



Tip of the Month December 2018

Understanding the Proposed Rule Change for Public Charge: “What do I tell my client?”

Submitted by: Colleen Beebe, Immigrant Legal Services
Program Manager and Resource Attorney for VLN

A newly proposed “public charge” rule is creating confusion for immigrants and those who serve them. Many persons, detrimentally, are not accepting benefits and services for their children and families *for which they are legally eligible* because they are afraid doing so will put their immigration status or process in jeopardy. As legal practitioners, we can help alleviate some of the fear and confusion this proposed change is creating by providing accurate information and advocating for fair and reasonable immigration laws and policies.

The Immigration and Nationality Act (INA) determines who can enter the United States (“admissibility”), for how long and for what purpose, and who must leave. Under INA Sec. 212(a)(4), a person is inadmissible to the United States if they are likely to become a public charge, defined as “primarily dependent on the Government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense.”

The current public charge rule applied to persons seeking admission has been in place since 1999. Under this rule, immigration adjudicators gauge a person’s likelihood of becoming a public charge based on several factors, including their assets/resources/financial status. For this factor, immigration officers may only consider receipt of “*cash benefits* from the government for income maintenance” or “institutionalization for long-term care at the government’s expense.” The only *cash benefits* that can be considered are Temporary Assistance for Needy Families (TANF), General Assistance (GA), and Supplemental Security Income (SSI). In making this determination, immigration officers may not consider non-cash assistance, including housing assistance, food support, or Medicaid.

On September 10, 2018, the Department of Homeland Security (DHS) published a proposed regulation related to public charge. The proposed regulation would:

- Change the definition of who may become a public charge;
- Apply new factors to determine when someone becomes a public charge; and,
- Broaden the types of public benefits that would be considered in any public charge test.

If finalized as it stands, the new rule would endanger family unity, shut out workers we need for a healthy economy, and increase inefficiencies in the system. For example, benefits that are not considered now but would be under the proposed rule include: SNAP (Food Stamps), Medicaid (except CHIP), Medicare Part D Low Income Subsidy, and Housing Assistance (public housing or section 8 vouchers and rental assistance).

So, how do we respond to a client’s question about whether they should seek new or continued public benefits? Here is some important information to share:

1. The new rule has not been finalized yet.

Nothing has changed. The current rule is still being applied domestically, although some consulates are applying some of the proposed changes now. We do not know what will happen with this process or when. The old rule applies until any change is finalized and put into effect.

2. The current *and* proposed public charge rules do not apply in all situations. The rule is only applied when:

- a. A noncitizen applies for admission to the United States from a consulate overseas.
- b. A noncitizen physically in the United States applies for permanent residence (e.g. a Green Card), a change of status, or an extension of stay.
- c. A lawful permanent resident is outside of the U.S.A. for more than 180 consecutive days and applies for reentry.

3. The current *and* proposed public charge rules do not apply to all noncitizens. The rule *never* applies to persons who have or are applying for asylum, refugees, persons applying for permanent residence under the Violence Against Women Act (VAWA), persons who have or are applying for U or T Visas (victims of certain crimes or human trafficking), minors with a special immigration status (SIJS), other certain protected categories of persons, persons who are already lawful permanent residents, persons who are applying to become naturalized citizens or persons who are naturalized citizens.

4. Under the current *and* proposed rules, receipt of the following services or benefits or in these situations are not considered: Any benefits received by family members, natural disaster assistance, emergency medical assistance, CHIP, WIC, school breakfast and lunch, energy assistance, transportation vouchers (non-cash help), non-cash TANF benefits, Federal Earned Income Tax Credit, Child Tax Credit, and student loans.

5. The proposed rule will not be applied retroactively if it becomes final. Any new rule would not include “past use of newly included programs if they were used before the final rule goes into effect.”

6. Clients are not alone. We need to encourage and emphasize to our clients that they are not alone. Many people, providers, and professionals throughout the United States have submitted public comment on the proposed rule to ensure that any new rule, if finalized, is as fair and reasonable as possible.

7. Refer clients to seek legal advice. VLN has a network of community legal clinics located in safe spaces and staffed by volunteer immigration lawyers where people may obtain individualized legal advice for free. Visit VLN at www.vlnmn.org for a list of locations and schedules.

Finally, VLN works hard to support the legal needs of Minnesota’s immigrant and refugee communities. If you would like to volunteer with VLN’s Immigrant Legal Services Program, please contact us at immigration@vlnmn.org.

Sources:

Immigrant Legal Resource Center, Public Charge, <https://www.ilrc.org/public-charge>, accessed on November 29, 2018.

American Immigration Lawyers Association, <https://www.aila.org/takeaction#/53>, accessed on November 29, 2018.

James H. Binger Center for New Americans, University of Minnesota Law School, *Analysis of DHS Proposed Rule on Public Charges*, October 29, 2018.