

## Changes to the Public Charge Determination Quick Guide

### Overview

The Department of Homeland Security has released its final rule around the “public charge test.” The new rule will apply to adjustment of status applications postmarked on or after **October 15, 2019**. The new rule will not apply to adjustment of status applications that are pending or postmarked before that date. Additionally, legal challenges may delay implementation.

Of utmost importance is that consumers potentially affected by the rule are advised to seek independent legal counsel; Washington state agencies and the Exchange are not able to provide that level of assistance.

### Background

- The federal government has issued a final rule that changes how immigration officials determine whether certain immigrants will become a “public charge.” Public charge is a term used in immigration law to describe someone who is primarily dependent on government assistance. A public charge assessment considers whether a person is likely to become a public charge at some time in the future. The rule redefines the term “public charge” and the factors used to assess whether someone is likely to become a public charge.
- The rule applies to individuals applying for one or more of the following:
  - Admission to the U.S., an extension of their stay
  - To become a lawful permanent resident (LPR or green card holders)
  - To extend or change their nonimmigrant visa category

**Some immigrant groups are exempted by law from the public charge test**, including refugees, people granted asylum, and people who have received humanitarian visas (Special Immigrant Juvenile, Violence Against Women Act self-petitioners, or other visas for victims of violent crimes or human trafficking, such as U visas or T visas).

- **Public charge and this rule do not apply to the naturalization process**, when lawful permanent residents (green card holders) apply to become U.S. citizens.
- **The rule does not go into effect until October 15, 2019 and legal challenges may delay implementation.**
- **The changes will not apply to all types of federal benefits.** For a list of benefits that are included or excluded, see the Frequently Asked Questions.
- Many factors including age, health, family status, and the length of time the individual received the benefit must be considered to determine whether a person is considered a public charge. Receipt of a public benefit alone does not automatically make someone a public charge. Public charge is also a prospective test and no one factor is definitive. Each person’s case is unique, and their overall circumstances must be reviewed. Even with the rule change, applicants for admission or permanent residence can still make their best case to show why they are not likely to become a “public charge” in the future.

## Talking Points

Exchange customer support (Call Center Representatives, Navigators, Brokers, Tribal Assisters) may receive calls from customers who have questions regarding this rule. Account workers and assisters should continue to help all consumers enroll in Medicaid and Qualified Health and dental plans. The Exchange understands that customers may be concerned about whether enrolling in coverage through *Washington Healthplanfinder* will negatively affect them or a member of their household. We are reviewing these changes and their impact on Washingtonians. We want to provide accurate, reliable information to you to be able to effectively help the immigrant clients that we serve. **Of utmost importance is that clients potentially affected by the rule are advised to seek independent legal counsel; the Exchange and Washington state agencies are not able to provide that level of assistance.**

- If individuals or families request to terminate their benefits, should staff discourage them from doing so? NO. Although staff may wish to tell clients it is safe for immigrants to receive the public benefits they are eligible for, it is impossible for us to guarantee that implementation of current or future policies will not negatively affect their immigration status.

Instead, staff may share the following information with clients to inform their decision.

- Programs and services administered by the State of Washington remain in place and are accessible to eligible clients in Washington State.
- Under the previous rules, officials could only count a client's use of cash assistance or long-term medical institutionalization when considering their immigration applications. The new rules add certain federal healthcare, nutrition, and housing benefits.
- Based on the final rule, these **changes will not count against people who have received these additional benefits before the rule's effective date**. New benefits being added to the public charge test will only be counted against an individual if they apply for, are certified for, or receive a benefit after the rule's effective date. **Currently, the rule is expected to become effective October 15, 2019**. And it's possible that the new rule will be blocked or delayed before it goes into effect.
- **The changes will not apply to all types of federal benefits**. NO changes are being made to state benefits, although state and local cash benefits will still be considered under the public charge test.
- **Not all immigrants are subject to the public charge test**.
- **It does not impact lawful permanent residents applying for U.S. citizenship or naturalization**.
- **It does not count the use of benefits by a person's family members**. The use of benefits by children or other household members will not be counted against an individual applying for lawful permanent residency (green card) or admission to the United States.
- If clients have questions about how receiving public benefits will affect their immigration status, please refer them to an immigration attorney. Resources may be available through one of the organizations on the Governor's website: <https://www.governor.wa.gov/issues/issues/safe-communities/immigration-and-refugee-resources>. Additionally, they may contact one of the following organizations for help:
  - CLEAR Hotline: 1-888-201-1014
  - Northwest Immigrant Rights Project (NWIRP):
    - NWIRP Seattle Office: 206-587-4009
    - NWIRP Yakima Valley (Granger) Office: 509-854-2100
    - NWIRP Wenatchee Office: 509-570-0054

## **Frequently Asked Questions**

*DISCLAIMER: The information contained here only applies to individuals and families applying for immigration status from within the United States. For individuals seeking lawful permanent residency from outside the U.S. through Department of State (DOS) consular offices, changes are already effective, and different standards may apply. Changes for these individuals are contained in the Foreign Affairs Manual (FAM) and are explained in further detail here: <https://www.nilc.org/wp-content/uploads/2018/02/PIF-FAM-Summary-2018.pdf>*

### **What is Public Charge?**

Public charge is a term used within immigration law to denote someone who is, or is likely to become, primarily reliant upon government benefits and assistance programs for survival. The test is used in applications for lawful permanent residency (green cards) or admission to the United States – including diversity visa applications and applications to renew, change or extend visas. It is not used in processing applications for U.S. citizenship or naturalization. Depending on the “totality of circumstances” of the individual, a public charge determination could result in a denied immigration application, denied re-entry into the U.S., or deportation from the country.

### **What changes are being made to the Public Charge test?**

The Department of Homeland Security has significantly broadened how the “public charge” test is conducted for immigrants seeking to obtain legal status. Currently, the test only considers the use of public assistance as evidence that someone is likely to become a public charge if they received cash assistance or long-term institutionalized medical care at the government’s expense. The public charge test has historically excluded most non-cash benefits.

Under the rule, applying for, being certified for, or participating in specified federal assistance programs — such as federal nutrition assistance, healthcare and public housing programs — could be weighed by immigration officials when making a public charge determination. Beginning on October 5, 2019, the rule will add the following benefits:

- Medicaid;
- Supplemental Nutrition Assistance Program (SNAP);
- Section 8 Housing Choice Vouchers;
- Section 8 Project-Based Rental Assistance; and
- Public Housing.

### **What benefits are already included?**

The following benefits are already included in the public charge test and will remain:

- Federal, state, local or tribal cash assistance for income maintenance;
- Temporary Assistance for Needy Families (TANF); and
- Supplemental Security Income (SSI).

### **When do these changes take effect?**

Currently, the rule is expected to become October 15, 2019. It is important to remember that the rule will not apply retroactively to benefits applied for or accepted prior to that date, and it will not apply to applications for an adjustment of status pending or postmarked before October 15. Also, legal challenges may delay implementation.

### **Does it count benefits used by children or other family members?**

No. Under the final rule, the public charge test does not count the use of benefits by a person’s family members against their application for a green card, lawful permanent residency, or admission to the United States. It only considers the applicant’s own use of assistance.

### **What benefits are not included?**

Any benefits not specifically listed in the rule will continue to be excluded from the public charge test. These include, but are not limited to:

- Children’s Health Insurance Program (CHIP)
- Supplemental Nutrition Program for Women, Infants and Children (WIC);
- Child care and development;
- Disaster relief;
- Earned Income Tax Credit (EITC);
- Emergency medical assistance;
- Employment and job-training;
- Federal student financial aid;
- Food banks;
- Head Start;
- Low-Income Home Energy Assistance Program (LIHEAP);
- Medicare Part D Low-Income Subsidy;
- National School Breakfast and Lunch Programs;
- Pell Grants;
- Benefits received by immigrant’s family members; and
- Any other benefit not specifically listed in the rule.

### **Who do these changes apply to?**

These changes apply to people who are seeking lawful permanent residency (green cards) or admission to the United States – including diversity visa immigrants and applications to renew, change or extend visas in the United States. It does not apply to lawful permanent residents who are applying for U.S. citizenship or naturalization.

It also does not apply to people who are refugees and asylees, Amerasian immigrants, Afghan and Iraqi Special Immigrant Visa Holders, Cuban/Haitian Entrants, humanitarian parolees, victims of human trafficking (T-Visa), victim of criminal activity (U-Visa), Special Immigrant Juveniles, or VAWA (Violence Against Women Act) self-petitioners.

### **Where can I read more about the final rule?**

The full text of the final rule is available here: <https://www.federalregister.gov/documents/2019/08/14/2019-17142/inadmissibility-on-public-charge-grounds>. For more information about how this rule impacts individuals and families, you may want to visit the Protecting Immigrant Families campaign: <https://protectingimmigrantfamilies.org/>.

### **What resources are available?**

If anyone has questions about how receiving public benefits will affect their immigration status, they should speak to an immigration attorney. Resources may be available through one of these organizations: <https://www.governor.wa.gov/issues/issues/safe-communities/immigration-and-refugee-resources>. Additionally, they may contact one of the following organizations for help:

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