

Public Charge Talking Points

Background

Under longstanding federal policy, the Federal Government can deny an individual entry into the United States, or adjustment to lawful permanent resident status, if he or she is determined likely to become a “public charge.”

“Public charge” is a term used in immigration law to refer to a person who is or might be dependent on public programs as their main source of support.

Information About the Recent Final Rule

- In August of 2019, the Federal Government released a new public charge policy that redefines “public charge” as an immigrant who receives one or more public benefits for more than 12 months over a 36-month period.
 - Public benefits historically included in the definition were limited to cash assistance, including CalWORKs (known federally as TANF), Supplemental Security Income (SSI) and General Assistance/General Relief.
 - The expanded list of public benefits to be considered includes:
 - CalFresh (known federally as SNAP)
 - Non-emergency Medi-Cal or Medicaid (Adults >21 Only)
 - In-Home Supportive Services (Adults >21 Only)
 - Housing Assistance, which includes Section 8 Voucher Rental Assistance, Section 8 Project-Based Rental Assistance, and Public Housing
- The rule change was set to go into effect on October 15, 2019; however, multiple injunctions delayed the rule’s effect. The final nationwide injunction was lifted on January 27, 2020 by the U.S. Supreme Court, and the federal government subsequently issued an updated effective date of February 24, 2020.
 - According to the newly issued federal guidance (post-SCOTUS ruling), there will not be a retroactive look back to benefits received prior to February 24, 2020.
 - Despite the lifting of the nationwide injunction, numerous lawsuits continue to work through the courts, and may result in court rulings to invalidate some or all of the changes that go into effect on February 24, 2020. The likely outcome of these cases is unknown at this time.

- Despite the attention that the rule receives, a only relatively limited number of specified immigrants are subject to a determination of public charge. Specifically, **this law only applies to individuals seeking admission into the United States or applying for adjustment of status**. This is not a provision of the law that applies to all immigrants.
- It is important to note who is **NOT** subject to the “public charge” rule:
 - Lawful permanent residents (green card holders) who apply for citizenship
 - Refugees and Asylees
 - Special Immigrant Juveniles
 - Trafficking victims
 - Victims of qualifying criminal activity
 - Certain domestic violence victims
 - Immigrants with no legal status who are not eligible to status adjustment (undocumented population)
- Although a majority of immigrants *aren’t* subject to this rule, we know that historically rules like this have major chilling effects on immigrants using public services because of the confusion, misinformation, and general fear caused by rules targeting their community.
- State-level anecdotes and information continue to tell us that individuals can be misinformed via resources they deem reliable such as word of mouth, non-traditional media and people who call themselves immigration attorneys or specialists but who don’t have training in these complex topics. This misinformation has resulted in families not signing up for benefits even when they are eligible, withdrawing from programs, or letting their benefits lapse.
- That is why it is critical that people ask a qualified legal resource before removing themselves or their families off public benefits that they qualify for and need to make ends meet.
 - CDSS has a list of qualified immigration services and legal resources on their website: <https://www.cdss.ca.gov/Benefits-Services/More-Services/Immigration-Services/Immigration-Services-Contractors>



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- Public benefits that are **NOT** subject to “public charge” even under the new rule include:
 - Nutrition benefits through Women, Infants and Children (WIC) or free school breakfast or lunch
 - Services provided to children under age 21 through Medi-Cal and/or the Children’s Health Insurance Program (CHIP)
 - Services provided to pregnant persons or persons up to 60 days following their pregnancy on Medi-Cal
 - Emergency medical services covered by Medi-Cal.
 - Covered California health care subsidies or Medicare coverage
 - Non-cash benefits funded solely by the state or a local entity, like expanded Medi-Cal coverage for undocumented children and young adults, or the California Food Assistance Program (CFAP).
 - Child care, Head Start, or public education.

- Only benefits received directly by the individual that is applying for a change in status or if they’re listed as a beneficiary will be considered, **NOT** their family members.

- There are many other factors considered when a public charge determination is made, like age, education, health, income level, and employment status – positive factors can be weighed against negative factors in this forward-looking test.

- Unfortunately, the “public charge” rule has always been confusing and this change will only make it worse.