Public Charge: What is the Rule, and What are the Proposed Changes?

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Education and Outreach
• The University of California Immigrant Legal Services Center serves the immigration-related legal needs of undocumented and immigrant students and their immediate family members, and immediate family members of US citizen students.

• Headquartered at UC Davis School of Law, the center serves 9 of the 10 UC Campuses: UC Davis, UC Irvine, UCLA, UC Merced, UC San Francisco, UC Santa Cruz, UC Santa Barbara, UC San Diego, and UC Riverside (UC Berkeley has its own program through EBCLC).
Disclaimers

• This presentation is meant to be informational only and does not constitute specific legal advice.

• The specific process and limitations in an individual case may be different.

• For case-specific legal advice, please consult with a qualified attorney.

• Please understand that the content provided is meant to be an overview—we’re trying to cover a lot in a short amount of time.
Icebreaker Quiz
1. Has the new public charge rule already been implemented?

Answer: No
2. If a noncitizen college student intends to apply for a green card, will it count against them if they have received state-funded educational scholarships or grants?

Answer: No
3. If an asylee intends to apply for a green card, should they consider dis-enrolling from certain public benefits in order to help their case?

Answer: No
4. If a green card holder intends to apply for citizenship, should they dis-enroll from MediCal?

Answer: No
5. To be in compliance with the new public charge rule, will impacted immigrants need to be dis-enrolled from public benefits programs on the same day the new rule is officially published?

Answer: No
Give Yourselves a Hand!
Agenda

• Putting public charge into context
• Existing public charge rule
• Proposed changes to the public charge rule
• Public charge at U.S. consulates and embassies
• Resources
• Q&A
Putting Public Charge Into Context
Inadmissibility and Deportability

• There are 2 ways noncitizens can be barred from entering/re-entering the United States, adjusting their immigration status, or maintaining their status:
  • They are “inadmissible” under the Inadmissibility Grounds
  • They are deportable under the Deportability Grounds

• If a bar applies AND no exception or waiver applies, then the noncitizen is barred from entry, denied benefit, and/or subject to removal.
Inadmissibility Grounds

- Health
- Criminal
- National Security
- *(Likely to become a)* Public Charge
- Lack of Labor Certification
- Fraud or Misrepresentation
- Prior removals or unlawful presence
- Miscellaneous
Existing Public Charge Rule
What is the current “public charge” test?

• Public charge: a person **primarily** dependent on the government for costs of day to day living.
• A person deemed **likely** to become a public charge by the United States Citizenship and Immigration Service (USCIS) can be denied permission to enter the country and permanent resident status (permanent residency = green card).
When is the public charge test applied?

+ When applying for permission to enter the U.S. from abroad.
+ When applying for certain immigrant visas or a green card—aka to become a lawful permanent resident (LPR)
  
  • Some green card applications are processed inside the U.S., and some must be processed abroad.

• *Note on applying from abroad:* new public charge challenges at U.S. consulates and embassies already in place.
When is the public charge test not applied?

- NOT when renewing a green card.
- NOT when applying for citizenship, aka naturalization.
- Many categories of immigrants are exempt from public charge rule (refugees, asylees, T visa, U visa, VAWA, SIJS, TPS, and others).
Public charge test defined in the law

- Immigration and Nationality Act (INA), Section 212(a)(4)

- The likelihood of becoming a public charge is based on all factors relevant to their ability to support themselves ("totality of circumstances")

- Immigration agents are required by statute to consider:
  - Age
  - Health
  - Family status
  - Assets, resources, and financial status
  - Education and skills

- Other factors may be considered, that are specified by regulation (e.g. use of public benefits)
Public Benefits

- Currently, only two types of benefits can be considered:
  - Cash assistance for income maintenance
  - Institutionalization for long-term care at government expense
Breaking it down

Will using benefits hurt my chances of getting a green card or becoming a U.S. Citizen?
DO NOT have a green card yet?

RIGHT NOW:

- 👍 It will NOT hurt your chances of getting a green card if YOU, your CHILDREN, or other FAMILY members receive:
  - **Healthcare programs**: Medicaid, prenatal care, “Obamacare”, other low-cost medical care
  - **Food programs**: SNAP/food stamps, WIC, school meals
  - **Other non-cash programs**: public housing, childcare, job training, educational scholarships and grants
- It does NOT hurt your chances if *only your children* receive cash benefits: TANF, Supplemental Security Income (SSI), General Assistance (GA)
DO NOT have a green card yet?

RIGHT NOW:

• 👎 You MIGHT have a problem getting a green card later if:
  
  • YOU get CASH benefits: TANF/welfare, Supplemental Security Income (SSI), General Assistance (GA)
  
  • OR your family’s only income is cash benefits
  
  • OR you are in a nursing home/Long-Term Care paid by Medicaid
Do you qualify for VAWA or a U/T Visa, or are you a REFUGEE or ASYLEE?

• 👍 You can use ANY benefits (if you are eligible), including cash aid, health care, food programs and other non-cash programs, without hurting your chances of getting a green card.
Already HAVE a green card?

- 👍 USCIS CANNOT cancel your green card just because YOU or your CHILDREN, or other FAMILY members use benefits.

- 👎 You CANNOT be denied citizenship for lawfully receiving benefits, including cash aid, health care, food programs & others.

- 👎 But you MIGHT have a problem if you leave the U.S. for more than 6 months. Talk to an immigration attorney before you leave.
Want to sponsor a relative for a green card?

RIGHT NOW:

• Using benefits, including cash aid, healthcare, and food programs should not prevent you from sponsoring a relative who is in the U.S. and can adjust their status in the U.S.

• **But** it might affect your relative whose application must be processed abroad.

• You must show that you or a co-sponsor have enough money to support the relative. Consult with a lawyer about your own situation.
Proposed Changes to Public Charge Rule
Department of Homeland Security (DHS) Proposed Regulation

- New definition of public charge
- More factors considered
- Additional benefits included
Proposed Regulation: New Definition of Public Charge

• Instead of assessing whether an applicant is likely to become *primarily dependent* on the government for support, the proposal defines a public charge as a person who merely *uses* an included government program.
Proposed Regulation: More Factors Must be Considered

• Age: whether too young (under 18) or too old (over 62) to work

• Health: physical or mental health condition that could affect ability to work or attend school, or require expensive care

• Family: household size, number of dependents

• Financial resources:
  ▪ Whether person earns at least 125% FPL
  ▪ Whether person has applied for immigration fee waiver

• Skills: English proficiency

• Credit rating
Proposed Regulation: Additional Benefits Included

Monetizable Benefits

• Cash assistance for income maintenance *(already included)*
  - SSI
  - TANF (CalWORKS)
  - CAPI (Cash Assistance Program for Immigrants)

• Non-cash:
  - SNAP (CalFresh/food stamps)
  - Housing assistance
    - (e.g. Section 8 vouchers, rental assistance)

Non-Monetizable Benefits

• Medical, except for:
  - Emergency
  - School-based Medi-Cal for children

• Long-term care *(already included)*

• Medicare Part D low-income subsidy

• Subsidized housing
“Totality of Circumstances” Legal Standard; Proposed Rule Adds Heavily Weighted Factors

Negative Factors:

• Authorized to work but not working and not a full time student
• Currently receiving a public benefit
• Has used a public benefit within last 36 months
• Medical condition that could interfere with work or require expensive treatment
• Uninsured without the prospect of receiving private insurance / paying for care
• Previously determined to be a public charge

Positive Factors:

• Income or resources over 250% FPL (over $62,000 for family of four)
What cannot be changed by the regulations?

• When public charge test applies
• Balance of factors must be considered
• Negative factors can be outweighed by positives
• Exempt categories of immigrants
• Benefits received by family members of the immigrant not considered
• Access to emergency medical care and disaster relief
“. . . the proposed definition [of public charge] would not include social insurance programs such as . . . non-cash benefits that provide education . . . Furthermore, DHS believes that exclusion of education-related benefits is justifiable in the interest of administrability (e.g., many such benefits are received indirectly through schools).”
Timeline

1. Oct. 10, 2018: Notice of proposed rulemaking (NPRM) was posted for public inspection
2. Dec. 10, 2018: 60-day public comment deadline
3. Present: Agency must read and respond to comments
4. ???: Final rule published
5. 60 days after the rule becomes final, newly-included benefits will be considered
Public Comments / Talking Points

• Chilling effect on immigrants seeking out important public benefits, many of whom may not even be impacted by the new rule.

• Risk of public health crises if immigrant communities dis-enroll from important healthcare programs.

• Social workers may be required to make immigrants aware of adverse immigration consequences of using public benefits.

• The Cato Institute found that immigrants consume 39% fewer benefits than people born in the US.*

Public Charge at U.S. Consulates & Embassies
Who Must be Processed Through US Consulates & Embassies?

+ Individuals who are abroad currently and want to apply for admission to the U.S.

+ Individuals who are in the U.S. currently, but whose applications must be processed through the U.S. consulate (aka “consular processing”)

- NOT individuals who are in the U.S. currently and able to adjust their status without leaving the U.S.
Public Charge at U.S. Consulates & Embassies

• Guidance pertaining to public charge inadmissibility in the Foreign Affairs Manual (FAM), governing consular processing cases, was revised in January 2018.

• Practitioners are starting to see more denials based on public charge inadmissibility at the consular interview.
More Application Denials Based On:

- Finding of public charge inadmissibility notwithstanding a qualifying Affidavit of Support, now that the Affidavit of Support is no longer sufficient on its own to refute public charge inadmissibility;

- Finding of public charge inadmissibility based on non-qualifying Affidavit of Support due to Sponsor’s own use of public benefits;

- Finding of public charge inadmissibility notwithstanding a qualifying Joint Sponsor Affidavit of Support, based on the consular officer’s doubts the joint sponsor will follow through on their promise to financially support the immigrant visa applicant; and

- Revocation of a previously approved Provisional Unlawful Presence Waiver when a consular officer determines the immigrant visa applicant may be inadmissible under the public charge ground.
Quiz Review
1. Has the new public charge rule already been implemented?

2. If a noncitizen college student intends to apply for a green card, will it count against them if they have received state-funded educational scholarships or grants?

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The answer to all of the above questions: No
Conclusion

• Public charge rules have not changed for immigrants who can adjust their status in the U.S.
• There is little to no advantage to stopping benefits right now.
• Food and healthcare help families thrive.
• Before you stop any benefits, consider speaking with a lawyer.
Find more information on the rule at:

• Protecting Immigrant Families
  • [https://protectingimmigrantfamilies.org/](https://protectingimmigrantfamilies.org/)

• National Immigration Law Center
  • [https://www.nilc.org/issues/economic-support/pubcharge/](https://www.nilc.org/issues/economic-support/pubcharge/)

• Immigrant Legal Resource Center
  • [https://www.ilrc.org/public-charge](https://www.ilrc.org/public-charge)
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CSU Resources

• Status of Direct Legal Support Services on CSU Campuses
  https://www2.calstate.edu/attend/student-services/resources-for-undocumented-students/pages/default.aspx

• Free Legal Support Services
  https://www2.calstate.edu/attend/student-services/resources-for-undocumented-students/Pages/legal-support-services.aspx

• Other Lawyer Referral Services
  https://www2.calstate.edu/attend/student-services/resources-for-undocumented-students/Pages/other-resources.aspx
CSU Resources

All CSU resources are posted on the Resources for Undocumented Students page on the CSU website: www.calstate.edu

- DACA Update
- Admissions Process
- Financial Aid
- Campus Support
- Legal Support Services
- About AB 540/2000/SB 68 and the California Dream Act
- Communications and Guidance
- Other Resources
Other CSU Resources

Resources for Undocumented Students

- [https://www2.calstate.edu/attend/student-services/resources-for-undocumented-students/pages/default.aspx](https://www2.calstate.edu/attend/student-services/resources-for-undocumented-students/pages/default.aspx)
- Free Legal Support Services
- Free DACA Legal Services and Filing Fee Assistance
- FAQs for CSU Employees about Federal Immigration Enforcement Actions on University Property
- CSU Campus Support
QUESTIONS?

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CSU The California State University