

Proposed “Public Charge” Rule: Trump Administration’s Assault on Immigrant Families



OFFICE OF THE COUNTY COUNSEL
COUNTY OF SANTA CLARA

FREQUENTLY ASKED QUESTIONS

The County provides this FAQ for informational purposes only and not for the purpose of providing legal advice. The FAQ represents the County’s understanding of existing law and policy, and the likely impact the proposed “public charge” rule would have if it became final as proposed. No part constitutes legal advice. For any questions about specific circumstances, please consult an attorney.

What does it mean to be a “public charge”?

Under existing federal policy, the term “public charge” is used to describe a non-citizen who the federal government determines is likely to primarily depend on the government for subsistence. If a public charge determination is made, the government may deny the non-citizen entry into the U.S. (lawful admission) or a green card (lawful permanent resident status). Under current policy, “public charge” only covers non-citizens who are primarily reliant on cash benefit programs—Temporary Aid for Needy Families (TANF/CalWORKs), Supplemental Security Income (SSI), and general assistance programs such as California’s General Assistance or General Relief (GA/GR) Programs—or who are receiving long-term care in an institution at government expense.

Who is subject to a “public charge” determination?

Most people applying for a green card or for admission to the U.S. (for example, someone outside the U.S. applying for a visa) are subject to a public charge determination. People with temporary visas may also be subject to a public charge determination when they extend or change their visa. However, the current rule and the proposed rule do not apply to naturalized citizens, current green-card holders (unless they are seeking to return to the U.S. after having been outside the country for more than 180 days, or in other narrow circumstances), refugees, people applying for or granted asylum, or certain other narrow categories of non-citizens.

How does the Trump Administration’s proposed rule seek to change the meaning of “public charge”?

On October 10, 2018, the Trump Administration officially published a proposed rule that details how the Administration wants to apply the public charge law. If it becomes final, the proposed rule would expand the definition of public charge to include non-citizens who use other critically important programs and services, such as the Supplemental Nutritional Assistance Program (SNAP/CalFresh), non-emergency Medicaid/Medi-Cal, and housing assistance, including public housing and Section 8 vouchers. Under the proposal, the federal government could deny green cards, admission, or a change or extension of a temporary visa to non-citizens who use even a small amount of these benefits—or even just apply for them.

Under the proposal, federal officials would only consider benefit use by the person applying for a green card, entry, or temporary visa change or extension—not by family members. And certain benefits are excluded from both the proposed rule and current policy, including the Women, Infants, and Children (WIC) Program and government subsidies for private insurance under the Affordable Care Act/Covered California.

What is the immediate effect of the proposal? Has federal policy changed?

Federal policy has not yet changed: the Trump Administration’s proposed rule is deeply troubling, but for now it is only a proposal. Federal policy will not change until the public comments on the proposal, and the federal government decides to issue a final rule after considering those comments. That process may take several months, and possibly longer. And any final rule issued could differ from the proposal.

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Can non-citizens continue to access public benefits?

Yes. The proposed rule does not prohibit non-citizens from continuing to access public benefits, and the County is committed to providing benefits and services to all County residents. However, if the proposed rule is finalized, the use of specific public benefits now by a non-citizen who is subject to a public charge determination could have negative immigration consequences, even if that non-citizen is eligible for the benefits. These specific benefits are the ones already covered by current policy: SSI, TANF/CalWORKs, General Assistance Programs (including GA/GR Programs), and government programs, like Medicaid, when used to pay for institutionalization for long-term care.

The proposed rule would not penalize a non-citizen subject to a public charge determination for using other benefits until 60 days after the Trump Administration issues a final rule. These newly considered benefits include the Supplemental Nutritional Assistance Program (SNAP/CalFresh), non-emergency Medicaid/Medi-Cal, and housing assistance such as public housing and Section 8 vouchers.

Please consult an immigration attorney if you have questions about the effect of public benefit use on your immigration status.

What should County residents do if they have questions, or would like to speak to someone about how the proposed rule may impact them or their family?

For questions about how this proposal might apply to you or your family, consult an immigration attorney. The County maintains a list of [free and low-fee immigrant legal services providers](#) serving Santa Clara County residents, available at <http://bit.ly/SCC-OIR-LegalSvcs>.

For immigration-related resources in a variety of languages, visit the website of the [Santa Clara County Office of Immigrant Relations](#) at <http://bit.ly/SCC-OIR>. For detailed information about the new public charge proposed rule, visit the websites of [Protecting Immigrant Families, Advancing Our Future](#) or the [Immigrant Legal Resource Center's public charge page](#).

Why does the proposed rule matter to the County of Santa Clara?

The County has long prided itself on being a welcoming home for individuals of all backgrounds, including immigrants. It has nearly two million residents and one of the largest immigrant populations in the United States: 38% of all County residents are foreign-born, and over 60% of children in the County have at least one parent who is foreign-born. The County's innovation-driven economy relies on the significant contribution of immigrants. Immigrants make up 47% of all employed people in the County, 42% of all business owners in the County, and two-thirds of all workers in the information and computer technology sectors. Immigrants founded half of the “high-tech” startup companies in Silicon Valley, and immigrants or their children founded half of the fourteen Fortune 500 companies based in Santa Clara County. In 2014 alone, immigrants in the County contributed an estimated \$77 billion to the County's economy, based on their wages and tax contributions, according to a New American Economy analysis.

The proposed public charge rule, if adopted as a final rule, would undercut the County's efforts to provide benefits and services that ensure the health and wellbeing of all County residents, including immigrants. The County provides and administers a wide range of essential safety-net programs, benefits, and services that could be hampered by the proposed rule, including public medical treatment and services, government-subsidized health insurance, housing assistance, mental health and substance abuse services, and general social assistance.