

How to Talk with Immigrants and Their Families About Public Charge Determinations Made Abroad

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This issue brief summarizes topline Protecting Immigrant Families Campaign messages and recommended talking points when communicating with immigrant communities specifically about public charge determinations made by immigration officers *outside* the U.S.

Under current U.S. government policy, individuals are considered likely to become a “public charge” if they are likely to become primarily dependent on the government for subsistence. In making the determination about whether someone is likely to become a public charge, an immigration or consular officer must look at all a person’s circumstances to determine if the person is likely to depend on the government for monthly cash assistance or long-term care in the future. This “totality of the circumstances” test is forward-looking and is not based solely on what happened in the past.

Outside of the U.S., a determination about whether a person is likely to become a public charge is made in these circumstances, generally:

- when the person or a family member has returned to their country of origin to apply for a green card (lawful permanent residence), also known as “consular processing”
- when the person is applying for a U.S. visa from outside the U.S.
- when the person has been sponsored by a family member to immigrate to the U.S.
- when a green card–holder (lawful permanent resident) is seeking to reenter the U.S. after spending 180 continuous days outside the U.S.

For topline messages and talking points to use when talking about the Trump administration’s proposed changes to how public charge determinations are made *inside* the U.S., visit www.nilc.org/how-to-talk-about-public-charge-pif/.

Please use the core message, along with any or all the topline messages. The messages are followed by a more extensive set of talking points.

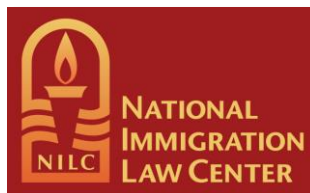
Partners should feel free to tailor any of the messages — including the specific wording of the core message — to suit their organization’s communications and community engagement strategy.

TOPLINE MESSAGES

Core message

- **Don’t give up!** Speak with an immigration attorney about options for pursuing a visa or green card for yourself or your family, and how you can make your best case.

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- **Don't assume you have to stop using services.** Health care, nutrition, and housing programs can help you and your children remain strong, productive, and stable. If you have questions about whether using benefits could affect your application for a lawful immigration status, *seek advice about your own situation*.

Other topline messages

- Not all immigrants are subject to the public charge test.
- Public charge policy for decisions made *inside the U.S.* has *not yet* changed. The changes proposed by the Trump administration are still only a proposal.
- Public charge policy for decisions made *outside the U.S.* has changed to some degree – but how the policy is implemented may vary from place to place.
- You can still make the best case for yourself. The public charge “test” looks at all a person’s circumstances, weighing positive factors against any negative ones.
- Federal and state laws protect the privacy of people who apply for or receive health care coverage, nutrition or economic support, or help from other government programs.

TALKING POINTS

Don't give up! Speak with an immigration attorney about options for applying for a visa or green card for yourself or members of your family, and how you can make your best case.

Don't assume you need to stop using services. Health care, nutrition, and housing programs can help you and your children remain strong, productive, and stable.

If you have questions about your immigration options, or whether using benefits could affect your application, seek advice about your own situation.

This online directory can help you find a local nonprofit organization that provides legal help and advice: www.ImmigrationLawHelp.org.

Public charge policy for decisions made outside the U.S. has changed to some degree. Individuals who are seeking to enter the U.S. from abroad or who must go abroad to process their immigration applications are subject to new public charge procedures. The State Department recently revised its instructions in the Foreign Affairs Manual (FAM) for consular officials considering applications from people seeking to enter the U.S.

The FAM guidance uses the current definition of public charge (likely to rely primarily on cash assistance or long-term care in the future). However, it allows the officials to consider a broad range of benefits used by the applicants, their dependents or sponsors in making this determination. (More information on the FAM changes is available at www.nilc.org/wp-content/uploads/2018/02/PIF-FAM-Summary-2018.pdf.) And it no longer considers a sponsor’s affidavit of support (contract promising to support the immigrant) as enough on its own to overcome a public charge barrier. As a result, U.S. consular officials abroad have been asking more questions about immigrants, their family members, and their sponsors.

People should speak with their attorney to understand how these processes may affect them and how to best prepare for a consular appointment.

You can still make the best case for yourself. The public charge test weighs positive factors against any negative ones. Consular officials must look at all of the applicant's circumstances in determining whether the person applying for admission is likely to become a public charge in the future. This includes the person's age, health, income, assets, resources, education/skills, family the person must support, and family who will support the person. Consular officials may also consider whether a sponsor has signed an affidavit of support (or contract) promising to support you. Positive factors must be weighed against any negative factors.

Some immigrants are exempted by law from the public charge test. This includes: refugees; asylees; survivors of trafficking, domestic violence, or other serious crimes (T or U visa applicants/holders); VAWA self-petitioners; special immigrant juveniles; certain people paroled into the U.S. and some other immigrants.

Federal and state laws protect the privacy of people who apply for or receive health care coverage or nutrition assistance, economic support, or help from other public programs. Applications for public programs should not request information about the immigration status of people in the household who are not applying for benefits for themselves. Non-applicants can provide only the information necessary to determine eligibility, like income. No one should provide false information when completing public benefit applications or dealing with any government agency. Benefit agencies may share information with other government agencies only for purposes of administering their programs, with limited exceptions.

The rules on public charge decisions made within the U.S. have *not yet* changed. For green card applications processed in the U.S., the public charge policies have not changed. Information on the proposed changes to "public charge" determinations within the U.S. are www.nilc.org/proposed-changes-to-public-charge-rule-faq.

For more information on the FAM changes, visit www.nilc.org/wp-content/uploads/2018/02/PIF-FAM-Summary-2018.pdf.

This issue brief was written by the National Immigration Law Center for the Protecting Immigrant Families, Advancing Our Future campaign, co-chaired by the Center for Law and Social Policy (CLASP) and the National Immigration Law Center (NILC). For more information, see www.nilc.org and www.ProtectingImmigrantFamilies.org.