

WHAT IS "PUBLIC CHARGE"?

Public Charge is a rule that allows immigration officials to consider whether an individual is a "public charge," or "primarily dependent on the government for subsistence," when the individual applies to enter the U.S. or when the individual applies for adjustment to Lawful Permanent Resident status (a green card). Currently, the government is considering a change to that rule. This advisory provides information regarding the proposed rule and its effects.

WHAT ARE THE CHANGES TO THE CURRENT RULE THAT THE GOVERNMENT IS PROPOSING?

The current rule provides that immigration officials will only consider "cash assistance, such as Supplemental Security Income (SSI) and Temporary Assistance for Needy Families (TANF), comparable state or local programs, and government-funded long-term institutional care, in the 'public charge' test – and only when it represents the majority of a person's support."

The proposed rule would change the current rule by expanding the definition of public charge to include use of one or more public benefits, including:

- Medicaid (with limited exceptions including Medicaid coverage of an "emergency medical condition," and certain disability services related to education)
- Supplemental Nutrition Assistance Program (SNAP)
- Medicare Part D Low Income Subsidy (assistance in purchasing medicine)
- Federal Public Housing, Section 8 housing vouchers and Section 8 Project Based rental assistance

WHAT IS THE STATUS OF THESE PROPOSED CHANGES? ARE THEY IN EFFECT YET?

The proposed rule is not finalized and the current rule remains in effect. The process for changing a regulation like public charge requires the government to propose a new rule, provide time for the public to comment on the rule, and respond to the public's comments; only then can the final rule be issued. The comment period for the proposed public charge rule ends on December 10, 2018. After that date, the government must respond to the comments submitted during the comment period before the government can finalize and enforce the new rule (described above). This means that the government can not carry out the changes in the proposed rule until the rule becomes final. Until then, current rule applies.

TO WHOM DOES THE PUBLIC CHARGE RULE APPLY?

The rule does NOT apply to:

- Green card holders (lawful permanent residents) applying for U.S. citizenship
- Certain "humanitarian" immigrants, including refugees, asylees, those "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."

Under the rule, the government only considers receipt of benefits by the person applying for status. **The government does not consider receipt of benefits by a family member in making its "public charge" determination.**