

## PUBLIC CHARGE & DEPORTATION FAQ for Advocates and Community Members

On May 3, 2019, [Reuters reported](#) that the Department of Justice (DOJ) plans to issue a proposed rule related to deportation on public charge grounds. This document is intended to help advocates and community members understand current policy and what we may see in the proposed rule.

### **How is this different from the public charge rule proposed by the Department of Homeland Security (DHS) that was published for comment in October 2018?**

The Department of Homeland Security's [Notice of Proposed Rulemaking](#) (NPRM) posted on October 10, 2018 interprets the public charge *inadmissibility* ground, not the public charge *deportability* ground. The Department of Justice, which oversees immigration courts, may propose a separate rule that addresses the deportability ground.

### **Who does the public charge ground of deportability apply to and how is that different from those who may be subject to the public charge ground of inadmissibility?**

The public charge ground of deportation applies only to people who have been *inspected and admitted to the U.S.*, including those who have adjusted to LPR status. The public charge ground of inadmissibility applies to people applying for *admission* to the United States (including lawful permanent residents who seek reentry after an absence of more than 180 days), for an immigrant or nonimmigrant visa at US consulate, or for adjustment to lawful permanent resident status. The proposed rule from October 2018 would apply a similar test to nonimmigrants seeking to extend or change nonimmigrant status in the US.

### **What do we know about DOJ's intended rulemaking related to public charge?**

#### **Here's a summary of what we know so far:**

- On September 22, 2018, when an informal version of the proposed rules on public charge inadmissibility were released, DHS sent reporters a question and answer piece, stating, "The Department of Justice intends to conduct a parallel rulemaking on public charge deportability, and will ensure that the standards are consistent to the extent appropriate."
- A [notice](#) from the Unified Regulatory Agenda (with an expected Fall 2018 date) is entitled: "Inadmissibility on Public Charge Grounds." The notice cites the statutes and regulations governing both the public charge ground of inadmissibility and the public charge deportation ground.

## **What is the current law on public charge and deportability? Can the government deport green card holders based on their use of public benefits?**

Under current law, DHS cannot deport/remove someone just for using public benefits that they qualify to receive. As described in [Field Guidance](#), there are very narrow circumstances under which a person may be removed based on public charge grounds. For this to occur, individuals must meet each of these conditions:

- Received cash welfare or long-term institutional care for reasons that existed before they entered the U.S.
- Received the cash welfare or long-term care less than 5 years after entering the U.S.
- Have (or have a sponsor who has) a legal debt to the government agency that provided the cash or long-term care received a demand for repayment from the government within 5 years of entering the U.S.
- Refused to repay the benefits, *and*
- The government filed a lawsuit and won in court

Mere receipt of a benefit is not enough. And, even if the conditions above appear to have been met, immigrants must be given an opportunity to prove that they became a public charge for causes that arose after entry. If immigrants can make such a showing, they will not be deportable as a public charge.

## **How common is it for a person to be deported on public charge grounds?**

Very uncommon. The public charge ground of deportability is extremely narrow and has been applied infrequently. As explained above, there are very narrow circumstances under which a person may be removed based on public charge grounds. Additionally, most public benefit programs do *not* create a legal debt for the immigrant. In some limited cases, the immigrant's sponsor may be liable for repayment of a debt but states generally have not filed lawsuits seeking repayment from sponsors.

Even if individuals receive a relevant program within the first five years after entry, they can show that they did so for reasons that arose after entry. For example, individuals who became pregnant, had an accident, became disabled or ill, lost a job, experienced a decrease in income, a rent increase, relocation, natural disaster, domestic violence or *other factors that arose after entry* – would not be deportable under the statute. And, even if found deportable based on public charge, LPRs may qualify to apply for relief, such as cancellation of removal.

## **How might DOJ change the public charge ground of deportability?**

Right now, we don't know exactly what the proposed rule on deportability will look like. However, there are legal limits on how far DOJ can go and we will be closely monitoring any changes for legal issues that may be raised. Even in the worst-case scenario, the circumstances under which an individual could meet the public charge ground of deportation would still be narrow. Most immigrants aren't eligible for the relevant programs during their first five years, and therefore would not meet the statutory test. Additionally, under the statute, the few individuals who might be subject to the rule would still have an

opportunity to show that their need for benefits is based on circumstances that arose after entry, and if found deportable, LPRs might still be able to apply for relief, e.g. cancellation of removal.

### **How would such a change affect immigrant families and communities?**

Like all threatened changes to public charge policies, the harm caused by the chilling effect would reach far beyond any individuals who may be affected directly. Although a revised public charge ground of deportation test could be relatively narrow in application, it is certain to generate panic, with further risk to public health and the infrastructure that serves all of us. If even one person is deported on public charge grounds, however, the chilling effect would be profound.

### **How can we prepare for or talk about these possibilities?**

We will need to continue providing accurate information to community members and advocates, while sharing opportunities to work collectively to fight back. To stay up to date on the latest news, we encourage you to join the Protecting Immigrant Families Campaign. More information is available at: <https://protectingimmigrantfamilies.org/get-involved/>.

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## **Public Charge & Deportation FAQ for Conversations with Community Members**

### **I am not a U.S. Citizen. Can the government deport me because I use public benefits?**

No. Under current law, the government cannot deport or remove you just for using public benefits that you qualify to receive. In order to be deported based on public charge, all of the following would have to be true:

- You received cash welfare or long-term institutional care for reasons that existed before you came to the U.S., and
- You got the cash welfare or long-term care less than 5 years after you came to the U.S., and
- You or your sponsor have a legal debt to the government agency that gave you the cash or long-term care, and you or your sponsor got a notice from the government that you owed the debt within 5 years of entering the U.S., and
- You or your sponsor have refused to repay, and the government filed a lawsuit and won in court

Simply receiving a benefit is not enough to be deported. Even if all of the factors above are true for you, you will still be able to show that you used benefits for reasons that happened after you came to the United States – like becoming pregnant or having a decrease in income. If you can prove that your situation has changed, you will not be deportable as a public charge.

### **I heard that the government is going to change the rules. How will that affect me?**

There are several changes that have been proposed and changes that may be proposed in the near future. However, right now, nothing has changed for public charge decisions made in the U.S. and there are legal limits on how much the rules can change. If or when proposed changes are finalized, the government will make an announcement and is likely to give 60 days' notice before the changes could go into effect.

*Remember that receipt of a public benefit for you or a family member is not, by itself, a reason to be deported. You can show that you used benefits based on a situation that came up after you entered the country.*

It's also important to keep in mind that even if changes happen, they will not affect everyone. Certain immigrants are not subject to the public charge rules.

### **Should I stop using public benefit programs just to be safe?**

We recommend that you continue to get the help you need. Using health care and other services can help you and your family become healthier, stronger and more employable. You can stay tuned for any changes that may occur, and can consult with an immigration attorney if you have questions about your individual situation.

If your family plans to apply for a green card or visa inside the United States, we recommend that you continue to use health, housing, and nutrition programs like SNAP, Medicaid, or Section 8 housing assistance that help your family.

If your family plans to apply for a green card or visa outside of the United States, you should talk with an expert for advice on your case before making any decisions. For free or low-cost options near you, visit [www.immigrationadvocates.org/nonprofit/legaldirectory](http://www.immigrationadvocates.org/nonprofit/legaldirectory). Help is available in many languages.

### **I am a naturalized U.S. citizen. Can I lose my citizenship if I use programs like Medicaid or food stamps?**

No. U.S. citizens cannot lose their citizenship based on their lawful use of public benefits. Once you become a U.S. citizen, the government may not deport you and must let you return to the U.S. after you travel outside the country.