



Public Charge Proposed Rule – What You Need to Know

On October 10, 2018, the Department of Homeland Security (DHS) published a proposed rule on Inadmissibility on Public Charge Grounds in the [Federal Register](#). There is a 60-day comment period that closes December 10, 2018. This fact sheet summarizes the proposed rule, its potential impact on farmworker communities, and opportunities to respond.

What is public charge? Public charge is a designation by U.S. immigration officials that a person is likely to become primarily dependent on government assistance to support themselves. It is assessed when a person applies to enter the U.S. and when a person applies to become a Lawful Permanent Resident (LPR). Public benefits considered under public charge include federal, state, and local cash assistance as well as long-term institutionalization under Medicaid. Certain categories of immigrants, including refugees, asylees, and U- and T- visa applicants, are not subject to the public charge assessment. A public charge designation will often lead to a denial of an application for immigration status.

What's in the proposed rule? The proposed rule changes the definition of public charge, expands the list of public benefits to be considered as a public charge, defines the factors to be considered in the totality of circumstances, and requires a public charge assessment on non-immigrant visa holders who wish to adjust or extend their status in the U.S.

Under the rule, public charge will be defined as the receipt of one or more of the public benefits listed below:

- Temporary Assistance for Needy Families (TANF)
- Supplemental Security Income (SSI)
- State and local cash assistance (General Assistance)
- Supplemental Nutrition Assistance Program (SNAP)
- Federal rental assistance (USDA Section 521, HUD Section 8 Rental Assistance, HUD Section 8 Housing Choice Vouchers, HUD Public Housing, HUD Section 202/811)
- Medicaid
- Premium and cost-sharing subsidies for Medicare part D
- Long-term institutionalization/care under Medicare and Medicaid
- Subsidized housing under the Housing Act of 1937

CHIP is not currently one of the benefits listed but DHS requested comment on its inclusion.

The use of these programs by U.S. citizen children or family members will not be considered in an individual's public charge determination.

The use of one or more public benefits is part of the totality of circumstances in a public charge determination. For those benefits not currently part of a public charge determination (SNAP, housing assistance, Medicaid, and premium and cost-sharing subsidies under Medicare part D), DHS will only consider use of these benefits beginning 60 days after the final rule goes into effect.

What other factors are considered in public charge determinations?

- Health
- Household
- Family Status
- Assets, resources, and financial status
- Education and skills
- English language proficiency

The proposed rule defines these factors and assigns them a positive or negative value. Some factors are heavily weighted. The most important heavily weighted negative factors to note are receipt of a public benefit (current use or within last 36 months) and lack of private health insurance or financial resources to pay for medical costs. Other factors, including a lack of financial assets, a household income below 125% of the Federal Poverty Level (FPL) (or \$25,025 for a household of two people), limited English proficiency, and low educational attainment, will be negatively weighed in the totality of circumstances. To avoid being penalized, a person with income below 125% FPL will have to demonstrate that they possess assets that are valued at five times the difference between the individual's household income level and the 125% FPL for that household size.

How will the proposed rule affect farmworkers specifically?

- *Financial status:* 30% of farmworkers earn below 100% FPL, according to 2014 NAWS data.¹ It will be difficult for farmworkers to overcome the wage threshold hurdle when applying to adjust their status or applying for a nonimmigrant visa under the proposed rule.
- *Benefits:* SNAP and Medicaid provide important supports for farmworker families. While few farmworkers who would apply to adjust their status are eligible to enroll in these benefits, many of these workers have eligible family members. Although the use of these benefits by family members will not be considered in an individual's public charge determination, many may be fearful about accessing health care or other assistance, such as SNAP and Medicaid, for eligible family members (specifically U.S. citizen children). According to 2014 NAWS data, 82% of

¹ U.S. Department of Labor, *Findings from the National Agricultural Workers Survey 2013-2014 (NAWS)*, published Dec. 2016, available at https://www.doleta.gov/agworker/pdf/NAWS_Research_Report_12_Final_508_Compliant.pdf.

farmworker children receive their health insurance through Medicaid.² Migrant health centers and other service providers have reported that families are disenrolling from various benefit programs due to fear about impending changes to public charge.

- *Health insurance and health care:* Cost is one of the biggest barriers to health care access for farmworkers. Only 14% of employers offer health insurance to their workers.³ Due to the expense of health insurance, few farmworkers are able to afford health insurance on their own. Yet they are at high risk for a number of chronic conditions, including heart disease, cancer, and diabetes. The proposed rule would penalize a worker who lacks private health insurance and has a medical condition that may interfere with their ability to work, such as heart disease or diabetes.
- *Education:* The highest grade completed by foreign born workers is typically 6th or 7th grade.⁴ Additionally, 57% of workers reported low English proficiency, stating that they speak a little English (32%) or none at all (27%).⁵
- *Household size:* When considering household size, all members of the household, including those not physically in the household for whom the person provides a least 50% support, are counted. Many workers, especially H-2A workers, support families both in the U.S. and in their home countries. When taking into account other household members, including children and relatives abroad, the household incomes of farmworker families may be far below 125% FPL.

H-2A workers may be reluctant to seek services due to fear of being assessed a public charge, further isolating them from their communities. Also, the additional public charge assessment for workers who extend their visas will create unnecessary delays for the employers and may make workers more vulnerable to recruitment fees and other abuses.

What happens next? The proposed rule will be open for public comment until December 10, 2018. Farmworker Justice (FJ) developed template comments that can be modified by organizations to submit via [regulations.gov](https://www.regulations.gov). We encourage national and local partners to submit their own unique comments to share the impact this proposed rule will have on farmworkers in your community.

FJ is a member of the Protecting Immigrant Families campaign, a national campaign spearheaded by the National Immigration Law Center (NILC) and the Center for Law and Social Policy (CLASP). The campaign's goal is to submit 100,000 public comments by the end of the 60 day comment period. More information about public charge and the Protecting Immigrant Families campaign can be found at protectingimmigrantfamilies.org. For a copy of the template comments or if you have any questions, contact Alexis Guild, Senior Health Policy Analyst, at aguild@farmworkerjustice.org

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³ IBID

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