



## *What You Need to Know About the U.S. Department of Homeland Security's Change to the Immigration Public Charge Rule*

On August 12, 2019, the federal government released a new public charge rule. It is scheduled to go into effect on October 15, 2019 unless the court delays or invalidates it. The new rule (the "New Rule") would expand what constitutes a public charge for immigration applications and adjustments of status.

### *What is a "public charge"?*

Immigration officials have been using a public charge test for over 100 years to determine admissibility into the U.S. or adjustment of status within the U.S. A "public charge" is defined as someone who is, or is likely to become, dependent on the government for support.

### *What does the New Rule do?*

When the New Rule goes into effect, the following changes will take place:

- **Additional** governmental programs will be considered in the public charge test, including:
  - Medicaid (unless pregnant or under 21)
  - SNAP/food stamps
  - Federal housing benefits like Section 8 & federally-assisted public housing like NYCHA, or Buffalo Municipal Housing Authority
- Establishment of income levels to test whether someone will become a public charge
- Consideration of other factors including: proficiency in English, and physical and mental health

Applicants can still make a case for themselves as to why they would not be a "public charge," even when the New Rule goes into effect.

### *A Public Charge Test Will Not Look At:*

- The additional benefits (SNAP, Medicaid, Section 8) received **before** the New Rule went into effect.
- Benefits received by the applicant's family – they will only look at benefits received directly by the applicant.
- Health benefits like Essential Plan, Child Health Plus, Qualified Health Plans or Advanced Premium Tax Credits.

### *Who Will be Affected by the New Rule?*

**Anybody subject to a public charge test, which includes people applying for:**

- Admission to the U.S. (including Legal Permanent Residents (LPRs) who seek reentry after an absence of more than 180 days);
- An immigrant or nonimmigrant visa at a consulate abroad;
- Adjustment to LPR status;
- Extension of current immigrant or non-immigrant status.

### **The New Rule will not apply to:**

- Most lawful permanent residents (green card holders)
- VAWA self-petitioners
- Applicants/recipients of U or T visas
- Applicants for temporary protected status
- Refugees and Asylees
- Applicants for citizenship

Most people who participate in NY health programs or housing programs like Section 8 or federal public housing will not be affected by the New Rule because eligibility for those programs is restricted to citizens and limited categories of non-citizens who largely do not go through a public charge test. Please speak to an immigration attorney about how a public charge test would apply to you.

### *What about mixed-status families in federally-subsidized housing?*

The New Rule is not the same as the proposed HUD "mixed-status" rule, which only impacts housing. The proposed HUD rule would prohibit mixed-status families from living together in housing subsidized by the federal government (including Section 8 and federal public housing). **The proposed HUD rule is not in effect.** If it does go into effect, only those families where every member is eligible to receive those federal housing benefits may reside in the household.

## **Where to get more information:**

Contact the New York State New Americans Hotline at 1 (800) 566-7636 for access to legal services and additional resources. Open 9AM to 8PM Monday-Friday (except federal holidays)