
Changes to “Public Charge” Instructions in the U.S. State Department’s Manual

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ON JANUARY 3, 2018, the U.S. Department of State published revised sections of its Foreign Affairs Manual (FAM) that deal with “public charge.” These State Department instructions underscore the Trump administration’s interest in restricting family immigration and deterring families from securing critical services. The FAM provides instructions that officials in U.S. embassies and consulates abroad use to make decisions about whether to grant non-U.S. citizens permission to enter the U.S. It does not govern decisions made by immigration officials in the U.S. However, the FAM revision foreshadows other changes that we may see this year.

What is the longstanding public charge policy?

The term “public charge” describes people who depend on government-funded cash assistance or long-term care. Individuals who are likely to become a public charge may be denied admission to the United States or a green card (lawful permanent residence, or “LPR” status).

Almost two decades ago, the government clarified that, consistent with longstanding policy, the use of services such as health coverage or nutrition assistance would *not* be considered in determining whether someone is a public charge. The public charge determination takes into account all a person’s circumstances. Any negative factor can be outweighed by positive factors — most importantly, the affidavit of support filed by the person’s sponsor — in determining whether the person is likely to rely on cash assistance or long-term care in the future.

In making a public charge determination, the government must consider many factors, including the person’s age, health, family situation, income, resources, and education. It may also consider the

affidavit of support (contract) signed by a sponsor. This test is forward-looking and may not be based *solely* on what happened in the past.

More information on public charge is available in this National Immigration Law Center issue brief: www.nilc.org/public-charge-overview/.

How do the new FAM instructions change the longstanding “public charge” policy?

The revised State Department instructions continue to require that each factor (age, health, income, education, family situation, etc.) be considered in the public charge test. However, the instructions also include changes in evaluating a sponsor’s affidavit of support and the use of non-cash benefits by applicants, sponsors, and family members.

Affidavit of support. The new instructions emphasize that the affidavit of support is a positive factor in the totality of the circumstances test but is not sufficient on its own to protect an individual from a determination that the person is likely to become a public charge. In addition, it suggests that the sponsor’s use of benefits could be taken into account.

However, since the forms that visa applicants and their sponsors submit do not ask about the sponsor’s use of benefits, it’s not clear how this would be implemented in practice. Federal laws generally protect information about benefit recipients from being shared for purposes not directly related to determining eligibility or administering the program.

Use of noncash benefits by the applicant or a family member. The revised instructions allow the receipt of any “public assistance” to be considered as part of the “totality” of the person’s circumstances, if relevant in predicting whether the person will become a public charge *in the*

It is too early to know how the changes described here will be implemented by each U.S. embassy or consular office.

See page 2 for more about how you can get updates on public charge and help monitor these changes.

future. The new instructions also allow State Department officials to consider, as part of the public charge test, whether an applicant's family member has received public benefits.

Health. Under the revised instructions, applicants — particularly those with a health condition — may need to provide proof of medical insurance or other ability to pay medical expenses in the U.S.

Education and skills. Under the new instructions, it is more likely that applicants will need to demonstrate that they have job skills, provide information about their job history, and explain any periods of unemployment or job changes. They may also need to provide information about their plans for employment once they immigrate to the U.S., or whether they have a job offer.

Who is affected by the revised State Department instructions?

The revised instructions could affect non-U.S. citizens who go through consular processing in their home country before entering the U.S. This includes people seeking nonimmigrant visas, including tourist or employment-based visas, and people seeking to be admitted to the U.S. as lawful permanent residents. The instructions clarify that the conditions for obtaining a nonimmigrant visa are normally sufficient to overcome the public charge exclusion, absent evidence to the contrary. The revised instructions do not affect the public charge determination for people already in the

U.S. who apply for a green card (i.e., those who seek to *adjust* to lawful permanent resident status).

The public charge test does *not* apply to humanitarian immigrants such as refugees; asylees; survivors of domestic violence, trafficking and other serious crimes; special immigrant juveniles; and certain individuals paroled into the U.S. Lawful permanent residents are not subject to a public charge determination when they apply for citizenship.

How can you help us understand what these changes mean in practice?

We need your help! It will be important to monitor how these changes or rumors about these changes are affecting individuals, families, communities, and community-based organizations in the U.S. Please share information with us via email at publiccharge@nilc.org.

How can you learn more?

Please stay tuned as we continue to learn how these changes work in practice. To learn about any changes to public charge policy, sign up for the Protecting Immigrant Families Campaign email list at <http://bit.ly/PIFCampaign>.

You can also contact Jenny Rejeske at the National Immigration Law Center (rejeske@nilc.org) or Madison Hardee at the Center for Law and Social Policy (mhardee@clasp.org).