

# Public Charge: What is the Rule, and What are the Proposed Changes?

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# Education and Outreach



**UNIVERSITY  
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Immigrant  
Legal Services  
Center



**CSU**

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## Immigrant Legal Services Center

- The University of California Immigrant Legal Services Center serves the immigration-related legal needs of undocumented and immigrant students and their immediate family members, and immediate family members of US citizen students.
- Headquartered at UC Davis School of Law, the center serves 9 of the 10 UC Campuses: UC Davis, UC Irvine, UCLA, UC Merced, UC San Francisco, UC Santa Cruz, UC Santa Barbara, UC San Diego, and UC Riverside (UC Berkeley has its own program through EBCCLC).

# Disclaimers

- This presentation is meant to be informational only and does not constitute specific legal advice.
- The specific process and limitations in an individual case may be different.
- For case-specific legal advice, please consult with a qualified attorney.
- Please understand that the content provided is meant to be an overview—we're trying to cover a lot in a short amount of time.

# Icebreaker Quiz



1. Has the new public charge rule already been implemented?

**Answer: No**

2. If a noncitizen college student intends to apply for a green card, will it count against them if they have received state-funded educational scholarships or grants?

**Answer: No**

**3.** If an asylee intends to apply for a green card, should they consider dis-enrolling from certain public benefits in order to help their case?

**Answer: No**



4. If a green card holder intends to apply for citizenship, should they dis-enroll from MediCal?

**Answer: No**

**5.** To be in compliance with the new public charge rule, will impacted immigrants need to be dis-enrolled from public benefits programs on the same day the new rule is officially published?

**Answer: No**

# Give Yourself a Hand!



# Agenda

- Putting public charge into context
- Existing public charge rule
- Proposed changes to the public charge rule
- Public charge at U.S. consulates and embassies
- Resources
- Q&A

# Putting Public Charge Into Context



# Inadmissibility and Deportability

- There are 2 ways noncitizens can be barred from entering/re-entering the United States, adjusting their immigration status, or maintaining their status:
  - ***They are “inadmissible” under the Inadmissibility Grounds***
  - They are deportable under the Deportability Grounds
- If a bar applies AND no exception or waiver applies, then the noncitizen is barred from entry, denied benefit, and/or subject to removal.

# Inadmissibility Grounds

- Health
- Criminal
- National Security
- ***(Likely to become a) Public Charge***
- Lack of Labor Certification
- Fraud or Misrepresentation
- Prior removals or unlawful presence
- Miscellaneous

# Existing Public Charge Rule





# What is the current “public charge” test?

- Public charge: a person primarily dependent on the government for costs of day to day living.
- A person deemed likely to become a public charge by the United States Citizenship and Immigration Service (USCIS) can be denied permission to enter the country and permanent resident status (permanent residency = green card).

# When is the public charge test applied?

- + When applying for permission to enter the U.S. from abroad.
- + When applying for certain immigrant visas or a green card—aka to become a lawful permanent resident (LPR)
  - Some green card applications are processed inside the U.S., and some must be processed abroad.
- *Note on applying from abroad:* new public charge challenges at U.S. consulates and embassies already in place.

# When is the public charge test *not* applied?

- NOT when renewing a green card.
- NOT when applying for citizenship, aka naturalization.
- Many categories of immigrants are exempt from public charge rule (refugees, asylees, T visa, U visa, VAWA, SIJS, TPS, and others).

# Public charge test defined in the law

- Immigration and Nationality Act (INA), Section 212(a)(4)
- The likelihood of becoming a public charge is based on all factors relevant to their ability to support themselves (“totality of circumstances”)
- Immigration agents are required by **statute** to consider:
  - Age
  - Health
  - family status
  - assets, resources, and financial status
  - education and skills
- Other factors may be considered, that are specified by **regulation** (e.g. use of public benefits)

# Public Benefits

- Currently, only two types of benefits can be considered:
  - Cash assistance for income maintenance
  - Institutionalization for long-term care at government expense

# Breaking it down

**Will using benefits hurt my chances of getting a green card or becoming a U.S. Citizen?**




# DO NOT have a green card yet?

RIGHT NOW:

- 👍 It will NOT hurt your chances of getting a green card if YOU, your CHILDREN, or other FAMILY members receive:
  - **Healthcare programs:** Medicaid, prenatal care, “Obamacare”, other low-cost medical care
  - **Food programs:** SNAP/food stamps, WIC, school meals
  - **Other non-cash programs:** public housing, childcare, job training, educational scholarships and grants
  - It does NOT hurt your chances if *only your children* receive cash benefits: TANF, Supplemental Security Income (SSI), General Assistance (GA)


# DO NOT have a green card yet?

RIGHT NOW:

-  You MIGHT have a problem getting a green card later if:
  - **YOU get CASH benefits:** TANF/welfare, Supplemental Security Income (SSI), General Assistance (GA)
  - **OR your family's only income is cash benefits**
  - **OR you are in a nursing home/Long-Term Care paid by Medicaid**



# Do you qualify for VAWA or a U/T Visa, or are you a REFUGEE or ASYLEE?

-  You can use ANY benefits (if you are eligible), including cash aid, health care, food programs and other non-cash programs, without hurting your chances of getting a green card.

# Already **HAVE** a green card?

- 👍 USCIS CANNOT cancel your green card just because YOU or your CHILDREN, or other FAMILY members use benefits.
- 👍 You CANNOT be denied citizenship for lawfully receiving benefits, including cash aid, health care, food programs & others.
- 👎 But you MIGHT have a problem if you leave the U.S. for **more than 6 months**. Talk to an immigration attorney before you leave.

# Want to sponsor a relative for a green card?

## RIGHT NOW:

- Using benefits, including cash aid, healthcare, and food programs should not prevent you from sponsoring a relative who is in the U.S. and can adjust their status in the U.S.
- ***But*** it might affect your relative whose application must be processed abroad.
- You must show that you or a co-sponsor have enough money to support the relative. Consult with a lawyer about your own situation.

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# Proposed Changes to Public Charge Rule



# Department of Homeland Security (DHS) Proposed Regulation

- New definition of public charge
- More factors considered
- Additional benefits included

# Proposed Regulation: New Definition of Public Charge

- Instead of assessing whether an applicant is likely to become primarily dependent on the government for support, the proposal defines a public charge as a person who merely uses an included government program.

# Proposed Regulation: More Factors Must be Considered

- Age: whether too young (under 18) or too old (over 62) to work
- Health: physical or mental health condition that could affect ability to work or attend school, or require expensive care
- Family: household size, number of dependents
- Financial resources:
  - Whether person earns at least 125% FPL
  - Whether person has applied for immigration fee waiver
- Skills: English proficiency
- Credit rating

# Proposed Regulation: Additional Benefits Included

## Monetizable Benefits

- Cash assistance for income maintenance (*already included*)
  - SSI
  - TANF (CalWORKS)
  - CAPI (Cash Assistance Program for Immigrants)
- Non-cash:
  - SNAP (CalFresh/food stamps)
  - Housing assistance
    - (e.g. Section 8 vouchers, rental assistance)

## Non-Monetizable Benefits

- Medical, except for:
  - Emergency
  - School-based Medi-Cal for children
- Long-term care (*already included*)
- Medicare Part D low-income subsidy
- Subsidized housing



# “Totality of Circumstances” Legal Standard; Proposed Rule Adds Heavily Weighted Factors

## Negative Factors:

- Authorized to work but not working and not a full time student
- Currently receiving a public benefit
- Has used a public benefit within last 36 months
- Medical condition that could interfere with work or require expensive treatment
- Uninsured without the prospect of receiving private insurance / paying for care
- Previously determined to be a public charge

## Positive Factors:

- Income or resources over 250% FPL (over \$62,000 for family of four)

# What cannot be changed by the regulations?

- When public charge test applies
- Balance of factors must be considered
- Negative factors can be outweighed by positives
- Exempt categories of immigrants
- Benefits received by family members of the immigrant not considered
- Access to emergency medical care and disaster relief

# Student Aid



“. . . the proposed definition [of public charge] would not include social insurance programs such as . . . non-cash benefits that provide education . . . Furthermore, DHS believes that exclusion of education-related benefits is justifiable in the interest of administrability (e.g., many such benefits are received indirectly through schools).”

# Timeline

1. Oct. 10, 2018: Notice of proposed rulemaking (NPRM) was posted for public inspection
2. Dec. 10, 2018: 60-day public comment deadline
3. Present: Agency must read and respond to comments
4. ???: Final rule published
5. 60 days after the rule becomes final, newly-included benefits will be considered

# Public Comments / Talking Points

- Chilling effect on immigrants seeking out important public benefits, many of whom may not even be impacted by the new rule.
- Risk of public health crises if immigrant communities dis-enroll from important healthcare programs.
- Social workers may be required to make immigrants aware of adverse immigration consequences of using public benefits.
- The Cato Institute found that immigrants consume 39% fewer benefits than people born in the US.\*

\* Alex Nowrasteh & Robert Orr, Immigration and the Welfare State: Immigrant and Native Use Rates and Benefit Levels for Means-Tested Welfare and Entitlement Programs, CATO Inst. Immigration Research and Policy Brief, n. 6 (May 10, 2018).

# Public Charge at U.S. Consulates & Embassies



# Who Must be Processed Through US Consulates & Embassies?

- + Individuals who are abroad currently and want to apply for admission to the U.S.
- + Individuals who are in the U.S. currently, but whose applications must be processed through the U.S. consulate (aka “consular processing”)
- NOT individuals who are in the U.S. currently and able to adjust their status without leaving the U.S.

# Public Charge at U.S. Consulates & Embassies

- Guidance pertaining to public charge inadmissibility in the Foreign Affairs Manual (FAM), governing consular processing cases, was revised in January 2018.
- Practitioners are starting to see more denials based on public charge inadmissibility at the consular interview.



# More Application Denials Based On:

- Finding of public charge inadmissibility notwithstanding a qualifying Affidavit of Support, now that the Affidavit of Support is no longer sufficient on its own to refute public charge inadmissibility;
- Finding of public charge inadmissibility based on non-qualifying Affidavit of Support due to Sponsor's own use of public benefits;
- Finding of public charge inadmissibility notwithstanding a qualifying Joint Sponsor Affidavit of Support, based on the consular officer's doubts the joint sponsor will follow through on their promise to financially support the immigrant visa applicant; and
- Revocation of a previously approved Provisional Unlawful Presence Waiver when a consular officer determines the immigrant visa applicant may be inadmissible under the public charge ground.

# Quiz Review



1. Has the new public charge rule already been implemented?
2. If a noncitizen college student intends to apply for a green card, will it count against them if they have received state-funded educational scholarships or grants?
3. If an asylee intends to apply for a green card, should they consider dis-enrolling from certain public benefits in order to help their case?
4. If a green card holder intends to apply for citizenship, should they dis-enroll from MediCal?
5. To be in compliance with the new public charge rule, will impacted immigrants need to be dis-enrolled from public benefits programs on the same day the new rule is officially published?

The answer to all of the above questions: **No**

# Conclusion

- Public charge rules have not changed for immigrants who can adjust their status in the U.S.
- There is little to no advantage to stopping benefits right now.
- Food and healthcare help families thrive.
- Before you stop any benefits, consider speaking with a lawyer.

# Find more information on the rule at:

- Protecting Immigrant Families
  - <https://protectingimmigrantfamilies.org/>
- National Immigration Law Center
  - <https://www.nilc.org/issues/economic-support/pubcharge/>
- Immigrant Legal Resource Center
  - <https://www.ilrc.org/public-charge>

# Contact Information

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  - Assistant Vice Chancellor & Chief Counsel - External Affairs, CSU Office of General Counsel

# CSU Resources

- Status of Direct Legal Support Services on CSU Campuses  
<https://www2.calstate.edu/attend/student-services/resources-for-undocumented-students/pages/default.aspx>
- Free Legal Support Services  
<https://www2.calstate.edu/attend/student-services/resources-for-undocumented-students/Pages/legal-support-services.aspx>
- Other Lawyer Referral Services  
<https://www2.calstate.edu/attend/student-services/resources-for-undocumented-students/Pages/other-resources.aspx>

# CSU Resources

All CSU resources are posted on the Resources for Undocumented Students page on the CSU website:

[www.calstate.edu](http://www.calstate.edu)



- DACA Update
- Admissions Process
- Financial Aid
- Campus Support
- Legal Support Services
- About AB 540/2000/SB 68 and the California Dream Act
- Communications and Guidance
- Other Resources



# Other CSU Resources

## Resources for Undocumented Students

- <https://www2.calstate.edu/attend/student-services/resources-for-undocumented-students/pages/default.aspx>
- [Free Legal Support Services](#)
- [Free DACA Legal Services and Filing Fee Assistance](#)
- [FAQs for CSU Employees about Federal Immigration Enforcement Actions on University Property](#)
- [CSU Campus Support](#)

# QUESTIONS?

