
PUBLIC CHARGE UPDATES

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Your child has you. And you have WIC.

WHAT IS PUBLIC CHARGE?

- Public charge is a balancing test. It defines what federal immigration officers can review when weighing to grant legal status (i.e., a visa or green card).
- Public charge allows immigration officers to deny legal status to individuals who will primarily rely on the government for support.
- Public charge is a forward-looking test based on the totality of an immigrant's circumstances:
 - Factors include age, health, family status, assets, resources, financial status, education, and skills.

BENEFIT USE IN PUBLIC CHARGE

- As part of the consideration of assets and financial resources, use of certain federal benefits has been included in public charge determinations since 1999
- Historically, federal benefit use has been limited to:
 - Cash assistance for income maintenance (TANF or SSI)
 - Long-term institutional care provided by Medicaid
- Since 2017, the Administration has explored efforts to expand the scope of public charge, including an expansion of the types of federal benefits permitted in public charge determinations

WHAT IS INCLUDED IN THE FINAL PUBLIC CHARGE RULE?

- August 2019: final public charge rule unveiled by Department of Homeland Security
 - **Expanded benefit consideration:** Medicaid, SNAP, and housing subsidies now included
 - **Income Test:** Only heavily weighted positive factors are related to income/employment, including making over 250% of the Federal Poverty Line and having private health insurance
 - **Additional Negative Factors,** including having certain health conditions, being a child, limited English proficiency, having less than a high school education, etc.

WHAT IS *NOT* INCLUDED IN THE FINAL RULE?

- **WIC is not included in the final public charge rule.**
 - WIC had been included in leaked drafts, which fueled the chilling effect facing WIC clinics. It is important to correct misconceptions that WIC is considered in public charge determinations.
 - Medicaid exception included for children under age 21, pregnant women (up to 60 days postpartum)
 - Other programs serving children – including CHIP, Head Start, school meals, etc. – are not included in public charge

WHO IS AFFECTED BY PUBLIC CHARGE?

- Public charge determinations only occur when an immigrant is applying for a visa or for legal permanent residency.
- Public charge does not apply when:
 - Renewing a green card;
 - Applying for citizenship/naturalization;
 - Certain non-citizen groups, including refugees, asylees, survivors of domestic violence, and Special Juvenile Status
- Rule was ***not retroactive***

CAVEAT: FOREIGN AFFAIRS MANUAL (FAM)

- Public charge rules are generally governed by Department of Homeland Security, but State Department issues guidance on the visa issuance process for embassy and consular officials
- January 2018 changes: permitted broader consideration of federal benefits, including “past or current receipt of public assistance of any type by the visa applicant or a family member in the visa applicant’s household.”
- October 2019: attempted changes to bring State Department guidance into alignment with DHS rule; process delayed as lawsuits played out

RECENT DEVELOPMENTS

- August 2019: final public charge rule issued by DHS
- October 2019: Nine lawsuits filed in five jurisdictions
- October 15, 2019: Original effective date – postponed by courts
- January 27, 2020: Supreme Court decision
 - Reverses nationwide injunctions, allowing for public charge rule to move forward in 49 states
 - Exception: Illinois, which has a statewide injunction from a lower federal court

NEXT STEPS

- In light of Supreme Court decision, DHS is committed to implementing public charge rule changes in the 49 states
- DHS is planning on releasing information “soon”
- Immigration officers *may* exercise discretion immediately; flag any instances of immediate implementation to NWA
- Decision will also likely impact advice by immigration attorneys to families. Important to clarify that WIC is not included in the public charge rule

QUESTIONS?

Connect with NWA's Immigration Page:

<https://www.nwica.org/immigration-resources>

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