



PUBLIC CHARGE AND NATURALIZATION

By Erin Quinn and Melissa Rodgers

I. Introduction

On October 10, 2018, the Department of Homeland Security (DHS) published a [proposed rule related to public charge](#) in the Federal Register. The proposed rule is not current law. We are many steps away from a final rule and its implementation. Even after the 60-day comment period for the proposed rule, DHS must review and consider all submitted comments before the rule becomes final. If the agency chooses to proceed with the rule, the final rule will then be published in the Federal Register. We expect it to be many months before DHS publishes a final rule on public charge. Even after publication, legal challenges could delay implementation.

The proposed rule interprets a provision of the Immigration and Nationality Act (INA) pertaining to inadmissibility. The inadmissibility ground at issue says a person is inadmissible if they are likely to become a public charge, which is a concept having to do with the likelihood that an immigrant will be financially self-reliant or need publicly funded support. (INA § 212(a)(4)). This law only applies to individuals seeking admission into the United States or applying for adjustment of status. This is not a provision of the law that applies to all immigrants.¹ Indeed, the eligibility requirements for naturalization do not include a public charge test. The legal use of government benefits and programs does not disqualify a permanent resident from naturalization.

This practice advisory provides an update on public charge for advocates providing naturalization legal assistance. This advisory briefly discusses the legal standard for assessing public charge and then discusses how to advise lawful permanent residents looking to naturalize.

II. What is the Legal Effect of the Proposed New Rule on Public Charge?

The proposed rule does not have the effect of law. The law will only change when a final rule is published in the Federal Register.² Until that time, there is no change in the law. Current guidance, dating back to 1999, controls.³

¹ For more information about public charge, including practice advisories and community resources for talking to immigrants about using important government programs and services, please visit the Immigrant Legal Resource Center's website at <https://www.ilrc.org/public-charge>.

² Even after the final regulation is published, litigation may temporarily or permanently block the regulation or certain provisions of the regulation from going into effect.

³ Current guidance specifies that the United States Citizenship and Immigration Services (USCIS) may not consider an immigrant's past or current use of a government-funded program as a factor when conducting a public charge determination, except if the immigrant used a *cash-based program* such as Temporary Assistance for Needy Families (TANF) or Supplemental Security Income (SSI), or was in *institutional long-term care at government expense*. See U.S. Dep't of Justice, Immigration and Naturalization Service, *Memorandum from Michael A. Pearson, Executive Associate Commissioner, Office of Field Operations: Public Charge: INA Sections 212(a)(4) and 237(a)(5)* (May 20, 1999), available at

The final rule will not be retroactive when it is published. This means that even though the proposed rule adds new negative factors that would count against an immigrant for purposes of public charge (discussed below), the United States Citizenship and Immigration Services (USCIS) will only consider benefits used *after* the new rule goes into effect. The proposed rule also gives immigrants an additional 60 day grace period that will begin on the day the new rule is published as “final.” For benefits newly-added to the public charge assessment by the proposed rule, or for the use of fee waivers, only use after the grace period will count.⁴

Practice Tip: The law regarding public charge has not changed. Attorneys and legal advocates who are helping lawful permanent residents (LPRs) complete a naturalization application can continue to help applicants with their N-400 applications, and fee waiver applications if applicable, without concern that a new set of rules has gone into effect. The ILRC will update this practice advisory to reflect future changes in the law.

Concerned individuals and organizations may submit comments until December 10, 2018. The Protecting Immigrant Families campaign has model comments and a link to submit comments available at <https://protectingimmigrantfamilies.org/>, as well as other information and materials. The ILRC has a model comment for the legal sector posted at <https://www.ilrc.org/public-charge>.

III. What is Public Charge?

Meaning of Public Charge; Proposed Changes

Under the law that is current at the time of publication of this practice advisory, public charge refers to the likelihood that an immigrant who is applying to enter the U.S. on a visa, or applying to become a Lawful Permanent Resident (LPR), will become “primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense.”⁵ The legal standard for determining whether or not an immigrant is likely to become a public charge is a forward looking totality of the circumstances test, that takes into account the immigrant’s age; health; family status; assets, resources, and financial status; and education and skills. The determination also takes into account an affidavit of support, when required from the immigrant’s sponsor. Use of cash public assistance for income maintenance, such as Temporary Assistance for Needy Families (TANF) or Supplemental Security Income (SSI), as well as institutionalization for long-term care at government expense, are considered in the totality of the circumstances determination and count against the immigrant. Nonetheless, the test is future looking; a person who used these benefits in the past may still overcome the public charge ground of inadmissibility, if they can show that they are not likely to primarily rely on these benefits in the future. Please see the ILRC’s practice advisory, *An Overview of Public Charge*, for a comprehensive overview of public charge.⁶

The proposed rule would expand the list of government benefits that count against the immigrant in the totality of the circumstances determination to include not only cash-based benefits but also Medicaid, the Medicare Part D low-income subsidy for prescription drugs, SNAP (formerly known as Food Stamps), and housing subsidies including Section 8. The proposed rule would also consider the use of a fee waiver for immigration benefits by the applicant to be a negative factor in the totality of the circumstances test. The proposed rule would implement harsh standards for personal circumstances, including negative weight for children, seniors, and individuals who have limited English proficiency, limited education,

<https://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-54070/0-0-0-54088/0-0-0-55744.html> (last visited Nov. 2018). See also USCIS Public Charge Fact Sheet (April 29, 2011), available at <https://www.uscis.gov/news/fact-sheets/public-charge-fact-sheet> (last visited Nov. 2018).

⁴ As proposed, the grace period only applies to the newly added government benefits that will be considered negative factors, as well as the use of immigration fee waivers. There is no grace period for benefits that have been considered negative factors since 1999 such as cash aid and long-term institutionalization.

⁵ See 1999 INS Field Guidance and USCIS Fact Sheet, referenced at footnote 3 of this practice advisory.

⁶ The practice advisory is available at <https://www.ilrc.org/overview-public-charge>.

medical conditions, or large families. Income below 125 percent of the federal poverty guidelines would be a negative factor. The proposed rule strongly favors immigrants with high incomes and includes a single positive factor, namely, a household income equal to or above 250 percent of the federal poverty guidelines. Again, these changes, which are not yet in effect, represent a drastic change from current DHS adjudication practice. This practice advisory will be revised should a new test apply.

Public Charge is a Ground of Inadmissibility

Public charge is a ground of **inadmissibility** under the Immigration and Nationality Act (INA § 212). The proposed rule interprets this ground of inadmissibility, found at INA § 212(a)(4). A very limited public charge ground of deportability, found at INA § 237(a)(5), also exists. The proposed rule does not pertain to the deportability ground.

Grounds of inadmissibility apply only at the time of admission: When an immigrant applies to enter the U.S. (entry) or applies to become a Lawful Permanent Resident (LPR) (adjustment of status); or when an LPR leaves the U.S. for more than 180 consecutive days and re-enters. Grounds of inadmissibility do not apply at the time of naturalization. However, if a naturalization applicant traveled *for more than 180 consecutive days* and was admitted back into the U.S., but was in fact inadmissible at the time they returned due to *any* ground of inadmissibility including public charge, the fact of entering when inadmissible could make the immigrant subject to removal. This could come up during the naturalization process. Note that this is true under existing law, and the proposed rule does not change this consideration. This practice advisory addresses best practices in screening naturalization applicants for travel-related issues, below.

This practice advisory focuses on the public charge ground of inadmissibility. The public charge ground of deportability, not at issue in the proposed rule, impacts permanent residents and others who have already been admitted to the United States. The grounds of deportability are the list of reasons an LPR could be charged in immigration court with being deportable. The deportation ground related to public charge is very different from the law discussed in this practice advisory. See INA § 237(a)(5). The public charge ground of deportability uses a different standard and has, to date, been applied narrowly and infrequently. LPRs subject to a ground of deportability go before an immigration judge who determines whether the permanent resident can remain in the U.S. Advocates who need assistance with a question related to the public charge ground of deportability may contact the ILRC's Attorney of the Day service or consult an ILRC manual.⁷

Only Some Immigrants are Subject to Public Charge

The public charge ground of inadmissibility applies to immigrants seeking to enter the U.S. or to adjust status to lawful permanent residence—in other words, it primarily applies to family-based immigrants. The public charge test does not apply to LPRs applying for citizenship (except if they were previously inadmissible, as discussed below). There is no public charge test for many groups of non-citizens, including refugees, asylees, survivors of trafficking or domestic violence, and others.⁸

⁷ Please see <https://www.ilrc.org/technical-assistance> for more information about the ILRC's Attorney of the Day service. The ILRC publishes a guide to removal defense law and practice, *Inadmissibility and Deportability*, available at <https://www.ilrc.org/publications/inadmissibility-deportability>.

⁸ Please see the ILRC's practice advisory, *An Overview of Public Charge*, for a comprehensive overview of public charge including the groups to whom it does and does not apply. The practice advisory is available at <https://www.ilrc.org/overview-public-charge>.

IV. There Is No Public Charge Test for Naturalization

The Eligibility Criteria for Naturalization Do Not Include Public Charge

General requirements for naturalization include:⁹

- Being at least 18 years old at the time of filing [Form N-400, Application for Naturalization](#).
- Being a permanent resident (having a “Green Card”) for at least 5 years, or 3 years if the applicant meets the criteria for marriage to a U.S. citizen.
- Living for at least 3 months in the state or USCIS district where the LPR applies.
- Demonstrating continuous residence in the United States for at least 5 years immediately preceding the date of filing Form N-400, or 3 if the applicant meets the criteria for marriage to a U.S. citizen.
- Showing physical presence in the United States for at least 30 months out of the 5 years (or 18 months out of the 3 years) immediately preceding the date of filing Form N-400.
- Being able to read, write, and speak basic English.
- Having a basic understanding of U.S. history and government (civics).
- Being a person of good moral character for at least 5 years, or 3 if the applicant meets the criteria for marriage to a U.S. citizen.
- Demonstrating an attachment to the principles and ideals of the U.S. Constitution, including taking the naturalization oath.

Advocates Helping Naturalization Applicants Must Still Screen for Issues Related to Public Benefits

Even though public charge is not part of the eligibility determination for naturalization, attorneys and legal advocates should carefully screen applicants for any red flag issues, especially when helping applicants who receive public benefits and are applying for a fee waiver for their naturalization application. While the fee waiver does not raise any separate concern, it might flag the use of benefits to the adjudicator and thus prompt more questions about receipt of benefits at the interview.

Advocates are screening to ensure the applicant did not trigger a ground of deportability, and to double check that the applicant has not fraudulently used benefits, which might also affect the good moral character determination. Generally, legal use of government-funded programs and the use of a fee waiver will not cause problems for the applicant, provided they have not left the U.S. for a trip a longer than 180 days.

Practice Tip: A red flag is any issue that may impact an LPR’s naturalization application, such as an issue that triggers a good moral character bar, or an issue that raises a concern that the naturalization applicant may be deportable. Inadmissibility due to public charge is only an issue for a naturalization applicant if it also raises an underlying concern about deportability. Technically, a person who is deportable may still naturalize, but under current guidance, USCIS is likely to refer such a person to immigration court to face charges of deportability. (In defense, the applicant can apply for relief before the immigration judge.)

⁹ For an overview of the requirements for naturalization, see USCIS Policy Manual Vol. 12, available at <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12.html> (last visited Nov. 2018); see also information on the USCIS Citizenship Resource Center, available at <https://www.uscis.gov/citizenship> (last visited Nov. 2018). The ILRC publishes a comprehensive guide to naturalization law and practice, *Naturalization and U.S. Citizenship: The Essential Legal Guide*, available at <https://www.ilrc.org/naturalization-and-us-citizenship>.

V. How Inadmissibility Can Affect an LPR

The public charge test discussed above is a ground of inadmissibility. A permanent resident who lives in the U.S. and never leaves is not subject to the grounds of inadmissibility. Instead, permanent residents within the United States are subject to a different set of rules, the grounds of deportability (INA § 237(a)). Although lawful permanent residents in the U.S. are only subject to the grounds of deportability, the public charge ground of inadmissibility can impact an LPR in one of three ways:

1. They travelled outside the U.S. for more than 180 days;¹⁰
2. They were actually inadmissible due to public charge at time of adjustment to LPR status (when they got their green card) and lied about it;
3. They are deportable for some other reason, and now want to apply to adjust status again in front of the immigration judge as a relief to removal.

Red Flag: Travel Outside the U.S. for more than 180 Days

An LPR can travel freely outside the U.S. without needing to be re-assessed for admissibility. An LPR is only subject to the grounds of inadmissibility upon return to the U.S. if they travel outside the U.S. and trigger one of the factors in INA § 101(a)(13)(C). This list includes committing certain crimes or having abandoned LPR status. In addition, **spending more than 180 consecutive days outside the U.S. triggers a full screen for admissibility when the LPR returns**, regardless of any other negative factors. For this reason, any LPR who stayed outside the U.S. for more than 180 days could have triggered a public charge inadmissibility issue, even if no other legal concern is present.

It is important for attorneys and legal advocates to understand that an LPR who traveled outside the U.S. for more than 180 days, and was inadmissible at the time of entry, could now be deportable for having been inadmissible at entry even if immigration authorities allowed them to enter. See INA § 237(a)(1)(A).

Example 1: LPR Vu takes a trip to Vietnam to visit his family. He stays for two weeks and returns. Even if the officers learn that Vu uses several public benefits and relies on support from the U.S. government, he can freely re-enter the United States. This is because Vu is an LPR and not subject to the public charge ground of inadmissibility.

Example 2: LPR Vu takes another trip to Vietnam, and this time stays to take care of his mother after surgery. He stays for 187 days and then returns to the United States. Because Vu was absent more than 180 days, he is now subject to the grounds of inadmissibility. Immigration officers could determine that he is inadmissible for being likely to become a public charge and place him in removal proceedings, charging him as inadmissible under INA 212(a)(4). Vu will have a chance to argue his case before the immigration judge.

Example 3: LPR Vu, who was absent from the U.S. for 187 days and then returns to the United States, is admitted into the U.S. even though he may have been inadmissible due to public charge. When he applies to naturalize, he faces the risk that he could be found to be deportable for having been inadmissible at the time of entry.

Practice Tip: In practice, attorneys and advocates are screening to see whether a naturalization applicant had an absence of more than 180 days, and would have been likely to have been barred on public charge grounds at the time they reentered the U.S.

¹⁰ By statute, an LPR is considered to be seeking a new admission if they trigger any of the conditions listed in INA 101(a)(13)(C), including committing certain crimes. In practice, if a separate issue such as crime, triggers the admissibility screen upon re-entry, public charge is not the main concern. However, merely being absent for more than 180 days triggers an admissibility screen, regardless of other behavior.

Red Flag: The LPR Was Inadmissible for Public Charge and Lied About It When They Became a Permanent Resident

If an applicant for naturalization was inadmissible at the time they were granted permanent resident status, USCIS will argue that they are not a lawful permanent resident. A person must have been properly granted lawful permanent resident status to meet the first requirement of being and maintaining LPR status for 5 or 3 years. Even if the LPR who now wants to naturalize could have been denied a green card on public charge grounds at the time they applied for permanent residence, it is unlikely to be a problem now if all pertinent information was disclosed at the time. If an immigrant disclosed all information to USCIS when they applied to become a Lawful Permanent Resident, including any information related to public charge, it would be very difficult for an officer, at time of a naturalization adjudication, to argue that the immigrant was inadmissible at time of adjustment for having been a public charge. The LPR's file would show documentation related to public charge, such as the affidavit of support, documentation of income, family ties, use of benefits, and other factors. The decision to grant LPR status is discretionary and advocates may presume that USCIS considered all factors, unless the immigrant lied. If the immigrant lied about one or more of these critical factors when they became an LPR, the factors related to public charge could come up as problematic at naturalization.

Example 1: When he was 19 years old and before he became an LPR, Raul was in an inpatient psychiatric hospital, and his institutionalization was paid for by Medicaid. Since then, he has been receiving effective treatment and has a job and a family. When he applied for his green card, he shared most of his medical history but did not disclose the institutionalization, because he was ashamed of it. Since becoming an LPR, he has had one more incident, which required six months of inpatient treatment. Raul now wants to apply to naturalize. Because Raul might have been found to be inadmissible on public charge grounds at the time he got his green card, and lied about an important factor, applying for naturalization now is risky. Raul's advocate should discuss the risks with him, and his options to readjust status if he moves forward with his naturalization application and is placed in removal proceedings.

Example 2: LPR Khalida received cash assistance from a government program a year before she applied for and was granted her green card. At the time she applied for permanent residence, she was no longer receiving cash assistance, and she also disclosed her past use of the benefit. USCIS granted Khalida's green card. Khalida faces little risk in applying for naturalization. Even if she uses benefits now, she will be able to show that all factors were disclosed at the time of her green card application—she will argue that the officer made a proper discretionary determination.

Relief in Immigration Court: Readjusting Status

If an LPR becomes deportable for any reason, one possible defense from deportation is an application to readjust status to become a lawful permanent resident again. This is a possible relief where the issue of deportability is either not a ground of inadmissibility, or when a waiver of the inadmissibility ground is possible, such as with certain aggravated felonies. It might also be possible relief where there was a legal error in the initial adjustment. If readjusting status is the relief sought from removal, the applicant will have to show admissibility, including that they are not likely to become a public charge.

Example: Marc becomes deportable for having been inadmissible at time of entry. It turns out USCIS thought they had jurisdiction over his adjustment of status application whereas in fact jurisdiction was with the court. Marc did not seek legal assistance when he applied to naturalize and was placed in removal proceedings. Now, Marc is back in front of an immigration judge and needs to adjust status. Luckily, he is married to a United States citizen who can file a new visa petition for him. Any grounds of inadmissibility, including public charge, could bar Marc from readjusting status even though he was previously an LPR.

VI. Effect of the Proposed Rule on the Inadmissibility Analysis for a Naturalization Applicant

As noted above, the proposed rule is just a proposal. It has no force of law at this time. Even if the proposed rule were published as final and implemented, its effect will not be retroactive.¹¹ If or when the proposed rule goes into effect, advocates assisting with naturalization applications will need to screen LPRs who traveled after the rule went into effect and have long absences (more than 180 days), to ensure they were not inadmissible at the time of entry for using a newly-considered public benefit such as Medicaid or SNAP. Of course, traveling outside the U.S. for more than 180 days will already have put the LPR at risk of a heightened inadmissibility screen upon return.

VII. Good Moral Character and Public Benefits

Good moral character is an eligibility factor for naturalization. It has nothing to do with public charge or the proposed rule defining public charge. However, naturalization applicants who are applying for a fee waiver based on receipt of a public benefit should receive a legal screening to ensure their use of public benefits does not trigger a good moral character bar, or even a crime bar, specifically related to fraudulent receipt of public benefits. It is a best practice to screen naturalization applicants who are applying for fee waivers for any good moral character issues arising from the improper use of the benefit.

Heightened Scrutiny for LPRs Who Traveled

A naturalization applicant who receives a government benefits and traveled out of the country for more than one calendar month should be screened for potential public benefits problems such as an SSI overpayment, a SNAP (Food Stamps) overpayment, or failure to report the travel to the human services agency. These situations could trigger a good moral character discretionary factor or even a finding of actual fraud. Any conviction for violating laws relating to public benefits, such as “welfare fraud,” requires a separate analysis to determine whether the applicant might also be deportable on a crime ground.

Practice Tip: Good moral character issues involving public benefits could arise even for short absences lasting more than one calendar month. Screening for good moral character is different from screening for inadmissibility after to a long absence. Advocates who identify a potential good moral character issue involving public benefits can partner with a public benefits attorney from a local legal aid office to resolve the issue.

VIII. Best Practices for Naturalization Workshops

At a naturalization workshop, it is essential to screen naturalization applicants to see whether their past use of public benefits could be an issue for their naturalization application. Best practices include:

1. Screen all applicants for absences of more than 180 days, which trigger the grounds of inadmissibility including public charge. This is true for all applicants, and especially naturalization applicants who are also applying for a fee waiver on the basis of public benefit receipt, which could open a line of questioning at their naturalization interview. **This is not a new recommendation.** Careful screening for long absences is a best practice under current law, and will continue to be a best practice if or when the proposed public charge rule is implemented. Applicants

¹¹ In the unusual, but possible, event that an LPR left the U.S. before the proposed regulation went into effect, but returned to the U.S. after the final regulation was published and went into effect, and after the expiration of the regulation’s grace period, then the LPR could be subject to the new rule at the time of their reentry to the U.S. This would only apply if the LPR was absent for more than 180 days. It is an unlikely scenario but one that advocates should consider when screening for long absences.

with long absences should already be getting an in-depth legal consultation to explore not only public charge but also other potential issues.

2. Screen all applicants who use public benefits, in particular applicants who are applying for a fee waiver on the basis of receipt of a public benefit, for any good moral character issues related to misuse of a benefit. Even short absences could be a red flag for improper receipt of a public benefit while out of the country.
3. Advise naturalization applicants that using fee waiver could trigger inquiry into their public benefit and travel history, but without creating unnecessary fear. Because the fee waiver is such an important and essential tool to allow many LPRs to access all the benefits of U.S. citizenship, advocates should ensure they can continue to help LPRs with fee waivers by implementing rigorous red flag screenings, and paying particular attention to training fee waiver station staff and volunteers.
4. To avoid having an absence of more than 180 days trigger a public charge problem, is it also a best practice to advise naturalization applicants to avoid absences of over 180 days between the time they apply and the time they naturalize. This is a good practice not only to avoid public charge problems but also to avoid triggering other potential grounds of inadmissibility.
5. Note that the proposed public charge rule expands significantly the categories of benefits that could trigger a finding of public charge (as compared to the 1999 guidance, which focuses on cash aid and long-term institutional care). If or when the proposed rule goes into effect, screen for use of an expanded set of public benefits.

Practice Tip: There are many issues in a naturalization application—such as crimes, good moral character, how the LPR obtained their green card, absences, and more—that could lead to a negative outcome for the applicant, ranging from a denial of the application to deportation. Public charge is not unique in that respect. Some New Americans Campaign partners require all applicants at workshops to sign a limited scope agreement, examples of which are available from the New Americans Campaign at <http://naturalization.ning.com/page/group-processing-resources#5>. For example, CUNY Citizenship Now!'s limited scope agreement states, “We assume no responsibility for the outcome of your case and we cannot guarantee results.” Nothing about public charge suggests the need to treat the issue differently from the myriad issues that may arise in a naturalization case.

IX. Fee Waivers for Naturalization as a Standalone Public Charge Factor

The proposed rule on public charge would consider the use of an immigration fee waiver to be a negative factor in the totality of the circumstances analysis—in other words, a factor that would suggest the immigrant is likely to become a public charge.¹²

However, an LPR who is applying to naturalize is not subject to a public charge bar for using a naturalization fee waiver. This is because there is no public charge test at naturalization. Additionally, the fact that one family member uses a fee waiver to apply for naturalization does not count against another family member who may be applying for a green card in the future. The proposed rule would only consider the applicant's own prior use of an immigration fee waiver (or use of a fee waiver by the beneficiary of the immigration petition). Therefore, using a fee waiver to apply for naturalization is irrelevant to concerns about public charge.

¹² The current draft regulation would consider both application for and receipt of an immigration fee waiver to be negative factors.

The only situation in which use of a fee waiver to apply for naturalization could come up as a public charge concern for an immigrant is in the event that the naturalization applicant was denied naturalization on some *other* ground (unrelated to public charge) and put into removal proceedings. Then, if they applied to readjust as a defense to removal, the prior use of an immigration fee waiver would be one factor in the new public charge assessment. (See section above on Relief in Immigration Court: Readjusting Status.) In practice, this is unlikely to be a significant concern for attorneys and legal advocates who are helping LPRs apply for naturalization, as a rigorous red flag screening should have identified any risks of deportability and the LPR should have been advised against applying for naturalization if they were otherwise deportable. Additionally, this discussion considers the speculative application of the proposed rule. It is important to keep in mind that the legal effect of the fee waiver provision is not yet determined.

Practice Tip: Even though using a fee waiver with a naturalization application does not raise public charge concerns, using a fee waiver based on receipt of public benefits could open up a line of questioning related to travel and use of benefits. See Best Practices for Naturalization Workshops, above.

X. Effect of Public Charge on a Naturalization Applicant's Ability to Sponsor a Family Member After Becoming a U.S. Citizen

A naturalization applicant who uses fee waiver in their naturalization application and then as a citizen wants to petition for, and sponsor a family member can do so. There is no public charge test for the sponsor of a family-based immigration petition. The public charge test applies to the beneficiary of the petition. Therefore, the fact that the sponsor, who is now a citizen, may have used a fee waiver to apply for naturalization, does not affect their ability to sponsor a relative. The proposed rule on public charge does not change this.

Use of a public benefit by the sponsor is currently only a factor in the context of consular processing, and even in that context does not include use by the sponsor of an immigration fee waiver.¹³ The proposed public charge rule does not consider public benefit use by the sponsor as part of the affidavit of support. Nonetheless, a sponsor who qualifies for a fee waiver or a public benefit may also have trouble meeting the requirements of sponsorship because they may also lack the required income and resources for the affidavit of support. This should not deter a prospective sponsor from using a fee waiver to naturalize—the sponsor person may still petition for a family member and a joint sponsor can help the family meet the public charge requirements.

Example: LPR Priya is applying to naturalize and qualifies for a naturalization fee waiver. She applies for naturalization with the fee waiver and becomes a U.S. citizen. She later petitions for her mother to immigrate to the United States and submits an affidavit of support as her sponsor. The fact that Priya used a fee waiver to apply for naturalization does not count against her mother's green card application or bar her from immigrating. The fact that Priya needed a fee waiver, however, suggests she may not have sufficient financial means to meet the requirements for being a sponsor. The petition may require a joint sponsor or other evidence to counter the possibility that Priya's mother will become a public charge. Remember that the current standard for public charge only considers the likelihood of becoming dependent on cash aid or institutional care at government expense.

¹³ For more information about public charge changes to consular processing, please see the ILRC's *Consular Processing Practice Alert on Public Charge and Affidavit of Support Issues*, available at <https://www.ilrc.org/consular-processing-practice-alert-public-charge-and-affidavit-support-issues>.

Notes and Additional Resources

The state of the law on public charge is in flux due to the proposed rule. ILRC will be continuing to track new developments related to public charge, as well as specific issues relating to naturalization.

- Please check the ILRC website at <https://www.ilrc.org/public-charge> for updates to this practice advisory and other materials.
- ILRC Community Resource (Infographic) on [Public Charge: Your Questions Answered](#)
- ILRC [Consular Processing Practice Alert on Public Charge and Affidavit of Support Issues](#)
- ILRC [An Overview of Public Charge](#)
- [Protecting Immigrant Families](#) website
- Protecting Immigrant Families resources on how to talk to families about public charge, available at <https://protectingimmigrantfamilies.org/resources/>. Resources include NILC's <https://www.nilc.org/issues/economic-support/how-to-talk-about-public-charge-pif/>.



San Francisco

1663 Mission Street, Suite 602
San Francisco, CA 94103
t: 415.255.9499 f: 415.255.9792

ilrc@ilrc.org www.ilrc.org

Washington D.C.

1015 15th Street, NW, Suite 600
Washington, DC 20005
t: 202.777.8999 f: 202.293.2849

About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.