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**The new
public charge
RULE on
admissibility**

The most important thing to know about the **public charge** rule:



The rule will
**not apply to
or affect** most
noncitizens
living in the
United States.

TIME LINE: Public Charge

- ❖ **5/26/99**: INS (now U.S. Citizenship & Immigration Services, or USCIS) publishes “Field Guidance on Deportation and Inadmissibility on Public Charge Grounds.” This is the **“old” policy** on public charge.
- ❖ **1/3/18**: Department of State (**DOS**) revises its Foreign Affairs Manual (FAM) guidance on inadmissibility and **public charge**, for decisions made outside U.S. (at consulates & embassies).
- ❖ **10/10/18**: Department of Homeland Security (**DHS**) publishes proposed **public charge** rule in Federal Register.
- ❖ **12/10/18**: Public comment period closes for proposed rule after **DHS** receives > **260,000** (!) comments.
- ❖ **8/14/19**: **DHS** publishes final **public charge** rule in Federal Register, with effective date of **10/15/19**.
- ❖ **10/11/19-10/14/19**: Multiple courts issue preliminary injunctions preventing new **public charge** rule from taking effect.

TIME LINE, Public Charge, cont'd:

- ❖ **1/27/2020**: Supreme Court lifts last remaining nationwide injunction blocking **DHS public charge** rule. DHS then decrees rule will take effect **2/24/2020** everywhere except Illinois.
- ❖ **2/20/2020**: **DOS** announces it will start applying new **public charge** rule in embassies and consulates.
- ❖ **2/21/2020**: Supreme Court allows new **DHS public charge** rule to take effect in Illinois, too.
- ❖ **2/24/2020**: New **DHS** and **DOS public charge** rules go into effect everywhere.
- ❖ **7/29/2020**: New **DHS public charge** rule is enjoined nationwide during (because of) COVID-19 pandemic. New **DOS** rule and 2018 FAM guidance are enjoined indefinitely.
- ❖ **8/12/2020**: 2nd Circuit appellate court limits **7/29/2020** injunction to New York, Connecticut and Vermont only.
- ❖ **9/11/2020**: 2nd Circuit lifts July 2020 injunction, **allowing DHS public charge** rule to take effect, again, everywhere in U.S.



Where does this leave us, and how does the **public charge** rule work?





1. WHO or WHAT is a “public charge”?





“public charge”

- “**Public charge**” involves a **test** used by Immigration officials to decide whether a noncitizen can **enter the U.S., get a green card** (“LPR,” lawful permanent resident status), or **extend or change a visa**.
- The **test** is used to identify whether person **depends on government benefits** as a source of support and therefore will not be self-sufficient (i.e., the person will be a “**public charge**”).
- Immigration will look at **all circumstances** – including **income, employment, health, education/skills, family situation, Affidavit of Support**, and whether the person applying for admission, adjustment or a visa has received **certain benefits** – to decide if the applicant is **likely to become self-sufficient in the U.S.**

Self-Sufficiency



- ❑ The term “**public charge**” has been in place in immigration law for **> 100 years**.
- ❑ Under the old policy (in effect for 20+ years, from 5/26/99 through 2/23/2020), “**public charges**” were applicants for admission, adjustment, or a visa who were **likely to become PRIMARILY DEPENDENT on the government** for long-term subsistence, as demonstrated by:
 1. their **receipt** of public **CASH ASSISTANCE** for income maintenance (i.e., **MFIP**, **GA**, or **SSI**), **OR**
 2. their **institutionalization** for **long-term care** at government expense (i.e., receipt of Medical Assistance [**MA**] for nursing home care).

Under the new RULE,
“public charges”
are applicants for admission,
adjustment, or a visa who:



- ❖ “receive” 1 or more specified government benefits
- ❖ for ≥ 12 months, in the aggregate,
- ❖ within a 36-month period.





2. WHEN are
public charge
decisions on
admissibility made?



Public charge decisions are made when noncitizens apply for:

- ✓ **ADMISSION** to the U.S. (including when they *re-enter* the U.S. after having been out of the country ≥ 180 days),



- ✓ **ADJUSTMENT** to **Lawful Permanent Resident (LPR)** status,



OR

- ✓ **CHANGE** or **EXTENSION** of a **VISA**.





3. **WHEN** does **public charge** **NOT** apply?

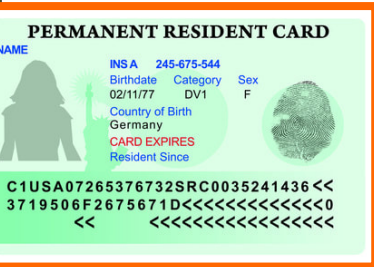




Public charge does
NOT apply
when noncitizens are:

**APPLYING FOR
CITIZENSHIP!**

14

[illegible]

**DEPORTATION
ORDER**

This public charge RULE
does NOT affect:

**DEPORTABILITY
OR
DEPORTATION**



4. To **WHICH**
noncitizens does
public charge
NOT apply?



These noncitizens, among others, are **NOT** subject to **public charge** consideration:

- × **refugees** (when *applying* for refugee status or *adjusting* to LPR);
- × **asylees** (when *applying* for asylum or *adjusting* to LPR);
- × **VAWA (Violence Against Women Act) self-petitioners** (when *applying* for VAWA, *adjusting* to LPR, or *seeking admission*);
- × **U-visa** or **T-visa recipients** (i.e., survivors of domestic violence, trafficking, or other serious crimes) (when *applying* for U- or T-visas and when *adjusting* to LPR, *if* the visas have not **expired**);
- × **SIJ (Special Immigrant Juveniles)** (when *applying* for SIJ, *adjusting* to LPR, or *seeking admission*); and
- × **TPS (Temporary Protected Status)** or **DACA recipients** (when *applying* or *re-registering*, **except** there is no mechanism in TPS or DACA for adjustment to LPR. Recipients may be subject to **public charge** when they later adjust through a different pathway.)



Note about exempt status (refugees, asylees, etc.):

☒ **Exempt status** means Immigration will **NOT** scrutinize noncitizens for **public charge** in **their own Green Card process**, when they are trying to adjust to LPR status.

EXEMPT

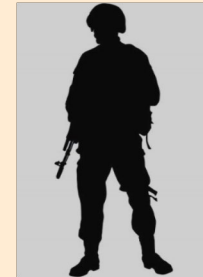
☒ Any benefits received while in **exempt status** **can never count** for **public charge** purposes, **EXCEPT THAT:**

⇒ For LPRs, their **exempt status** may **not protect them** if they **leave the U.S. for > 6 months**. USCIS may look at them upon their return to the U.S. to determine if they are **public charges**.

Special rule for members of the armed forces

Receipt of public benefits **does NOT count** *if*, at the time of receipt of the benefit **OR** when applying for admission, adjustment, or a visa, a noncitizen is:

- **enlisted** in the U.S. armed forces,
- serving in **active duty** or the **Ready Reserve**, **OR**
- the **spouse or child** of an enlistee or active duty participant.



Note: There are **no** special provisions for U.S. **veterans** or their families!



5. **WHERE** are public charge decisions made?



Admissibility decisions are made in 1 of 2 places:

Outside U.S.
Consulates abroad



Consulates make decisions about whether to grant permission to enter the U.S. At this time, embassies have been **enjoined** from using both the **public charge** RULE and the FAM criteria.



Inside U.S.
Immigration offices



U.S. Citizenship & Immigration Services (USCIS) makes decisions about whether to grant permission to enter, re-enter, or stay in the U.S. USCIS is using the new **public charge** RULE.





6. **WHEN** did the new
public charge **RULE**
take effect?



**The new RULE took effect
on February 24, 2020.**

It was temporarily paused in late
July but is back in effect since
September 11, 2020.





7. **WHAT** has changed?



Old Policy

- Under the **old policy**, Immigration looked at the “**totality**” of the **circumstances** to make a **public charge** determination.
- Immigration could determine noncitizens were **public charges** if they were “**primarily depending**” on **cash assistance (SSI, GA, or MFIP)** for **subsistence**, or on **MA** for **long-term** (nursing home) **care**.
- Noncitizens assessed as **public charges** could **overcome** the determination with an **Affidavit of Support (I-864)** (where a sponsor, [and maybe a joint sponsor], agrees to support the noncitizen until the noncitizen works for 10 years, becomes a U.S. citizen, or dies).



New RULE

- Under the **new** RULE, Immigration **still** looks at the **“totality” of the circumstances**.



- Whether noncitizens **“receive”** certain **specified government benefits** in any **12 months within a 36-month period** is **1 factor** USCIS will consider. Noncitizens no longer have to be **“dependent”** on the benefits **“for subsistence.”**
- The **Affidavit of Support** is **still** a factor, but it will **no longer overcome** a **public charge** determination by itself. Also, USCIS will look more **closely** at noncitizens' relationships with their **joint sponsor** and will factor in whether the joint sponsor has signed an **Affidavit of Support** for any **other** immigrants or applicants.

“Totality of Circumstances” minimum factors that must be considered under the new RULE

- **AGE**: USCIS will assess how age **affects the ability to work**, particularly for those < 18 or ≥ 62 .
- **HEALTH**: USCIS look at whether the applicant for admission, adjustment or a visa has been **diagnosed with a medical condition** likely to require extensive treatment/institutionalization or to interfere with work or the ability to care for family, attend school, etc.
- **FAMILY COMPOSITION**: USCIS will consider **household size**. The larger the household, the more income the applicants will need to have to show they are unlikely to become **public charges**.



“Totality of Circumstances”: more minimum factors that must be considered under the new RULE

EDUCATION:

- Does the noncitizen seeking admission, adjustment or a visa have adequate **education/skills** to get & keep a job?
- Can the applicant speak and understand **English** or other languages well?



AFFIDAVIT OF SUPPORT:

- ◆ How **likely** is it that the sponsor will **actually support** the applicant?
- ◆ Has the **joint sponsor** submitted an **Affidavit of Support** in another case?
- ◆ What is the **relationship** between the applicant and the joint sponsor? Does the joint sponsor **live with** the applicant?

“Totality of Circumstances”: even more minimum factors that must be considered under the new RULE



Financial Status



- Does the household have **income** \geq **125% FPG**?
- If not, can the applicant show **assets** that can be converted to cash within 1 year to make up the difference?
- Does the applicant have assets/resources **to cover expected medical costs**?
- What are the household's **debts** and **financial responsibilities**?
- Has the applicant applied for, been certified for, or received **certain government benefits** since enactment of the RULE?



New “heavily weighted” negative factors

- ☹ **Work**: An applicant is authorized to work but is **not in school**, is **not working**, & has **no reasonable prospect** of future employment.
- ☹ **Public benefits**: Since 2/24/20, the applicant has **received**, or been **certified or approved to receive**, ≥ 1 “public benefit” for at least **12 months total** during a **36-month period before** the application for admission, adjustment, or a visa.
- ☹ **Health**: The applicant was diagnosed with a **medical condition** likely to **require extensive treatment** or institutionalization that is likely to **interfere with work AND** is **not currently insured** &/or doesn't have sufficient resources to pay for treatment.
- ☹ **Prior public charge determination**: The applicant **previously** has been found **inadmissible or deportable** on **public charge** grounds.



New “heavily weighted” positive factors

- ☺ **assets**: The household has assets, resources, &/or support $\geq 250\%$ Federal Poverty Guidelines (FPG)*
- ☺ **income**: The applicant is authorized to work & is currently employed with income $\geq 250\%$ FPG*
- ☺ **health insurance**: The applicant has private health insurance. (Note that subsidized coverage through the ACA doesn't count).



***250% FPG** = \$31,900/yr HH 1; \$43,100/yr HH 2; \$54,300/yr HH 3; \$65,500/yr HH 4; etc.



8. **HOW** are **PUBLIC BENEFITS** **EVALUATED** under the new **public charge** **RULE?**



Definition: “public charge”

old policy



Noncitizen who is “likely to become **primarily dependent**” on government “**for subsistence,**” as demonstrated by either

- (i) “receipt of public cash assistance for **income maintenance**” or
- (ii) “**institutionalization** for long-term care at government expense”

new RULE



Noncitizen who “**receives** one or more public benefit[s]...”



Old policy on public charge: receipt of public benefits

Govt. looks **ONLY** at:

- **Cash assistance** for income maintenance



- **Institutionalization** for long-term care at govt. expense



This means **ONLY**:

- **MFIP**
- **SSI**
- **GA**



- **MA**, but only for nursing home care



Benefits at issue

Old policy

- MFIP
- SSI
- GA
- MA for long-term care



new RULE

- MFIP
- SSI
- GA
- MA for long-term care



++ PLUS ++

- SNAP
- Section 8 Housing Choice Voucher & Rental Assistance programs
- Public Housing
- MA (with exceptions)

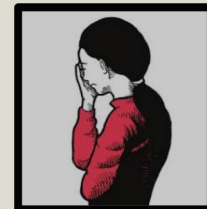
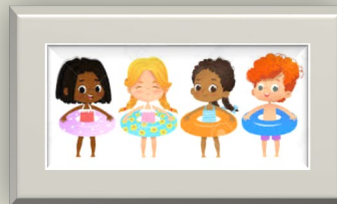
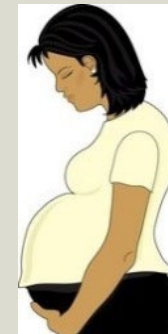


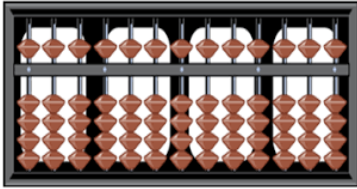


MA public charge exceptions under new RULE

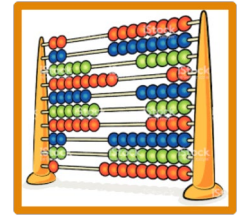
Use of MA will **NOT** be considered for:

- **pregnant women**
- women who **gave birth** within the last **60 days**
- **children < 21**
- those receiving care and services from a **center for victims of torture**
- those using Emergency MA (**EMA**)





How benefits are counted under new **RULE:**



Receipt of benefits \geq 12 months within a 36-month period:

- Receipt of **2** benefits in **1 month** will count as **2 separate months**. (Because **MFIP** has a cash and a food component, receipt of **MFIP** alone will count as **2 months** of benefits.)
- Receipt of **3** benefits in **1 month** (such as **SNAP**, **MA**, and **public housing**) will count as **3 separate months**.
- Receipt of **4** benefits (**MFIP**, **public housing**, **MA**) in **1 month** will count as **4 separate months**.
- An applicant for adjustment or a visa could “**use up**” the 12 months in as few as **3 months**.....



9. **WHICH** benefits are **SAFE** under the new **public charge** **RULE**?



Some benefits that are **NOT CONSIDERED**
under the new **public charge** RULE:

cash	Food	health care	other
Social Security Disability or Retirement benefits	WIC (Women, Infants & Children)	CHIP (Children's Health Insurance Program)	Disaster Relief
Foster Care benefits	School Lunch	MinnesotaCare	Energy Assistance
Adoption Assistance benefits	School Breakfast	Medicare	EITC (Earned Income Tax Credit)
Unemployment (UI) benefits	food from Food Shelves	Emergency MA	Childcare Assistance through Basic Sliding Fee program
VA benefits	meals at Soup Kitchens	subsidies & tax credits under the ACA	benefits through Head Start
Workers Compensation (WC) benefits	food at Shelters	MA for children < 21, pregnant women, etc.	Pell grants, student loans, state scholarships



10. Do benefits received by people other than the applicant (i.e., the applicant's **children**) **count** under the new **public charge** **RULE**?



NO! NO! NO!

Benefits received by nonapplicant dependent children DO NOT COUNT!

Under the new **RULE**, **benefits received by children or other dependents** do **NOT** affect a determination of whether the applicant is likely to become a **public charge**.



For example, the applicant's **children can get MA** and it will **NOT affect** the applicant's ability to adjust her status or petition for a relative to come to the U.S.!



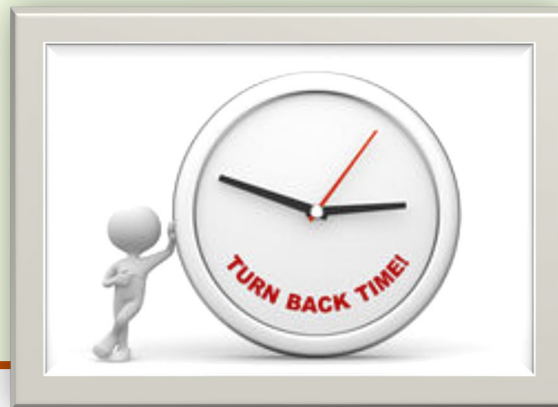
11. **IS** the new **public charge** **RULE** retroactive?



NO! NO! NO!

The RULE is NOT retroactive!

The benefits an applicant for admission, adjustment, or a visa applied for or received **before** February 24, 2020 do **NOT** count, *unless* they counted under the old policy.





12. **HOW** might the new **public charge** **RULE** **affect** noncitizens?



These noncitizens could be **eligible** to receive public benefits **AND** be **directly affected** by the new **RULE** if:

- they are **returning LPRs** and have been **outside the U.S. > 6 mos.** (They may then be treated as if they are seeking admission);
- they were LPRs, **lost their status** (for example, because they committed a crime) and have to **readjust**;
- they are **parolees**, in some circumstances; or
- they are **otherwise exempt** but **plan to adjust through a family relationship** instead of through an exempt pathway.



DIRECT



These noncitizens could be **eligible** to receive public benefits **AND** be **INDIRECTLY** affected by the new **RULE** if:

- ▶ in the future, they hope to **adjust their status** or **extend a visa**; or
- ▶ they hope to file a **petition** for a **relative** to come to the U.S. (Their circumstances will be more closely scrutinized...)



13. **WILL** USCIS get access to protected information if noncitizens apply for:

- * **benefits** from the **county** for their children,
- * **school lunch or breakfast** benefits for their children, or
- * help from a **food shelf**?



NO! NO! NO!

Information noncitizens give the
County, the schools, and food
shelves is **PROTECTED** by
data privacy laws
and will **NOT** be shared
with **USCIS!**



The U.S. and the State of Minnesota
have laws and policies that
protect all such information!

14. SCENARIOS

under the new
public charge RULE



Scenario #1: ZOYA

- Zoya's son petitioned for her to immigrate to the U.S.
 - She has been living here for 12 years with a green card.
 - She is 72 and recently retired. She gets Medicare, MA, and \$802 in Social Security retirement benefits.
 - Zoya's sister in Ethiopia is ill. Zoya wants to travel to Ethiopia to see her sister.
 - Zoya is worried that if she leaves, she won't be able to come back to the U.S. to be with her son and grandson.
- ❖ Zoya will be fine if she keeps her visit under 6 months.
 - ❖ If, however, Zoya leaves the U.S. for **> 6 months**, she may be subject to a **public charge** test when she comes back to the U.S. In that case, USCIS will **weigh heavily against her** her **low income, retirement**, and receipt of **MA**.
 - ❖ Timing of Zoya's trip will be critical. Her use of MA will count as a **heavily weighed negative factor** if she is enrolled for **≥ 12 months** during the **36-month period** **after** **February 24, 2020**.

Scenario #2: JESÚS

- Jesús is **68** and from **Nicaragua**. He has **TPS** (Temporary Protected Status).
- Jesús has been in the U.S. **> 30 years**, working in a turkey processing plant.
- He has some physical conditions and has reduced his work hours because of pain.
- Jesús now earns **\$10,000** per year, which barely pays his rent and utilities.
- Jesús gets **MinnesotaCare** and state-funded food benefits (**MFAP**). MFAP is a food program for noncitizens **> 50** who aren't eligible for **SNAP** because of their immigration status. **MFAP follows SNAP regulations**.
- Jesús's daughter, Verónica, recently became a U.S. citizen. She would like to petition for her father to get a green card.



- ❖ Jesús's receipt of **MinnesotaCare** is not a problem, and his receipt of **MFAP** is not a problem: neither benefit is a specified benefit under the new **public charge RULE**.
- ❖ However, Jesús's **low income** (< 125% FPG), **advanced age**, and **medical conditions** could be held against him under the **public charge** test.

Scenario #3: LAYLA, MADU, and HOMER

- Layla and her 10-year old son, Madu, came to the U.S. from Egypt on a **tourist visa**.
 - They **overstayed** their visa and were put in removal (deportation) proceedings. But Immigration granted them **withholding of removal** after they showed they would be persecuted in Egypt because of their religion.
 - Layla just married Homer, a U.S. citizen. Homer has a good job and just filed a petition **for LPR status for Layla and Madu**.
 - Layla is worried about **public charge** because **Madu received MA** and **SNAP** for 6 months, from 2/28/2020 through 8/31/2020.
- ❖ Madu's receipt of **MA** is not a negative factor for Layla, because **only her own receipt** of benefits matters **for her**.
 - ❖ Madu's **receipt of MA** will not be a problem **for him**, because he is < 21 and exempt under the **MA** exemption for those < 21.
 - ❖ Since Madu did not receive **SNAP** for > 12 months, his receipt of benefits should not be a factor.



Scenario #4: ISA

- Isa was born in Micronesia and came to the U.S. in 1994 under the Compact of Free Association (COFA).
- COFA gives Isa the right to live and work permanently in the U.S. as a **nonimmigrant**.
- Isa is 25 and studying at a community college to be an LPN (licensed practical nurse).
- Isa just got **engaged to a U.S. citizen**. She is **pregnant**. She is getting **MA for prenatal care**.
- Isa's fiancé wants to sponsor her for a green card, but she is worried that her receipt of **MA** during her pregnancy will cause a problem.

❖ Receiving **MA** as a pregnant woman is not a problem for Isa – **MA** during pregnancy does not count for **public charge** purposes.

❖ However, Isa's **income, credit score, education, and other factors** will be weighed to determine if she is likely in the future to use one of the benefits in the **RULE**. Her fiancé can post bond to overcome a **public charge** presumption.





16. Again, **WHICH** benefits
are 100% safe?

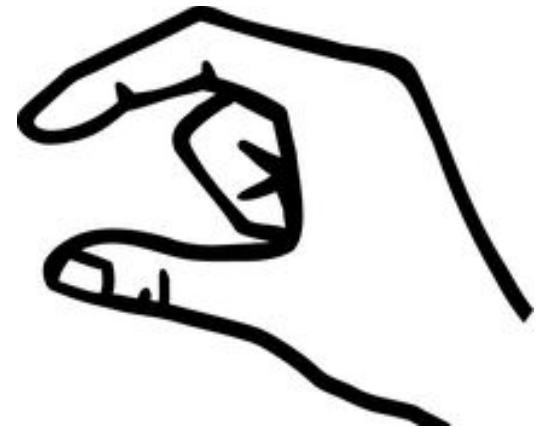


100% SAFE – THESE AND OTHERS!

cash	food	health care	other
Social Security Disability or Retirement benefits	WIC (Women, Infants & Children)	CHIP (Children's Health Insurance Program)	Disaster relief
Foster Care benefits	School Lunch	MinnesotaCare	Energy Assistance
Adoption Assistance benefits	School breakfast	Medicare	EITC (Earned Income Tax Credit)
Unemployment Insurance (UI) benefits	food from Food shelves	Emergency MA	Childcare Assistance through Basic Sliding Fee
VA benefits	food at Soup kitchens	subsidies & tax credits under the ACA	benefits through Head Start
Workers Compensation (WC) benefits	food at Shelters	MA for children < 21, pregnant women, etc.	Pell grants, student loans, state scholarships

For **most** noncitizens, the other benefits (cash assistance, SNAP, MA, public housing, and section 8) **are safe**, too!

An important thing to remind folks is that the new **public charge** RULE applies to only a **very small percentage** of noncitizens!



17. Final thoughts

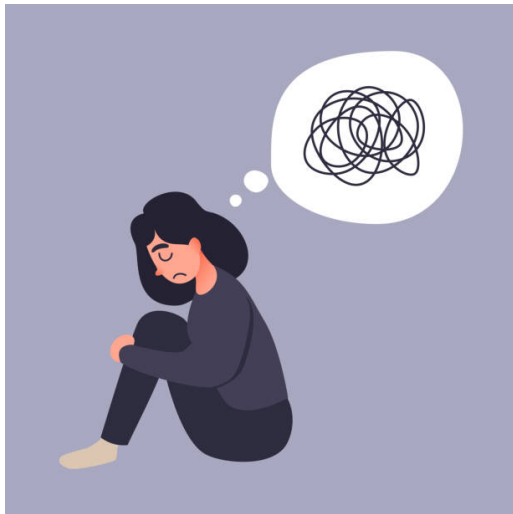




The new **public charge** RULE's government benefits limitations are **NOT** going to affect very many people!

- ◉ **Remember:** in most cases, the RULE is **NOT** going to apply.
- ◉ It will **ONLY** apply in **very limited circumstances** – if someone is trying to **move to the U.S., get a green card, or extend a visa.**
- ◉ **Even then**, whether the RULE will affect people depends on their **immigration status**. Many noncitizens are **NOT** going to be affected!

Please bear in mind:



- ❖ Noncitizens (and everyone else!) need to keep themselves and their children **healthy, housed, and well-fed**.
- ❖ If noncitizens are worried that getting benefits **might** affect their ability to adjust their immigration status, they should **consult with an attorney**.
- ❖ They may be worrying for nothing!

Does **public charge** apply?

Noncitizen and family members already have green cards	→	Public charge and changes to the RULE DO NOT APPLY (<i>unless</i> noncitizen plans to leave the country for > 6 months).
Person is applying for, or has, U.S. citizenship , a U- or T-Visa , asylum , refugee status, SIJ status, or TPS ; or the noncitizen is seeking to renew a green card	→	Public charge DOES NOT APPLY . If people already have, or are in the process of applying for, 1 of these statuses, they can safely use any government benefits for which they're eligible. Benefits they get while <i>in</i> this status will not be counted against them in the future , even if they end up applying for a green card on a different basis.
Family member plans to apply for a green card or visa from <u>inside</u> the U.S.	→	SEEK ADVICE FROM AN ATTORNEY!
Family member plans to apply for a green card or visa from <u>outside</u> the U.S.	→	SEEK ADVICE FROM AN ATTORNEY!

FOR QUESTIONS ABOUT **PUBLIC
CHARGE** OR RECEIPT OF
GOVERNMENT BENEFITS,
PLEASE CALL:

Southern Minn. Regional Legal Services, Inc. (SMRLS):
1-888-575-2954

Mid-Minnesota Legal Aid
1-800-292-4150 or 612-332-1441

Immigrant Law Center of MN
1-800-223-1368

Volunteer Lawyers Network (VLN)
612-752-6677

