

PUBLIC CHARGE AND IMMIGRANT PARTICIPATION IN WIC: FREQUENTLY ASKED QUESTIONS

August 12, 2019

- **Is WIC a public charge?**

NO. On August 12, 2019, the Department of Homeland Security (DHS) issued a final public charge rule. Under the DHS rule, WIC is not included in public charge determinations.

BACKGROUND ON PUBLIC CHARGE

1. What is public charge?

Public charge is an element of immigration law that historically allowed federal authorities to deny legal status to individuals who are determined to be primarily dependent on the government for subsistence. On August 12, 2019, the Trump Administration redefined public charge in a way that would allow immigration officials to deny legal status for an individual's use of one or more public benefits.

Public charge determinations are conducted according to a forward-looking "totality of the circumstances" test. This means that immigration officials will consider a variety of factors – including an immigrant's age, health, family status, assets, resources, financial status, education, skills, and use of certain public benefits – and how all of those factors would affect the immigrant's likelihood to support themselves and their family without government assistance.

2. When do immigration officials conduct a public charge determination?

Public charge determinations occur when an immigrant is petitioning the government for a change to their legal status. This includes applications for a visa to enter the country and petitions for a green card and legal permanent residency.

Public charge determinations do **NOT** occur during naturalization proceedings, which is when an immigrant petitions for citizenship status. Nonetheless, gaining legal status or legal permanent residency is a critical step on the path to citizenship and public charge determinations can delay or deprive immigrants of the opportunity to eventually become citizens.

3. What federal programs are considered in public charge?

Use of any specified program would be considered a “heavily weighted negative factor” which could be used to deny an immigrant legal status. It does not *automatically* disqualify an immigrant from attaining legal status.

On August 12, 2019, the Department of Homeland Security announced that an immigrant’s use of SNAP, Medicaid, or housing assistance would count as a negative factor in immigration proceedings.

This is a significant expansion of public charge, which has historically been limited to cash assistance for income maintenance (specifically SSI or TANF) or institutionalization for long-term care at government expense (such as certain long-term programs through Medicaid).

4. Are there any exceptions for pregnant women or children?

YES. The final rule does not permit public charge consideration of Medicaid benefits if the immigrant is under 21 years of age, or a pregnant woman (including a postpartum period of 60 days).

5. When does the expansion of public charge go into effect?

OCTOBER 15, 2019. The final rule will be published on August 14, 2019, but the rule does not go into effect until 60 days after publication. Receipt of Medicaid, SNAP, or housing assistance prior to the effective date will not be considered in a public charge determination.

6. Does public charge apply to all immigrants?

NO. The final rule does not affect naturalization proceedings, which is when an immigrant petitions for citizenship status. It also does not apply to certain humanitarian immigrant groups, including refugees, asylees, and Violence Against Women Act self-petitioners.

7. Does the final rule consider benefit use by US citizen family members, including US citizen children?

NO. Under the final rule, public charge determinations will not take into account any benefit use by other US citizen members of the household, including US citizen children.

8. Will an immigrant still be subject to public charge review if they obtain an affidavit of support?

YES. An affidavit of support is a declaration, usually by a family member, that suggests an immigrant will have the resources or community support needed to live without government assistance. Historically, the affidavit of support was a strong indicator that an immigrant would not become a public charge. The final rule indicates that an affidavit of support will now be a lesser factor in the totality of the circumstances test, weighed against an immigrant's benefit use and current income/assets.

9. Is there a difference if an immigrant is applying for legal status from abroad?

YES. In January 2018, the State Department revised the Foreign Affairs Manual (FAM) – guidance for embassies and consulates on when to issue visas. The FAM now permits consular officers to review any past or current benefit use by the immigrant, the immigrant's family, the sponsor, or the sponsor's family. The FAM guidance has led to higher rates of visa denials abroad. It is not clear whether this guidance will now be revised to align with the final DHS rule.

10. Can public charge determinations result in deportation?

YES, but it is unlikely. Legal authority to deport an immigrant for becoming a public charge is narrow. Immigrants may only be deported under public charge within five years after their first entry into the United States, and the government must further prove that the immigrant became a public charge for reasons that predate entry into the United States. Pregnancy is one of the changing circumstances that precludes deportation based on public charge.

11. Does the final rule make it easier to deport immigrants on the basis of public charge?

NO. The Department of Justice is considering proposals to adjust the rules around public charge deportations, but there has been no change to current policy.

Legal authority to deport an immigrant on the basis of public charge is narrow. Those limitations – including the requirement of a reason that predates entry to the United States – are put in place by federal law. If the Administration seeks to make it easier to deport individuals on the basis of public charge, they will have to pass legislation in Congress.

PUBLIC CHARGE'S IMPACT ON WIC PARTICIPATION

1. Does the new public charge rule mean that participating in WIC could hurt my immigration status?

NO. If you were on WIC before, you should continue to be on WIC. The final rule clarifies that WIC participation will not be considered in a public charge determination conducted in the United States, even though other vital programs like SNAP and Medicaid are affected.

There is one caveat: the State Department's guidance for consular officials (the Foreign Affairs Manual) permits officials that are issuing visas to enter the country to consider **any** benefit obtained by an applicant, an applicant's family, a sponsor, or a sponsor's family. It is possible that this guidance will be revised to align with the final DHS public charge rule. Until further revisions are approved, the National WIC Association will continue to monitor this provision and its application.

2. Does WIC keep records of my personal information, including my address?

WIC maintains personal information in your participant file, including your address and contact information. With limited exceptions, this information is used only for the purposes of administering the WIC program. WIC agencies and clinics are bound by federal regulations to maintain the confidentiality of participant data and personal information.

3. Does WIC collect information about my immigration or citizenship status?

NO. WIC clinics and agencies do not inquire or collect information about a participant's immigration or citizenship status. The only exception is the state of Indiana.

4. Does WIC share my information with immigration authorities?

NO. Federal regulations restrict the sharing of information collected by WIC to ensure participant privacy, and this information is generally only shared with other parties when necessary for the administration of the WIC program. WIC clinics and agencies do not share personal participant information with immigration authorities, including Immigration and Customs Enforcement (ICE) or United States Citizenship and Immigration Services (USCIS).

5. Do I have to respond when WIC asks whether I am registered to vote?

NO. WIC staff will often ask new participants whether they are registered to vote as part of a broader effort to encourage civic participation. This question is not intended to detect citizenship or immigration status. Since only US citizens over the age of 18 are permitted to vote, immigrant participants may be concerned about answering this question. No one is legally required to answer this question as a condition of WIC eligibility.

6. Does my participation in WIC affect the ability of my family members to change their immigration status?

NO. WIC participation is not included in the latest proposals for public charge. The final rule limits public charge review of participation in certain public assistance programs (i.e., SNAP, Medicaid, housing assistance) to only the applicant's benefits. Your participation in these programs should not impact another individual's immigration case.

7. My lawyer is telling me that I should no longer participate in WIC. What should I do?

Lawyers will often exercise caution, especially in a time of uncertainty. Since the final rule is now issued, lawyers should have additional clarity about the consequences of public charge.

If your lawyer is advising you against WIC participation, it is worth having a more detailed discussion with your lawyer and consulting your WIC staff before denying yourself access to WIC benefits.

8. What happens if my lawyer asks for documentation of my WIC participation?

When applying for a green card, the current Form I-485 inquires into whether an applicant has received public assistance from any source. The current forms do not ask whether family members (including children) have received public assistance. You should be truthful in disclosing your participation in WIC, although current rules prevent immigration officials from weighing that participation in a public charge determination. If you are uncertain, you should ask your immigration attorney why documentation of your WIC participation is needed and how it will be used in the application process.

9. If I choose to terminate my participation in WIC, should I return unused food checks, breast pumps, or other benefits I received from WIC?

NO. Past use of WIC benefits should not be considered in any public charge determination. You should be able to use any benefits that were issued to you before a formal change to the rule without any consequence to your immigration status.

10. If I choose to terminate my participation in WIC, can WIC delete records of my prior use of the program?

NO. WIC clinics or agencies generally cannot delete WIC records, including those of past participation and receipt of benefits. However, WIC records are bound by privacy rules that are not shared with other agencies for purposes outside of the administration of the WIC program. Even though WIC cannot delete your participant file, it should not be shared with ICE, USCIS, or other immigration officials.