
Changes to “Public Charge” Instructions in the U.S. State Department’s Manual

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ON JANUARY 3, 2018, the U.S. Department of State published revised sections of its Foreign Affairs Manual (FAM) that deal with “public charge.” These State Department instructions underscore the Trump administration’s interest in restricting family immigration and deterring families from securing critical services. The FAM provides instructions that officials in U.S. embassies and consulates abroad use to make decisions about whether to grant non-U.S. citizens permission to enter the U.S. It does not govern decisions made by immigration officials in the U.S. However, the FAM revision foreshadows other changes that we may see this year.

What is the longstanding public charge policy?

The term “public charge” describes people who depend on government-funded cash assistance or long-term care. Individuals who are likely to become a public charge may be denied admission to the U.S. or a green card (lawful permanent residence, or “LPR” status).

Almost two decades ago, the government clarified that, consistent with longstanding policy, the use of services such as health coverage or nutrition assistance would *not* be considered in determining whether someone is a public charge. The public charge determination takes into account all of a person’s circumstances. Any negative factor can be outweighed by positive factors — including the affidavit of support (contract) filed by the person’s sponsor — in determining whether the person is likely to rely on cash assistance or long-term care in the future.

In making a public charge determination, the government must consider many factors, including the person’s age, health, family situation, income,

resources, and education. It may also consider the affidavit of support signed by a sponsor. This test is forward-looking and may not be based *solely* on what happened in the past.

More information on public charge is available in this National Immigration Law Center issue brief: www.nilc.org/public-charge-overview/.

How do the new FAM instructions change the longstanding “public charge” policy?

The revised State Department instructions continue to require that each factor (age, health, income, education, family situation, etc.) be considered in the public charge test. The instructions maintain the current definition of public charge as a person who is likely in the future to rely on cash assistance for monthly income or government-funded long-term care. However, the instructions include changes in evaluating a sponsor’s affidavit of support and the use of noncash benefits by applicants, sponsors, and family members.

Affidavit of support. The new instructions emphasize that the affidavit of support is a positive factor in the totality-of-the-circumstances test but is not sufficient on its own to protect an individual from a determination that the person is likely to become a public charge. In addition, it suggests that the sponsor’s use of benefits could be taken into account. However, since the forms that visa applicants and their sponsors submit do not ask about the sponsor’s use of benefits, it’s not clear how this would be implemented in practice.

Use of noncash benefits by the applicant or a family member. The revised instructions allow the receipt of any “public assistance” to be considered as part of the “totality” of the person’s

We are monitoring how the changes described here are being implemented by each U.S. embassy or consular office.

See page 2 for more about how you can get updates on public charge and help monitor these changes.

circumstances, if relevant in predicting whether the person will become a public charge *in the future*. The new instructions also allow State Department officials to consider, as part of the public charge test, whether an applicant's family member has received public benefits.

Health. Under the revised instructions, applicants — particularly those with a health condition — may need to provide proof of medical insurance or other ability to pay medical expenses in the U.S.

Education and skills. Under the new instructions, it is more likely that applicants will need to demonstrate that they have job skills, provide information about their job history, and explain any periods of unemployment or job changes. They may also need to provide information about their plans for employment once they immigrate to the U.S., or whether they have a job offer.

Who is affected by the revised State Department instructions?

The revised instructions could affect non-U.S. citizens who go through consular processing in their home country before entering the U.S. This includes people seeking nonimmigrant visas, including tourist or employment-based visas, and people seeking to be admitted to the U.S. as lawful permanent residents. The instructions clarify that the conditions for obtaining a nonimmigrant visa are normally sufficient to overcome the public charge exclusion, absent evidence to the contrary. The changes also could affect green card applicants who are required to leave the U.S. to seek status through consular processing. The revised instructions do not affect the public charge determination for people who are eligible to apply for a green card in the U.S. (i.e., those who seek to *adjust* to lawful permanent resident status in the U.S.).

The public charge test does *not* apply to humanitarian immigrants such as refugees; asylees; survivors of domestic violence, trafficking and other serious crimes; special immigrant juveniles; and certain individuals paroled into the U.S. Lawful permanent residents are not subject to a public

charge determination when they apply for citizenship.

How have the revised instructions been implemented so far?

We are gathering information about how these changes are being implemented. We understand that applications at some consular offices have been scrutinized more closely than previously, and we've heard reports of denials and requests for additional information related to public charge. For example, individuals filing affidavits of support from joint sponsors have been asked to submit evidence regarding their relationship with the joint sponsor and the reasons why the joint sponsor is agreeing to take on this legal responsibility.

Applicants who are asked to submit further information to satisfy the public charge test (such as evidence of a job offer or health insurance) may face delays. Therefore, we advise people to work closely with an immigration attorney before proceeding to a consular interview. For more information, see these Catholic Legal Immigration Network Inc. (CLINIC) resources:

<https://cliniclegal.org/resources/public-charge-updates-what-your-client-facing-consulate>.

How can you help us understand what these changes mean in practice?

We need your help! It will be important to monitor how these changes — or rumors about these changes — are affecting individuals, families, communities, and community-based organizations in the U.S. Please share information with us via this online form: <https://tinyurl.com/y9j3chk3>.

How can you learn more?

Please stay tuned as we continue to learn how these changes work in practice. To learn about any changes to public charge policy, sign up for the Protecting Immigrant Families Campaign email list at <http://bit.ly/PIFCampaign>.

You can also contact Sonya Schwartz at the National Immigration Law Center (schwartz@nilc.org) or Madison Hardee at the Center for Law and Social Policy (mhardee@clasp.org).