Public Charge Update: February 5, 2020

From: The Office of Equity and Multicultural Services
To: All Department of Human Services staff
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Disclaimer: This document does not contain legal advice. Individuals who are concerned about whether and how receipt of public benefits might affect their immigration status should ask for help from an immigration attorney.

ALERT: On Jan. 27, 2020, the U.S. Supreme Court set aside a preliminary injunction from New York that prevented the U.S. Department of Homeland Security public charge rule from taking effect nationwide.

▪ This means the new federal public charge rule can now go into effect.
▪ The state of Oregon is monitoring developments around public charge closely.
  o The exact timing of when the U.S. Department of Homeland Security will start implementing the new rule is not yet known.
  o We will continue to update our clients, community partners, members of the public and other stakeholders as more information becomes available.


Background: On Aug. 12, 2019, the U.S. Department of Homeland Security announced it had finalized the new public charge rule. The new rule was going to take effect on Oct. 15, 2019. However, it was temporarily blocked by federal courts. On Jan. 27, 2020, the U.S. Supreme Court set aside the last of three federal injunctions that had blocked the new rule from taking effect. This means the new public charge rule can now go into effect. The only exception is in Illinois where the rule remains blocked by a statewide injunction.

What is public charge?
“Public charge” or the “public charge test” is used by immigration officials to decide if a person can:
▪ Enter the United States, or

References:
(1) https://www.uscis.gov/legal-resources/final-rule-public-charge-ground-inadmissibility
• Get lawful permanent resident (LPR) status (i.e. a green card).

**How are public charge decisions made?**
Immigration officials are supposed to look at all a person’s circumstances to determine if they are likely to depend on the government for aid *in the future.* Use of public benefits is supposed to be only one of several factors used to make this decision.

**What happens if a person is found to be a public charge?**
Officials can deny the applicant entry to the United States or a green card.

**Who does public charge affect?**
The *only* people that public charge affects are those who:

- Apply to enter the United States,
- Apply to get a green card, or
- Have a green card who leave the United States for 180 consecutive days or

**Who does public charge *not* affect?**

- U.S. citizens:
  - Those who are born in the United States, and
  - Those who have naturalized.
- Green card holders (except those who leave the U.S. for 180 consecutive days or more). This includes:
  - People with green cards who are applying for U.S. citizenship, and
  - Those renewing their green card.
- Active military service members and their families.
- Immigrants who are in the United States for humanitarian reasons. For example:
  - Refugees
  - Asylees (including people applying for asylum)
  - People with Temporary Protected Status (TPS)
  - Violence Against Women Act (VAWA) self-petitioners
  - T or U visa applicants or holders
  - People with Special Immigrant Juvenile Status (SIJS)
  - Certain parolees, and
  - Other categories of noncitizens.

References:
(1) [https://www.uscis.gov/legal-resources/final-rule-public-charge-ground-inadmissibility](https://www.uscis.gov/legal-resources/final-rule-public-charge-ground-inadmissibility)
What public benefits in Oregon count as Public Charge under the new rule?

| Non-emergency Oregon Health Plan (i.e. Medicaid) coverage for non-pregnant adults 21 and older. |
| Medicaid-funded long-term care. |
| Supplemental Nutrition Assistance Program (SNAP) or food stamps. |
| Federal, state or local cash assistance programs. This includes: |
| - Supplemental Security Income (SSI), and |
| - Temporary Assistance for Needy Families (TANF) |
| Section 8 rental assistance (i.e., housing choice vouchers) |
| Project-based Section 8 housing and subsidized housing. |

What public benefit programs in Oregon do not count as Public Charge under the new rule?

| Oregon Health Plan coverage for youth younger than 21 (i.e. Medicaid and the Children’s Health Insurance Program, or CHIP) |
| Oregon Health Plan coverage for people who are pregnant including 60 days after giving birth (i.e. Medicaid, Citizen-Alien Waived Emergent Medical (CAWEM) Plus, etc.) |
| Oregon MothersCare (OMC) program |
| Emergency Oregon Health Plan coverage for people of all ages (i.e. CAWEM) |
| Oregon’s Cover All Kids program |
| Early Head Start and Head Start/Oregon Pre-Kindergarten |
| Employment Related Day-Care child-care reimbursement |
| School-based health services for school-aged children |
| Free and reduced School Lunch Program (exception: the new rule would consider this if there was a referral to this program through SNAP) |
| Women, Infants, and Children (WIC) supplemental nutrition program |
| Commercial health insurance premium subsidies through Oregon’s Health Insurance Marketplace |
| Oregon Food Bank programs and services |
| Older Americans Act (OAA) programs |
| State-funded programs to aid older adults and people with disabilities (e.g., Oregon Project Independence (OPI) program) |
| Medicare Part D Low-Income Subsidy (LIS) |
| Many other health and social services programs not listed here |

References:

(1) [https://www.uscis.gov/legal-resources/final-rule-public-charge-ground-inadmissibility](https://www.uscis.gov/legal-resources/final-rule-public-charge-ground-inadmissibility)
Things to Keep in Mind:

1. **Public benefits your children or other family members get don’t count against you in the Public Charge Test**
   Most immigrants who are applying for a green card are not eligible for the benefits listed in the rule. And benefits used by eligible family members are not counted unless the family members are also applying for a green card.

2. **Some immigrant groups are not subject to “public charge.”** Certain immigrants — such as refugees, asylees, many survivors of domestic violence, and other protected groups — are not subject to “public charge” inadmissibility determinations and would not be affected by this final rule. Exempt immigrants include: refugees; asylees; survivors of trafficking, domestic violence, or other serious crimes (T or U visa applicants/holders); VAWA self-petitioners; special immigrant juveniles; certain people paroled into the U.S. as well as other “humanitarian” immigrants. And lawful permanent residents (Green Card holders) are not subject to the public charge test when they apply for U.S. citizenship.

   The rules specify that any benefits received while in an exempt status will not be counted against applicants, if they later seek status through a non-exempt status.

3. **Immigration officials must consider all of an immigrant’s circumstances.** The public charge statute — which cannot be changed by regulations — requires immigration officials to look at all factors that relate to noncitizens’ ability to support themselves, including their age, health, income, assets, resources, education/skills, family members they support and family who will support them. They may also consider whether a sponsor has signed an affidavit of support (a contract) promising to support the noncitizen. Since the test looks at the person’s overall circumstances prospectively, no one factor is definitive. Any negative factor, such as not having a job, can be overcome by positive factors, such as having completed training for a new profession or having college-educated children who will help support the family. Thus, use of public benefits will not automatically make one a public charge, and the applicant can present the best case for him/herself.

References:
(1) https://www.uscis.gov/legal-resources/final-rule-public-charge-ground-inadmissibility