

# THE ESSENTIALS ON PUBLIC CHARGE FOR THE USCRI NETWORK

On August 14, 2019, the administration announced final changes to the Public Charge Rule. These changes become effective on October 15, 2019. Below is a breakdown of what the Public Charge Rule means, and who is affected.

## What is a public charge?

Public charge is a term used in immigration law to describe someone who is dependent on government programs for financial support. The federal government can deny entry into the U.S. or adjustment to Lawful Permanent Resident (LPR) status (green card) if it is determined that person is likely to become a public charge.

## What are the proposed changes to public charge?

These additional factors have been added to the Public Charge Rule:

### Use of government programs

In addition to the cash and long-term care programs already considered under current policy, these programs will also be considered:

- Cash assistance programs, including Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), and Supplemental Security Income (SSI)
  - o Except for entirely state/local non-cash assistance, such as the Women and Infant Children (WIC) program
- Long-term institutional care paid by the government (Medicaid)
  - o Except for use of the Affordable Care Act, emergency care, disaster relief assistance, or emergency care while under 21 or pregnant
- The Housing Choice Voucher Program (formerly Section 8), federally-subsidized housing

### Positive versus Negative Factors Test

The government will also consider these factors:

- Income level relative to household size
- English proficiency
- Physical and/or mental health conditions that could affect one's ability to work, attend school, or care for themselves

The new rule could allow a person who may become a public charge, based on the above factors, to **post a bond** to be admitted to the U.S. The bond would be set at a minimum of \$10,000 and if the person used certain government programs while in the U.S., they could forfeit the bond (lose the money).

## Who does the Public Charge Rule apply to?

1. Anyone applying to come to the U.S.
2. Anyone applying to be a Legal Permanent Resident
3. Anyone applying to extend their nonimmigrant visa in the U.S.
4. Anyone applying to change their nonimmigrant status



## Who is exempt?

The Public Charge Rule **DOES NOT** apply to all immigrants. These immigrants are exempt:

1. refugees
2. people who are applying for or have been granted asylum (asylees)
3. women, men, or children applying for a green card under the Violence Against Women Act (VAWA)
4. people who have or are applying for U or T visas
5. children seeking Special Immigrant Juvenile status
6. Afghan and Iraqi Special Immigrant Visa recipients
7. Amerasians
8. Lautenberg entrants

This exemption is statutory (INA § 209(c), 8 USC 1157, 8 USC § 1159(c)) and cannot be changed by the administration without an act of Congress. At this time, there are no proposals or efforts to change these exemptions. The administration's final rule re-states that **these populations will not be penalized for using benefits** when they apply for admission, a green card, or family reunification through the I-730, Visa 93, Visa 92, Affidavit of Relationship, or follow-to-join process.

Anyone who falls within these categories can access government programs for which they are eligible, without worrying that it will hurt their ability to obtain a green card or adjust their immigration status in the future.

## How does the rule change citizenship applications and green card renewals?

For green card holders, the public charge rule does NOT apply when they are applying to become a U.S. citizen or renewing the green card. Therefore, green card holders can access government programs without fear it will affect their status or application for renewing the green card or applying for U.S. citizenship.

## Why do the changes matter?

All green card holders seeking to sponsor a family member through non-refugee-specific immigration pathways will now face the Public Charge Rule. Prior to the new rule, income was the only factor in determining financial ability to sponsor a family member. Under the new rule, the government will consider what benefits a sponsor used or uses to support themselves if a family member is being processed by the U.S. government overseas. Therefore, the new rule could affect the ability of former refugees, asylees and other humanitarian immigrants, who now have a green card, to sponsor relatives through non-refugee-specific pathways, including the I-130 process. **This is a complex process, so we strongly advise people see an immigration lawyer about their specific cases.**

This final rule will significantly affect the health and well-being of immigrant families who are legally entitled to access government benefits. In times of economic distress, immigrant families will be forced to choose between a green card and food or critical healthcare.