



# FREQUENTLY ASKED QUESTIONS

## Proposed Changes to the Public Charge Rule

NOVEMBER 2018

ON OCTOBER 10, 2018, the Trump administration published a *proposed* new rule that would change how immigration officials inside the United States decide who is likely to become a “public charge.” Earlier this year, the Trump administration changed the public charge–related instructions that officials in U.S. embassies and consulates abroad use to decide whether to grant a person permission to enter the U.S.

If the rule published in the Federal Register by the U.S. Department of Homeland Security (DHS) on October 10 is finalized in its proposed form, it would mark a significant departure from the government’s current policy. For over a hundred years, the government has recognized that programs that help people get health care and food are necessary to help families remain productive and thrive. Entire households and communities would be harmed by the proposed new policy, since there’s no way to target individual immigrants without hurting children, families, and communities.

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### DISCLAIMER

This document contains general information based on what the Protecting Immigrant Families Campaign knows to date and is *not legal advice*. Please take the time to consult with an immigration attorney or Board of Immigration Appeals–accredited representative about your own situation to help you decide what’s best for you and your family. For free or low-cost options near you, visit the National Immigration Legal Services Directory at [www.immigrationadvocates.org/nonprofit/legaldirectory/](http://www.immigrationadvocates.org/nonprofit/legaldirectory/).

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## BACKGROUND

### What or who is a “public charge”?

*Public charge* is a term used in immigration law to refer to a person who is primarily dependent on the government for support. The proposed new rule would broaden the definition of who is to be considered a public charge so that it includes immigrants who use one or more government programs listed in the proposed rule.

### How does the government decide who is likely to become a public charge?

The government uses a public charge “test.” The public charge test is based on several different factors. An immigration officer must look at the “totality of circumstances” by looking at the person’s age, health, family status, financial status, education and skills, and the “affidavit of support” filed by their sponsor (if they have one). The government must look at the person’s whole situation to decide if they are likely to depend on public programs in the future.

### What is an “affidavit of support”?

An affidavit of support is a legally enforceable contract that a person (called a *sponsor*) signs to accept financial responsibility for another person, usually a family member, who is coming to the U.S. to live permanently.

### When does the public charge test apply?

The test applies in two situations: (1) when a person applies to enter the U.S. or (2) when a person applies to adjust immigration status to become a lawful permanent resident (to get a green card). You apply for a visa or green card by submitting

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information on a form. Using the information from that form and from the interview that follows, the government decides if you are likely to become a public charge. The test is *not* used when a permanent resident applies for U.S. citizenship.

### To whom does the public charge test apply?

The public charge test does *not* apply to all immigrants. Some immigrants are not subject to the public charge test. Certain “humanitarian” immigrants are either exempt from having to show that they are not likely to become a public charge or can qualify for a public charge “waiver.” These immigrants include refugees; people who are applying for or have been granted asylum (asylees); women, men, or children applying for a green card under the Violence Against Women Act (VAWA); people who have or are applying for U or T visas; children seeking Special Immigrant Juvenile status; and people in some other protected categories.

If you are in any of these categories, you can use *any* government programs you are eligible for — including cash aid, health care, food programs, and other noncash programs — without worrying that doing so will harm your chances of getting a green card or improving your immigration status.

Public charge does not apply to people with green cards when they apply for U.S. citizenship.

### Who is currently considered a public charge?

Currently, immigration officials may consider your use of the following programs in deciding whether you are likely to become a public charge:

- **Cash assistance** programs, including:
  - state and local cash assistance programs
  - Temporary Assistance for Needy Families (TANF), which has **different names in different states**<sup>1</sup>
  - Supplemental Security Income (SSI), which helps people with limited income and who have disabilities, are blind, or are age 65 or older
  - General Assistance or other local cash assistance programs
- **Long-term institutional care paid by the government** (for example, Medicaid to stay at a nursing home).

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<sup>1</sup> The different states’ TANF program names are listed here: <https://aspe.hhs.gov/dataset/tanf-program-names>.

## FIGHT BACK!

The proposed rule on public charge is not yet in effect, and there is still time to resist it. You have until December 10 to share your thoughts by [submitting a comment](#). The rule won't become final until after the government has responded to community input, and ultimately the details of the rule may change.

### How do I prove that I'm not likely to become a public charge?

Make the best case for yourself (with documentation, your interview, etc.). You can explain why you are not likely to become a public charge in the future. For example, you can present information about your employment.

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## PROPOSED CHANGES TO PUBLIC CHARGE POLICY

The rules for public charge *may* change for people who are applying in the U.S. to become a lawful permanent resident.

### What are Trump's proposed changes to the public charge rule?

If the rule is finalized, the proposed change in policy would:

- Add more programs that could be considered when determining if someone is likely to become a public charge, including certain health care, food, and housing programs.
- Establish income levels that would be weighed against or in favor of applicants in the public charge test. For example, if a person earns less than \$31,000 per year to support a family of four, this would be considered a negative factor in the public charge test. And a person who supports a family of four would have to earn more than \$63,000 per year for their income to be considered a heavily positive factor in this test.
- Apply a similar test to (1) requests to extend a nonimmigrant visa (for example, to receive permission to stay longer in the U.S. on a visitor's visa) and (2) requests to change to another nonimmigrant status (for example, change from a student visa to an employment visa).

The proposed new rule also:

- Lists other standards for immigration officials to consider when evaluating an individual case. For example, having limited English-speaking skills or physical or mental health conditions that could affect the person's ability to work, attend school, or care for themselves would be viewed negatively in the "totality of circumstances" test.

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- Could allow some people applying for a green card to post a *public charge bond* in order to enter the U.S. To be allowed into the U.S., a person deemed likely to become a public charge because of their income, a health condition, or certain other factors may be required to buy a bond for a minimum of \$10,000. They might then lose that money (forfeit the bond) if they used certain government programs.

### Which government programs would be added to the list of programs considered as part of the public charge test?

The programs that would be considered in the public charge test, in addition to the cash and long-term care programs already considered under current policy, are:

- health care coverage through Medicaid, except for treatment for emergency medical conditions (Medicaid programs run by the states have different names in different states. To see what Medicaid is called in your state, visit <https://www.healthcare.gov/medicaid-chip-program-names/>.)
- Supplemental Nutrition Assistance Program (SNAP, sometimes called *food stamps*)
- low-income subsidy (LIS) for prescription drug costs under Medicare Part D
- rental assistance under Section 8 housing vouchers, Project Based Section 8, and Public Housing

(The cash and long-term care programs that are already considered under *current* policy are listed above under the question “**Who is currently considered a public charge?**”)

### Which programs are *not* included in the proposed rule’s list?

The following programs are not included in the proposed rule’s list of programs that would be considered as part of the public charge test:

- disaster relief
- emergency medical assistance
- programs that are entirely state, local, or tribal (other than cash assistance)
- benefits received by the immigrant’s family members
- any other benefit not specifically listed in the proposed rule

Government programs not listed in the proposed new rule include school-based services for children, education, child development, and employment and job-training programs. In its request for comments on the rule, DHS asks for input on whether benefiting from the Children’s Health Insurance Program (CHIP) should be considered. CHIP is not currently listed as a program considered. However, it could be included in the final rule because DHS is asking for comments on whether to include it.

## When could the proposed rule be approved and take effect?

We do not know for sure. The government must follow a long process before the rule becomes final and effective. Before the proposed rule can become final, the government must

- allow the public to submit comments on the proposed rule (the deadline to submit comments is December 10, 2018)
- read all of the public's comments
- draft and publish responses to the public's comments

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## INFORMATION FOR NONCITIZENS APPLYING TO ENTER THE U.S. OR TO ADJUST STATUS TO LAWFUL PERMANENT RESIDENCE

### I am applying to enter the U.S. from abroad. What changes to public charge policy apply to me?

The U.S. government's policy about public charge has already changed for people who are seeking a visa or a green card at consular offices outside of the U.S. In January 2018, the U.S. State Department revised its Foreign Affairs Manual (FAM) to institute new policies on public charge. The FAM provides guidance to government officers at U.S. embassies and consulates who decide whether to grant a person permission to enter the U.S.

If you are seeking a visa to enter the U.S., you may be subject to the public charge test and will have to show why you should not be deemed likely to become a public charge.

For more information on this, see the National Immigration Law Center's publication [Changes to "Public Charge" Instructions in the U.S. State Department's Manual](#).<sup>2</sup>

### I have a green card and am planning to travel outside the U.S. What changes to public charge policy apply to me?

If you have a green card, you may be subject to the public charge test when you try to reenter the U.S. if you travel abroad for more than six months. We suggest that, before you leave the U.S., you discuss your travel plans with an immigration attorney.

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<sup>2</sup> <https://www.nilc.org/issues/economic-support/public-charge-changes-to-fam/>.

**How do the changes to public charge policy affect me if I'm sponsoring a family member who is applying abroad for a green card?**

If you are sponsoring a family member for a green card who lives outside the U.S., be prepared to answer questions about your relationship to that person.

**I am applying in the U.S. for adjustment of status and will have to be interviewed at a consulate outside the U.S. before I can get my green card. What should I do?**

We recommend that you consult with an immigration attorney before you go to your consular interview.

**If I used government programs in the past, does that mean I may not be able to get a green card?**

The public charge test is forward-looking. It would not consider any newly listed benefits used prior to the date the proposed new rule takes effect. If you previously received help from government programs but your situation has changed, you can show that you will not need those services now or in the future (for example, because you now have a job).

**What if my family members use health care, nutrition, education, or other programs?**

Generally, it is benefits received by you, the applicant for a visa or green card — not benefits received by your family members — that are to be considered in the public charge test. If the proposed rule goes into effect, the government should not count your children's use of *noncash* benefits (for example, health insurance or food stamps) against you when it reviews *your* immigration application. However, if your children's *cash* benefits are your only source of support, that can affect whether you are deemed likely to become a public charge. Be sure to speak with an immigration attorney about your case.

**Should I or my family stop using the government programs we are using now?**

If you or your family are getting help to get medical care or to pay for food or rent, you do *not* need to stop receiving this help. The proposed rule has *not* been finalized. If it *does* eventually become final, it won't take effect until months from now. The proposed rule says that it will apply only to programs you use after the rule goes into effect.

**If a child is receiving health care coverage through a public program, how will that affect their application for a green card?**

Children who are applying for a green card could be affected by the proposed new rule. If they are receiving Medicaid, this could be considered in the public charge test, along with their age, income, and other factors. The government has asked for input on whether to include the Children’s Health Insurance Program (CHIP) as a program whose use should be considered in the public charge test. But CHIP is not included as such a program in the proposed rule published on October 10.

**What if I am serving in the military?**

The new proposed rule would exclude from the public charge test consideration of benefits received by active duty servicemembers and their spouses and children.

**What if I receive a benefit that’s not listed?**

When it applies the public charge test, the government should consider only the programs listed in the proposed rule. Help received through programs that aren’t listed, such as education, child-development, employment, and job-training programs, are *not* part of the public charge test. For example, Pell Grants, child care, or other benefits that are not listed will not be considered.

**If I use Medicaid or food stamps, will I be considered likely to become a public charge?**

If you are living in the U.S. and applying for a green card, it’s still OK for you to use Medicaid or SNAP (food stamps). And remember, the government will look at your whole situation to decide if you are likely to depend on government programs in the future. If you received support in the past but no longer will need it, you can show that you no longer use or need these programs. For example, you can show that you have a job or other health insurance now.

Even if the proposed rule goes into effect, your U.S. citizen children can still receive SNAP (food stamps) or Medicaid if they are eligible, without affecting your application for a green card.

**If I use Obamacare, will I be considered likely to become a public charge?**

Under both the current public charge policy and the proposed rule, it is OK for you to use Obamacare (Affordable Care Act health insurance) with financial help if you are eligible. Using it should not hurt your ability to adjust your immigration status.

**If I get WIC, will I be considered likely to become a public charge?**

Under both the current public charge policy and the proposed rule, it is OK to get help from WIC (the Special Supplemental Nutrition Program for Women, Infants, and Children). Receiving WIC should not hurt your ability to adjust your immigration status.

### **If my child goes to Head Start or Early Head Start, will I be considered likely to become a public charge?**

Under both the current public charge policy and the proposed rule, it is OK for you to use educational programs such as Head Start or Early Head Start.

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## **INFORMATION FOR LAWFUL PERMANENT RESIDENTS AND U.S. CITIZENS**

### **What if I am a lawful permanent resident (I have a green card) and am receiving help from government programs. Can I lose my green card?**

You cannot lose your green card just because you, your child, or other family members use benefits properly. And you cannot be denied U.S. citizenship for lawfully receiving benefits. **But you *may* have a problem if you leave the U.S. for more than six months and then try to reenter the country, because at that point you are requesting “reentry” into the U.S.** If you’re planning an extended trip outside the U.S., speak with an immigration attorney before you leave.

### **I have my green card and need to renew it soon. Can the government deny my renewal application because I am receiving Medicaid, food stamps, or housing assistance?**

No. The public charge test does not apply when you renew a green card. The renewal application may not be denied based on your use of programs for which you are eligible.

### **If I have a green card and get medical care through a government program, does that mean I cannot become a U.S. citizen?**

No. The public charge test does not apply to lawful permanent residents (people with green cards) when they apply for U.S. citizenship.

### **If I am a U.S. citizen, does the public charge test apply to me?**

The public charge test does not apply to U.S. citizens. If you are a U.S. citizen receiving help through public programs, you should continue receiving the benefits you need for which you are eligible.

### **Can naturalized U.S. citizens lose their U.S. citizenship if they use programs like Medicaid or food stamps?**

No. U.S. citizens cannot lose their citizenship based on their lawful use of public benefits. Once you become a U.S. citizen, the government may not deport you and must always let you return to the U.S. after you travel outside the country.

## What if I am U.S. citizen or lawful permanent resident and want to sponsor or am sponsoring someone for a green card?

Getting help through public programs should not prevent you from sponsoring someone (such as a family member) who is applying for a green card in the U.S. But it *could* be considered if your family member is applying for a green card from outside the U.S. or needs to go abroad for a consular interview before being granted permanent resident status. You will need to file an “affidavit of support” to show that you or a cosponsor or joint sponsor have enough money or resources to support the person you’re sponsoring.

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## WAYS TO GET INVOLVED

**Fight back! Anyone — your doctor, your neighbors, your relatives, your community’s leaders, and you — can speak up to oppose the policy changes proposed in the new rule. *Make a difference.***

### The rule process takes months, so you have time.

The public has 60 days from the time the proposed rule was published (until December 10, 2018) to submit comments, and the government then must review all the comments. This could take weeks or months. If the government decides to change the rule in response to the comments, it will be at least another month before the rule takes effect. Congress does not have to approve the rule for it to take effect, but Congress should also review the rule. Review of the rule by Congress could further slow its implementation or block it.

### What can I do now?

Think through the impact this proposed rule may have on you and your family. We recommend having these conversations now, as you continue taking care of your needs, such as going to your medical appointments.

You should discuss these issues:

- Are you using any programs that may be considered in the public charge test?
- Are you working, or will you be able to find other ways to meet your basic needs if this rule goes into effect?
- Is there a way you could apply for a green card in the near future?

### How can I help?

We need to be strong because the stakes are high. Let the government know that this rule would harm you, your family, your community, and the country.

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- Join us in submitting comments to oppose the proposed changes to public charge policy. Find out how by visiting [www.ProtectingImmigrantFamilies.org](http://www.ProtectingImmigrantFamilies.org).
- Organize your networks, your neighbors, and your family to submit comments about the proposed rule.
- Share your own story.

[Click here](#) to send your message about why this proposal is a bad idea. To submit a comment, you do not have to provide your contact information or your immigration status, just your name. If you do not want to give your name, you can ask a friend or representative to share your story for you.

### What if I have more questions?

Talk to someone who knows the rules. Contact trusted sources of information, including:

- a trusted nonprofit that serves immigrants
- a community health clinic or social worker
- your immigration lawyer or Board of Immigration Appeals–accredited representative

Groups all over the country are monitoring and planning to fight the changes to public charge policy in the proposed rule. For more information and to sign up to receive the latest information, visit [www.ProtectingImmigrantFamilies.org](http://www.ProtectingImmigrantFamilies.org).

The information in this FAQ was prepared by the Protecting Immigrant Families, Advancing Our Future campaign, which is co-chaired by the Center for Law and Social Policy (CLASP) and the National Immigration Law Center (NILC).