**Public Charge –**

**Quick Reference Chart to Assist Immigrant Clients Seeking/Receiving Benefits during the Pendency of the Proposed “Public Charge Rule”**

*MLRI Basic Benefits Training (BBT) Series Immigrants & Benefits Session Handout, 3-27-19*

**Overview**

With the exception of a January 2018 change in the U.S. Department of State’s public charge policies for consular visa processing cases, public charge laws, regulations, case law, and policy have not changed as of this date, and former Department of Homeland Security (DHS) public charge guidelines published by the former INS in 1999 remain in effect. (The link to these guidelines and the other policies referred to in this Quick Chart is in the BBT materials list.)

*Proposed* USCIS public charge regulations published in October 2018 have led to an increase in questions from immigrant clients about whether they should apply for or dis-enroll from safety net programs they and/or family members may receive or have received, as well as questions about how past receipt of these benefits may affect prospects for adjusting status, attaining other status, or protecting status. The following questions can be discussed with immigrant clients to help them make informed decisions about their benefits. Every represented immigrant client should be encouraged to discuss these questions with his/her/their attorney before making any decision. Additional materials useful for lawyers dealing with these matters are also available free of charge from MLRI by contacting Iris Gomez or Deirdre Giblin (contacts are in the BBT materials.)

Whether or not an immigrant will face public charge consequences in seeking one or more immigration statuses, or protecting the status the person now has, depends on an assessment of multiple risk factors beyond those involving the receipt of benefits, for example, factors like employment, income, and education. Also, benefits dis-enrollment may not be necessary or in an immigrant’s best interest, since the surrender of critical safety net benefits such as health care or nutrition benefits may have harmful long-term personal consequences for the client and/or his/her/their loved ones, apart from a legal immigration consequence. Some benefits may help an immigrant avoid a negative public charge determination – if evidence can be secured to show how receiving the benefits improved the person’s current and future ability to be self-sufficient.

**Key Questions for Clients Who Express Concerns about Receiving Benefits**

In order to assist an immigrant in making an informed decision about whether his/her/their risk of an adverse public charge determination outweighs the need for safety net benefits, it is helpful to determine at least 4 things:

1. What kind of benefit is it?

Immigrants may seek/receive benefits that do or do not entail a public charge risk, as described in the BBT PowerPoint handout and other materials, as follows:

1. Cash benefits for income maintenance purposes that *do* factor into public charge determinations under current policies;
2. Benefits that are *not relevant* to public charge inadmissibility determinations, even under the proposed 2018 rule; and
3. Benefits that *may factor* into such determinations, if the 2018 proposed rule is published as a final rule, depending on the timing, amount, and duration of relevant benefits received.

There is a Quick Chart of these benefits on page 4 below. (See the BBT materials for more detail.)

1. What is the immigrant’s current status and/or what status will the person be seeking?

Immigrants may have a status that is or is not affected by public charge rules. (See the BBT PowerPoint.) Some immigrants with an exempt status may seek a superior status that *is* affected by public charge rules, while others may have a *choice of statuses* – some of which may entail public charge consequences and some of which may not. These choices should be discussed with an immigration attorney.

It is helpful to determine whether an immigrant seeking status falls into the following situations before assessing a public charge risk for receiving a relevant benefit:

-Seeking “adjustment of status” to LPR (“green card” holder) via family relationship or other pathway that is *not* exempt from public charge and may therefore entail a public charge risk, depending on the timing issues in number 3 below and a more complete assessment of public charge risk factors by an immigration attorney.

-Seeking “adjustment of status to LPR (“green card” holder) through a public charge exempt pathway which therefore entails no public charge risk to obtain that particular status.

-Seeking another type of non-LPR status (e.g. asylum) that is exempt from public charge and therefore entails no public charge risk to obtain that particular status

-Seeking a non-LPR status that is *not* exempt from public charge and may therefore entail a public charge risk, depending on the timing issues in number 3 below and a more complete assessment of public charge risk factors by an immigration attorney.

-Seeking “consular processing” for an immigrant visa abroad based on family relationship or other consular processing that is not exempt from public charge. Whether an immigrant must seek consular processing is a complex question that should be discussed with an immigration attorney.

3. What is the Timing/Duration/Amount of Each Relevant Benefit Received & Timing of Filing/Adjudication of Status Application to Which Public Charge Rules Will Apply?

* When will the immigrant be applying for status or expect to be interviewed for a status to which public charge rules apply?
* For what periods has the immigrant been receiving each of the benefits?

If an immigrant is applying for status now and likely to be interviewed at any time prior to publication of a final public charge rule, *if* one is ultimately finalized by DHS, *current* public charge rules, including those distinguishing the receipt of cash versus non-cash benefits, must continue to apply. Even if a rule is finalized, immigrants will have additional time to decide whether to dis-enroll from any of the noncash benefit programs covered by the final rule, which will apply only to those covered non-cash benefits received 60 days after the rule is published.

Additionally, the rule contains minimum thresholds for receiving non-cash benefits in order for them to count, and some immigrants may be able to retain their benefits for a limited period beyond the 60-days. There are two significant thresholds for any of these newly added non-cash benefits to count.

-For a single non-cash benefit that can be quantified (a “monetizable benefit”), the threshold would be 15% of the poverty level for a single person (currently $1,821) in a 12-month period. Those benefits are: SNAP (food stamps) and Federal housing - Section 8 program & other covered housing except Public Housing. But the 15% threshold will also apply to cash benefits that already counted under existing public charge guidelines.

-For a single non-cash benefit with an undetermined value (a “nonmonetizable benefit”), the limit would be 12 months in a 36-month period, or 9 months if a person received both kinds of benefits (monetizable and nonmonetizable). The nonmonetizable benefits are: Non-emergency Medicaid, Medicare Part D/fully insured, and Federal housing - Public Housing program. The receipt of two nonmonetizable benefits in one month counts as two months, and long-term care at government expense, which is already included under current public charge guidelines, is also a nonmonetizable benefit.

These minimum thresholds mean a client who has received a single benefit in either category (monetizable or nonmonetizable) will have some additional time after the 60 day period expires to make a disenrollment decision, if needed. For a client who received both a monetizable benefit and a nonmonetizable benefit, the 15% threshold will likely be exceeded before the durational one. For a client who has received multiple benefits, including the monetizable cash benefits that already count, the thresholds are of less utility.

4. What Evidence of Positive Impact of Benefits Received Exists, if Public Charge May Apply?

* How has receipt of benefits improved client’s ability to be self-sufficient now and in the future?

Some examples of evidence that could be developed to help immigrants show that receiving certain benefits improved self-sufficiency include those that improved his/her/their health, allowing the immigrant to work, or that provided new work skills and experience:

-HUD, the federal agency responsible for housing programs the proposed rule would add, offers tenants many employment-enhancing programs, including: HUD Secretary Ben Carson’s recently unveiled Envision Centers to offer HUD-assisted families access to support services “that can help them achieve self-sufficiency . . .”; HUD’s Jobs Plus program “…which consists of employment services, financial incentives and community supports… associated with increased annual earnings for nondisabled, working-age residents”; HUD’s Family Self Sufficiency Program; HUD’s Section 3 program; and HUD’s Family Investment Centers.

-A working disabled program that is covered by Medicaid enables individuals with disabilities to work without risking loss of the benefits and supports that make work possible.

Individuals who obtained benefits while in an exempt status but are now seeking a status that is *not* exempt from public charge should be encouraged to consult an immigration attorney for assistance in determining whether the humanitarian Congressional purpose behind the exemption should protect the immigrant from a negative public charge determination on that basis and may be able to show how the benefits supported their recovery from the conditions that made them eligible for that status (e.g. domestic violence or persecution.)

**Quick Chart on Public Benefits Eligibility & Public Charge Issues in Light of by Proposed 2018 Public Charge Rule**

**Type of Benefit** **Is Immigrant Eligibility Restricted?** **Public Charge Inadmissibility?**

|  |  |  |
| --- | --- | --- |
| Cash Benefits  -Federal: SSI & TANF  -State: EAEDC | Yes – see NILC eligibility chart  Yes – see MLRI Cash/FS Chart | Yes- both USCIS & DOS apply public charge inadmissibility to these types of benefits |
| Non-Cash Benefits in Proposed USCIS Rule:    -Medicaid (non-emergency)  -Medicare Part D (low-income subsidy)  -SNAP (Food Stamps)  -Federal Housing | Yes – see MLRI ACA summary  & chart listing which MassHealth programs are Medicaid  Yes – see NILC eligibility chart  Yes – see MLRI Cash/FS chart  Yes – see MLRI housing handout | USCIS does not apply public charge inadmissibility to these types of benefits but would if the Proposed Rule were finalized, to these types of benefits if received after the effective date  DOS now considers past receipt of these types of benefits in the totality of circumstances to determine likelihood of receipt of cash benefits in the future |
| Non-cash Benefits *not* in Proposed USCIS Rule | Some are restricted & others are not | USCIS does not apply public charge inadmissibility to these types of benefits and would not do to these types of benefits if received after the effective date  DOS now considers past receipt of *some* of these types of benefits in the totality of circumstances to determine likelihood of receipt of cash benefits in the future |
| Other Benefits not in rule  -earned benefits:  OASDI (Social Security)  Unemployment  Veterans benefits  Government pensions | Restrictions vary | No. Neither USCIS nor DOS apply public charge criteria to these benefit programs |