

Public Charge: Overview and Potential Impact

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January 16, 2019

The information in this presentation is for general educational purposes only and is not legal advice.

This presentation is meant to provide a broad overview of the proposed public charge rule. The rule is extraordinarily complex and this presentation does not cover all aspects of the rule. In all cases, people should seek an individual assessment of whether the rule, if adopted, could negatively impact their immigration status.

What is Public Charge?

- Long-standing facet of immigration law
- Part of the immigration/change of status application process
- Assessment of whether a person is likely to become “primarily dependent on the government for subsistence”
 - Cash assistance for income maintenance
 - Institutionalization for long-term care at government expense

What would change?

- Expanded types of immigration applications subject to test
- New definition of public charge: “An alien who receives one or more public benefits” as defined by the rule
- New considerations:
 - Expanded list of public benefits
 - Time and dollar thresholds for public benefits use
 - “Totality of circumstances” test
- Diminished role of sponsorship
- Changes to public charge bonds

Who is subject to a public charge test?

- Persons applying for admission to the U.S. (immigrant and non-immigrant visas)
- Persons applying for lawful permanent residence (green card)
- Green card holders who leave the U.S. and do something that could put their residency status in jeopardy (e.g., outside U.S. for more than 180 continuous days) (expanded)
- Visa renewal and change in visa applicants (e.g., student → work) (expanded)

Who is not subject to a public charge test?

- Applicants for citizenship
- Applicants for a green card renewal
- Excluded categories of immigrants, by law or regulation, including:
 - Refugees and asylees
 - Certain special visa holders from certain countries
 - Certain trafficking and crime victims (including T and U visa holders)
 - Special Immigrant Juveniles (SIJs)
 - Violence Against Women's Act (VAWA) self-petitioners
 - Service members in the U.S. Armed Forces

What public benefits would be included?

- Non-emergency Medicaid and Medicaid for pregnant persons (new)
- Medicare Part D Low-Income Subsidy (new)
- Supplemental Nutritional Assistance Program (SNAP) (new)
- Housing assistance (Section 8 housing and rental assistance and subsidized housing under the Housing Act of 1937, 42 USC 1437 *et seq.*) (includes NYCHA) (new)
- Cash Assistance for income maintenance (e.g., Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), state and local cash assistance)
- Institutionalization for long-term care at government expense

NOTE: There are exceptions; also, there are dollar thresholds for monetized benefits and time thresholds for non-monetized benefits

What public benefits are not included?

- Emergency Medicaid
- Child Health Insurance Program (CHIP)/Child Health Plus (*under consideration*)
- Benefits received by a minor child (*under consideration*)
- ACA subsidized plans (including Essential Plan)
- Women, Infants, and Children (WIC)
- Discounted healthcare services (H+H, FQHCs, sliding fee programs)
- Medicare Parts A and B, Medicare Advantage
- AIDS Drug Assistance Program (ADAP)
- HIV/AIDS Services Administration (HASA) and the State HIV emergency shelter allowance
- Housing Opportunities for Persons With AIDS (HOPWA)
- Ryan White program benefits
- Immunizations and testing and treatment for communicable disease
- Head start and other school programs
- **Anything else not specifically listed**

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Totality of Circumstances Test

- Currently receiving or received one or more designated public benefits within the previous 36 months above threshold (heavily weighed negative)
- Household income
 - Less than 125% FPL (negative)
 - More than 250% FPL (heavily weighed positive)
- Age
 - Younger than 18 or older than 60 years of age (negative)
 - 18 to 60 years of age (positive)
- Household size
- Education and skills (including ability to speak English)

Totality of Circumstances Test (cont'd)

- Assets and liabilities; credit score
- Employment
 - Not a student and no recent employment or reasonable prospect of employment (heavily weighed negative)
 - Legally employed and earning more than 250% FPL (heavily weighed positive)
- Health
 - Applicant has been diagnosed with a medical condition that will interfere with the ability to provide for self, attend school, or work (negative)
 - Applicant has such medical condition and has no non-public insurance or other means of paying for medical costs (heavily weighed negative)
- Type of application (visa, green card, etc.)

NOTE: This is not a complete list.

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Sponsorship and Public Charge Bonds

- Sponsorship (affidavit of support)
 - Diminished role under proposed rule
 - Part of totality of the circumstances test (positive factor)
 - A sufficient affidavit alone will not result in a finding that the applicant is unlikely to become a public charge
- Public Charge Bonds
 - Discretionary
 - Minimum of \$10,000, adjusted annually for inflation (currently \$1,000)
 - Cancelled upon: citizenship, permanently leaving U.S., dying, green card holder for 5+ years, change in immigration status to one not subject to public charge
 - Automatic breach if public benefits received

Important Considerations

- This proposal **would not change eligibility requirements** for public benefits programs
- The benefits considered are **only those used by the immigrant applicant**, not those used by other family members and dependents
- **Newly considered benefits used before the rule becomes effective would not be considered** in the public charge test
- **Many immigrants would not be impacted by the rule** – an individual assessment is essential

New York City: Estimated Impact

- ~304,000 low- and middle-income New Yorkers, including U.S. citizens and green card holders, could be discouraged from participating in public benefits programs due to confusion and fear about the scope of the rule change. This includes an estimated 72,000 U.S. citizen children and 29,000 individuals with disabilities.
- ~75,000 low- and middle-income PRUCOL individuals could be deterred from continuing to receive or applying for public benefits.
- Up to 400,000 low- and middle-income immigrant New Yorkers who are not currently eligible to receive benefits could be deemed inadmissible or ineligible to adjust their immigration status because of their age, health, education, income, assets, etc.
- If 20% of the ~220,000 non-citizen recipients of SNAP, cash assistance, or both, and 54,000 non-citizen recipients of Supplemental Security Income and the state supplement (SSI/SSP), they and those on their benefits case would suffer an annual loss of \$235 million in benefits. This could produce \$420 million in reduced economic activity in the city overall.

https://www1.nyc.gov/assets/immigrants/downloads/pdf/research_brief_2018_12_01.pdf

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Timeline

- Published in Federal Register on October 10, 2018
- 60-day public comment period ended December 10, 2018
 - Over 210,000 comments received
 - The City of New York submitted comments and also joined a multi-jurisdiction comment letter
- Department of Homeland Security considers comments; typically takes at least several months
- Final rule published – NOTE: May differ from proposed rule
- Based on the proposed rule, the rule would become effective 60 days after publication

What can I do?

- Reinforce what we know to be true
 - This is only a proposed rule – the standard has not changed
 - Use of newly included benefits before rule becomes effective will not impact later applications
 - Many immigrants would not be affected by the rule change
- Tell people where to get help

Resources

- Visit nyc.gov/immigrants, search for “public charge”
 - FAQs
 - Printable flyers in many languages
 - Connections to legal assistance
- Individuals seeking information about public charge can call 1-800-566-7636 from 9 am to 8 pm, Monday to Friday
- To make an appointment with an immigration legal services provider, call ActionNYC at 1-800-354-0365 from 9 am to 6 pm, Monday to Friday

Thank you!

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