



September 19, 2019



NEW RULE ON “PUBLIC CHARGE”

○ Who or what is a “public charge”?

The new “Public charge” **RULE** involves a **test for admissibility** used by Immigration officials to decide whether you can **enter** the U.S., **get a green card** (adjust to “**lawful permanent resident**” or **LPR** status), or **extend or change a visa**. The test is used to identify whether you are likely to depend on government benefits as a source of support (and, therefore, whether you will be self-sufficient or a “public charge.”) In applying the test, Immigration will look at **all of your circumstances** – including your income, work, health, education/skills, family situation, and Affidavit of Support. It will also look at whether you have used certain benefit programs.

○ How has the “public charge” definition changed?

Under the old policy, a “public charge” was a person “likely to become **primarily dependent** on the government for subsistence.” That means you **relied on** SSI, MFIP, or GA, or on MA for nursing home care, for support. Under the new **RULE**, a public charge is anyone who “**receives**” **one or more specific government benefits** for more than 12 months in a 36-month period. The new **RULE amends the definition** of public charge, **expands the benefits** considered, and **alters the factors** Immigration uses to determine if you will be a public charge.

○ Who is NOT subject to a public charge test when applying for admission, adjustment, visa extension, etc.?

You are **EXEMPT** from the public charge test if you are in certain categories: if you are a **refugee, asylee, or parolee**; applying for or receiving **SIJ** (Special Immigrant Juvenile) or **VAWA** status, or a **U- or T-Visa**; or receiving **DACA** or **TPS**. **NOTE:** there is no direct path to LPR status for DACA or TPS recipients. Adjustment may happen through a family petition, which will require public charge assessment. Also, if you are an LPR **reentering the U.S. after a 6-month absence**, you may be subject to a public charge test upon your reentry, even if you are otherwise exempt.

○ Where and when are public charge decisions made, and who makes them?

Public charge decisions are made by Immigration officials here in the U.S. They are also made by consulates abroad, which use different factors not discussed here. Public charge decisions are made about those petitioning for **admission to the U.S.**, for **adjustment to LPR status**, or to **change or extend a visa**. They are also made if you are an LPR seeking admission to the U.S. **after being out of the country for at least 6 months**. **PUBLIC CHARGE DECISIONS DO NOT APPLY TO CITIZENSHIP APPLICATIONS OR TO RENEWALS OF GREEN CARDS OR DACA**. Also, this **RULE CANNOT BE USED TO DEPORT you**, even if you use government benefits!

○ How is the old policy different from the new RULE?

BEFORE, while Immigration always considered the “**totality of the circumstances**,” a significant factor was whether you had an **Affidavit of Support (I-864)**, which is a contract where your sponsor (and often joint sponsor) agrees to support you until you work for 10 years, become a U.S. citizen, or die. In the past, you could usually overcome a public charge determination with the Affidavit of Support.



NOW, the Affidavit is just 1 factor, and the test goes beyond your and your sponsor’s income. It considers your **age, health, family composition, assets/resources/finances**, and **education/skills**, with the goal of trying to decide if you are likely to become self-supporting in the future. Certain factors are weighed negatively (like being a child, ill, or older than 61), and others are weighed positively (like having income and assets over 250% of the federal poverty guidelines). The U.S. now officially prefers immigrants who are healthy, educated, of working age, and English-speaking, especially if you have income and assets of at least 250% of federal poverty guidelines. The **RULE** also amends **WHICH** public benefits are considered, and **HOW** they are considered.

○ How does the new RULE consider government benefits?

BEFORE, only 2 types of benefits were considered for public charge purposes: **cash** for long-term maintenance (SSI, MFIP or GA), and **MA for long-term care**. You had to be “primarily dependent” on them for subsistence.

NOW, a public charge is anyone who “receives” the following benefits in **any 12 months** in a **36-month** period:

* **CASH:** SSI, MFIP, GA

* **HEALTH CARE:** MA (but **NOT** for children under 21; pregnant women or women within 60 days of giving birth; Emergency MA; or care or services received at the Center for Victims of Torture)

* **FOOD SUPPORT:** SNAP (food stamps)

* **HOUSING SUPORT:** Public housing and **Section 8 housing choice vouchers** and **rental assistance**

○ How are benefits counted?

Receipt of **any benefit** in a single month counts as 1 “**month**” of benefits. So receiving 3 different benefits in a single month (like Section 8, MA and SNAP) will “**use up**” **3 of those 12 months**. (Note that because MFIP contains both a cash and a food component, 1 month’s receipt of MFIP counts as 2 months of benefits.)

○ When will the new **RULE** take effect?

The **RULE** takes effect on **10/15/19**. **BUT lawsuits have been filed in federal courts by more than 20 states and by a number of districts and organizations challenging the new **RULE**. A court decision could temporarily or permanently delay or stop the **RULE** from taking effect.**

○ Is the **RULE** retroactive?

No. The **RULE** is **not** retroactive. **Except** for cash assistance and MA for nursing home care, **NO BENEFITS YOU RECEIVED BEFORE OCTOBER 15, 2019 CAN BE CONSIDERED**. Also, any benefits you received while you were in an exempt status (refugee, asylee, etc.) cannot count against you!

○ Will benefits received by my children count?

No. Immigration will look **only** at you, the person seeking admission to the U.S. or adjustment of status. **BENEFITS RECEIVED BY YOUR CHILDREN OR OTHER DEPENDENTS WILL NOT COUNT.**



○ Which benefits are **NOT** considered for public charge?

- ▶ **CASH:** Social Security disability (SSDI) or retirement benefits (RSDI), Unemployment Insurance (UI), Workers’ Compensation (WC), Veterans benefits, Adoption Assistance, Foster Care Assistance
- ▶ **FOOD:** WIC (Women, Infants and Children), school breakfast and school lunch benefits, food from a food shelf, food at a shelter or soup kitchen
- ▶ **HEALTH:** MinnesotaCare, Medicare, MA for children under 21, MA for pregnant women and for 60 days after giving birth, CHIP-funded health care, Emergency MA, MA used at the Center for Victims of Torture
- ▶ **OTHER:** Energy Assistance (LIHEAP), EITC (Earned Income Tax Credit), Child Care Assistance, Head Start, Public Health immunizations, testing for and treatment of communicable diseases, school loans, etc.

The above benefits (and some others) are **ALL SAFE** and you will **not be reported** to Immigration for using them.

IF YOU HAVE QUESTIONS ABOUT **PUBLIC CHARGE
OR **RECEIPT OF GOVERNMENT BENEFITS**, PLEASE CALL:**

Southern Minnesota Regional Legal Services, Inc. (SMRLS), **1-888-575-2954**

Mid-Minnesota Legal Aid, **1-800-292-4150** or **612-332-1441**

Immigrant Law Center of MN, **1-800-223-1368**

Volunteer Lawyers Network (VLN), **612-752-6677**

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