



New Immigration Policy Change:

“Public Charge” Final Rule – What You Need to Know

On August 14, 2019, the Department of Homeland Security (DHS) published its final rule on Inadmissibility on Public Charge Grounds (the “Public Charge rule”) in the [Federal Register](#). **The changes made by this immigration regulation are currently set to go into effect on October 15, 2019.** This fact sheet summarizes the rule, its potential impact on farmworkers and their family members, and ongoing education and litigation efforts related to the rule. FJ’s statement on the final public charge rule can be found on our [website](#).

Public charge is an assessment under immigration law that is made when certain persons who are not citizens of the U.S. apply to enter the U.S. and when a person applies to become a Lawful Permanent Resident (LPR). It does not apply to applications to become a citizen. Under the Immigration and Nationality Act, the government may deny an application for immigration status to a person who “is likely at any time to become a public charge.”

The new rule drastically changes the factors used to determine whether a person is “likely” to become a public charge in the future. It also changes the definition of “public charge.” The consequences are that many immigrants who contribute to our economy and support their families will be deemed unfairly to be a “public charge” and denied immigration status.

Public charge does not apply to all categories of immigrants. Many immigrant and nonimmigrant statuses are exempt from the public charge determination, including refugees, asylees, and U- and T-visa applicants, among others. H-2A and H-2B temporary foreign workers **are** subject to the public charge determination when they apply for their visas at U.S. consulates.

Definition of “public charge”

In determining whether a person is likely to become a “public charge,” the DHS will use a new definition of that term.

- **Current definition – someone who will become primarily dependent on the government for support**
- **New definition – someone who receives one or more public benefit for more than 12 months in the aggregate within any 36 month period (such that, for instance, receipt of two benefits in one month counts as two months)**

As will be seen below, this definition will lead to the denial of many immigration applications that for decades have been approved.

What is considered a public benefit?

In the past, the public charge determination narrowly defined public benefits as cash assistance for income maintenance and government-funded long-term institutional care. Starting October 15, additional programs will be considered to be public benefits under the rule, including SNAP (formerly Food Stamps), housing assistance, and Medicaid.

Under the final rule, public benefits include the following:

- Cash assistance from Federal, state, local or tribal programs (including TANF, SSI, and General Assistance)
- Supplemental Nutrition Assistance Program (SNAP)
- Housing assistance (including Section 8 housing, public housing)
- Medicaid (*except – emergency Medicaid, Medicaid for children under 21, Medicaid for pregnant women and postpartum care for 60 days*)

Only the benefits listed above will be considered in a public charge determination. Programs that are entirely funded by the state, county, or city (except cash assistance) will NOT be considered in a public charge determination. **Only the receipt of benefits for which the applicant is the beneficiary will be considered.** Applicants will not be penalized for benefits used by family members, including U.S. citizen children. They can apply on behalf of an eligible family member without being penalized as long as they are not the beneficiary.

“Totality of Circumstances” test

In addition to the use of the specific benefits listed above, the final rule also defines and weighs a variety of factors in determining whether someone is likely to become a public charge. The factors are part of a “totality of circumstances” test, in which factors are assigned positive and negative values. These factors include:

- Age
- Health
- Family status (household size)
- Assets/resources/financial status
- Receipt of public benefits
- Education and skills
- Prospective immigration status and expected period of admission
- Affidavit of support

Depending on the applicant’s circumstances, the factors above may be positive or negative. If the applicant is between 18 and 62 years old, that will be seen as a positive. But, if the applicant is under 18 or over 62, that will be seen as a negative. Similarly, limited English proficiency is a negative factor as is the lack of high school

education. Employment history and skills related to employment are positive. It is a negative factor if household income is below 125% of the Federal Poverty Level (FPL) but a person can overcome that factor by having assets of at least five (5) times the difference between the applicant's income and 125% of the FPL. For a family of four, 125% FPL is a household income of \$32,188.¹

Some factors are heavily weighted as positive and negative. The heavily weighted negative factors include: the receipt of any of the defined public benefits listed above for more than 12 months in the aggregate within a 36-month period; diagnosis of a medical condition that will require extensive medical treatment or interfere with ability to work/attend school and lack of insurance or financial resources to pay for medical costs; and authorization to work but inability to demonstrate current employment or prospect of future employment. The heavily weighted positive factors include: income above 250% of the FPL and private unsubsidized health insurance coverage. *Health insurance obtained through the health insurance marketplace but paid for with Advanced Premium Tax Credits is NOT considered a heavily weighted positive factor.*

H-2A workers are assessed for public charge when applying for their visas at U.S. consulates.

In January 2018, the U.S. Department of State revised its Foreign Affairs Manual (FAM) to align with the proposed changes in the DHS public charge rule. The FAM revisions did not include a change in the definition of public charge. DHS states that it will work with the State Department to further revise the FAM to reflect the standards in the final rule.

Temporary foreign workers under the H-2A or H-2B programs who apply to extend their nonimmigrant temporary work visas in the U.S. will not be subject to the future-looking public charge assessment. Instead, DHS will consider whether they received the designated public benefits for more than an aggregate of 12 months within a 36-month period since obtaining their nonimmigrant status.

The final public charge rule will make it more difficult for farmworkers to adjust their status or enter the United States due to the rule's treatment of the totality of circumstances factors.

- *Family and financial status:* Farmworkers' average household income ranges from \$20,000 to \$24,999, well below the threshold of 125% of the FPL in the new rules' factors.² An estimated 33% of farmworkers have a family income below 100% of the FPL³ (\$25,750 for a family of four).⁴ Many farmworkers are supporting family members in the U.S. and abroad. The average farmworker household has two minor children. Many farmworker families have few assets and those assets (such as a car) often are of very limited value.⁵
- *Health Insurance:* Cost is one of the biggest barriers to health care access. Approximately 47% of farmworkers have health insurance but only 18% of workers reported that their employer offered

¹ 2019 Federal Poverty Guidelines, available at <https://www.projusticemn.org/fedpovertyguidelines/>

² U.S. Department of Labor, Findings from the National Agricultural Workers Survey 2014-2016 (NAWS), published January 2018, available at https://www.doleta.gov/naaws/research/docs/NAWS_Research_Report_13.pdf.

³ IBID

⁴ 2019 Federal Poverty Guidelines, available at <https://www.projusticemn.org/fedpovertyguidelines/>

⁵ IBID

comprehensive health insurance.⁶ Due to the expense of health insurance, few farmworkers are able to afford private health insurance. Yet they are at high risk for a number of chronic conditions, including heart disease, diabetes, and cancer.

- *Education and skills:* Foreign-born farmworkers on average have an 8th grade education.⁷ Sixty-two percent of farmworkers reported low or limited English proficiency.⁸

In addition to obstructing access to immigration status, the new rule will discourage farmworkers and their family members from participating in programs for which they are eligible, even those that will not impact immigration applications, and that were created to help low-wage workers improve their quality of life. While few farmworkers who would apply to enter the U.S. or to adjust their status are eligible to enroll in the public benefits in the public charge definition, many workers have eligible family members who may disenroll or decline enrollment due to fear about potential immigration consequences.

It is important that farmworker communities have accurate information about the changes in public charge so they can make informed decisions about the use of public benefits and understand the impact their financial status will have on immigration applications.

Farmworker Justice is working with national, state, and local partners, including the [Protecting Immigrant Families campaign](#), to share information about the public charge rule. Farmworker Justice is also one of the plaintiffs in a lawsuit, filed by a coalition of organizations on August 16, 2019, that seeks to invalidate this harsh, anti-immigrant regulation.

If you have any questions or for more information, contact Alexis Guild, Senior Health Policy Analyst, at aguild@farmworkerjustice.org.

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