

## **PUBLIC CHARGE & DEPORTATION**

### FAQ for Advocates and Community Members

*On July 3, 2019, the Department of Justice (DOJ) submitted a draft notice of proposed rulemaking (NPRM) to the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) for formal review before the NPRM is published in the federal register. The draft DOJ NPRM has not been published yet. This document is intended to help advocates and community members understand current policy and what we **may** see in the proposed rule. Draft rule language is not publicly available at this stage.*

#### **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](#) (DHS 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 and the Board of Immigration Appeals, plans to propose a separate rule that addresses the public charge deportability ground.

#### **Who does the public charge deportability ground 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 deportability applies only to people who have been inspected and admitted to the US, 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 a consulate abroad, 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."
- On May 3, 2019, [Reuters reported](#) that the Department of Justice (DOJ) plans to issue a proposed rule related to the public charge ground of deportability.
- A [notice](#) from the Unified Regulatory Agenda (with an updated June [June 2019](#) expected 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. It also indicates that the rule is not classified as a major rule.

- On July 3, 2019, DOJ submitted the draft NPRM to the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) for formal review. The draft NPRM is not publicly available at this stage. But, stakeholders can [submit requests to meet with OIRA](#) from now until the DOJ NPRM is published in the federal register here and the comment period begins.

### **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 a person just for using public benefits that the person qualifies 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. 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 public benefit 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?**

We don't know exactly what the proposed rule on public charge deportability will look like. We will be closely monitoring any changes for legal or policy issues that may be raised. Even under the worst-case scenario, the circumstances under which an individual could meet the public charge ground of deportability would likely remain narrow. Most immigrants aren't eligible for the relevant programs during their first five years, and therefore would not meet the statutory test. But there are some

exceptions (see next question). 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, eligible LPRs may still be able to apply for immigration relief, such as cancellation of removal.

### **Who might be directly affected by a DOJ rule change?**

Most immigrants are not eligible for the relevant public benefits programs during their first five years, and therefore would not meet the statutory test. But there are some exceptions. Here are some **examples** of non-citizens who may be eligible for public benefits like Medicaid, SNAP and housing assistance, in their first five years:

- Lawful permanent resident children (green card holders) are eligible for SNAP in all states, and for Medicaid in 33 states and the District of Columbia;
- People granted asylum, refugee status and certain other “humanitarian” immigrants are eligible for Medicaid, SNAP and housing assistance;
- Non-citizen veterans, active duty military members and their spouses, unremarried surviving spouses, and children are eligible for Medicaid and SNAP;
- Lawful permanent residents are eligible for housing assistance without a waiting period;
- Lawful permanent residents may be eligible for state or locally-funded cash assistance or government funded long-term care in some states.

### **How might the test to determine whether someone is *deportable* on public charge grounds (DOJ NPRM) differ from the proposed test to determine whether a person is *inadmissible* on public charge grounds (DHS NPRM)?**

The test for determining whether a person is inadmissible or has become deportable on public charge grounds might be very different. In determining inadmissibility, DHS looks at whether a person is likely to become a public charge *in the future*, based on a totality of circumstances, including income, use of public benefits, age, family status, and education. In determining whether a person has become deportable as a public charge, the government looks *backward*, focussing on whether a person has received a relevant public benefit in the first five years after entry - based on circumstances that pre-date the person’s entry.

### **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 deportability 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/>.

## **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 deportable 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 deportable as a public charge. 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 came up after you arrived in 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?**

Several changes have been proposed or may be proposed in the near future. However, the rules on public charge decisions made in the U.S. have not yet changed. 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 the receipt of a public benefit for which you are eligible is not, by itself, a basis for making a person deportable as a public charge. Even if the rules change, you would be able to 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.