heavily weighed negative factor does not mean you will be found a public charge – a combination of positive and heavily weighed positive factors can make up for this situation.

What are positive factors? And heavily weighed positive factors?

- Your age is between 18 and 61
- A medical condition that does not affect your ability to work or to care for yourself
- You have a smaller family size
- You are supporting your family as the primary caregiver

- You have completed education at a high school level or above
- You have completed specialized training or courses for your job
- You have a high credit score
- Your household income is greater than 250% of the Federal Poverty Guidelines for your household (See, <https://www.uscis.gov/i-864p>)
- You have private health insurance, or insurance under the Affordable Care Act (Obamacare) that is not subsidized via premium tax credits
- For others, see the full article

What are negative factors? And heavily weighed negative factors?

- Your age is lower than 18 or greater than 61
- A medical condition that affects your ability to work or care for yourself
- You have a larger family size
- You depend on support from another household
- You have received public benefits for any amount of time
- You have received or you have been approved to receive public benefits for more than 12 months in the aggregate within the 36-month period prior to applying for admission or to adjust status
- You have medical conditions that require extensive treatment or institutionalization, and you are uninsured or lack the means to pay for the associated medical costs
- You are not employed nor a full-time student
- For others see the full article

Lawful Permanent Residents and Naturalized U.S. Citizens?

Current Lawful Permanent Residents generally are not affected by the new rule. Should a Lawful Permanent Resident apply for citizenship, their application cannot be denied based on the public charge inadmissibility ground. However, Lawful Permanent Residents will be subject to the new rule where they are considered applicants for admission, such as if they are returning to the United States from a trip abroad in excess of 180 days. Current Lawful Permanent Residents should still be careful to only use public benefits for which they are eligible.

To see what documents are helpful to collect to avoid a “public charge” determination, see the full article in English and Spanish at:

<https://www.tacruzlaw.com/.../08/21/faq-new-public-charge-rule/>

<https://www.tacruzlaw.com/.../preguntas-mas-frecuentes-sobre-.../>

Call Cruz Law, PLLC at (434) 260-0665 for a free consultation.

(This FAQ was authored by Jordan Woodlief, Paralegal, and Tanishka Cruz, Managing Attorney based on legal research and contains the opinions of the authors and should not replace independent legal advice provided by an attorney or representative familiar with an individual's case.)