

PUBLIC CHARGE AND IMMIGRANT PARTICIPATION IN WIC: FREQUENTLY ASKED QUESTIONS

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BACKGROUND ON PUBLIC CHARGE

1. What is public charge?

Public charge is an element of immigration law that allows federal authorities to deny legal status to individuals who are determined to be primarily dependent on the government for subsistence. The federal government has long held a narrow view of public charge, limited only to individuals receiving cash assistance for income maintenance (such as the TANF program) or institutionalization for long-term care at government expense (such as certain long-term programs through Medicaid). Use of government programs like WIC has never before been considered in a public charge determination.

Public charge determinations are conducted according to a “totality of the circumstances” test. This means that immigration officials will consider a variety of factors – including an immigrant’s age, health, family status, assets, resources, financial status, education, skills, and use of certain public benefits.

2. What changed on February 8, 2018?

On February 8, 2018, news organizations reported that the Department of Homeland Security (DHS) had drafted a proposed rule that would expand the public benefits considered in public charge determinations.

3. What would the proposed rule change?

The proposed rule would expand the public benefits that could be considered under the totality of the circumstances test to include a wide range of public assistance programs, including WIC, health insurance subsidies under the Affordable Care Act, Medicaid benefits, SNAP, CHIP, Section 8 housing vouchers, and Head Start education programs. Such use would be considered a “heavily weighted negative factor” which could be used to deny an immigrant legal status. It does not automatically disqualify an immigrant from attaining legal status, and it does not subject an immigrant to deportation. Nonetheless, the inclusion of vital programs like WIC in the definition of public charge is an alarming step.

4. **Has the law changed?**

NO. The information published on February 8 does not have legal weight and is not yet federal policy. Federal rulemaking takes several months to complete and WIC clinics will have some notice as to when a rule will be completed and have legal effect. Although the Administration signaled that it does not intend to formally propose the rule until July 2018, regulatory action could begin as early as next month.

5. What are the next actions that will be taken?

Drafts of this proposed rule do not change policy, but they do create a chilling effect that leaves immigrants afraid to utilize vital services like WIC that they are legally permitted to use. The next formal action to be expected is for DHS to submit the proposed rule to the White House’s Office of Management and Budget (OMB). OMB must approve the rule before it can be formally proposed. Once the rule is formally proposed, DHS must provide notice to the general public, so that advocacy groups

can be prepared for any rules changes and inform WIC clinics about the new rules. There will also be a comment period, so that interested parties can express their dissatisfaction with any proposed rule changes and hopefully convince DHS that this change should not be implemented as it would have detrimental effects on public health. The rule does not have legal effect and the definition of public charge does not change until after notice-and-comment. DHS must then respond to the submitted comments, consider revisions, and undergo other administrative processes before issuing a final rule.

6. When do immigration officials conduct a public charge determination?

Public charge determinations occur when an immigrant is petitioning the government for a change to their legal status. This includes petitions for a green card and legal permanent residency. The proposed rule would NOT apply to naturalization proceedings, which is when an immigrant petitions for citizenship status. Nonetheless, gaining legal status or legal permanent residency is a critical step on the path to citizenship and public charge determinations can delay or deprive immigrants of the opportunity to eventually become citizens.

7. Would the proposed rule apply to all immigrants?

NO. The proposed rule would not affect naturalization proceedings, which is when an immigrant petitions for citizenship status. It would also not apply to certain humanitarian immigrant groups, including refugees, asylees, and Violence Against Women Act self-petitioners.

PUBLIC CHARGE'S IMPACT ON WIC PARTICIPATION

1. Do these actions mean that participating in WIC could hurt my immigration status?

NO, nothing has changed. If you were on WIC before, you should continue to be on WIC. The administration is just beginning to consider whether to change the rule – that process is long and takes several months. WIC clinics will have advance notice and be able to advise you if and when there is a policy change that will result in consequences or barriers to adjusting your immigration status. In addition, the current proposal would not punish participation that predates the rule going into effect. Therefore, if you are participating now, it would not cause consequences in the future.

2. Does WIC keep records of my personal information, including my address?

WIC maintains personal information in your participant file, including your address and contact information. With limited exceptions, this information is used only for the purposes of administering the WIC program. ***WIC agencies and clinics are bound by federal regulations to maintain the confidentiality of participant data and personal information.***

3. Does WIC collect information about my immigration or citizenship status?

NO. WIC clinics and agencies do not inquire or collect information about a participant's immigration or citizenship status. The only exception is the state of Indiana.

4. Does WIC share my information with immigration authorities?

NO. Federal regulations restrict the sharing of information collected by WIC to ensure participant privacy, and this information is generally only shared with other parties when necessary for the administration of the WIC program. WIC clinics and agencies do not share personal participant information with immigration authorities, including ICE or USCIS.

5. Do I have to respond when WIC asks whether I am registered to vote?

NO. WIC staff will often ask new participants whether they are registered to vote as part of a broader effort to encourage civic participation. This question is not intended to detect citizenship or immigration status. Since only US citizens over the age of 18 are permitted to vote, immigrant participants may be concerned about answering this question. **No one is legally required to answer this question as a condition of WIC eligibility.**

6. Does my participation in WIC affect the ability of my family members to change their immigration status?

NO. The proposed rule has not gone into effect and is not national policy. However, the leaked draft does indicate that an immigrant's family status and the use of benefit programs by a family member – including a U.S. citizen child – could affect an immigrant's petition for legal status. This will only come into effect if the rule is formally proposed and adopted by the administration.

7. My lawyer is telling me that I should no longer participate in WIC. What should I do?

Lawyers will often exercise caution, especially in a time of uncertainty. Lawyers may be unfamiliar with the fact that WIC is legally available to all eligible women and children – regardless of immigration status (8 U.S.C. § 1615(b)). Other nutrition programs (like SNAP) have eligibility restrictions on certain immigrants, and attorneys may confuse and conflate the different programs. It is worth having a more detailed discussion with your lawyer and consulting your WIC staff before denying yourself access to WIC benefits. The draft of a proposed rule on public charge also indicates that the rule will not apply retroactively. Past or continued use of WIC before any formal change to the rule will not be considered for immigration purposes. Therefore, immigrant participants should not leave WIC unless the administration takes formal action. WIC staff and immigration lawyers will have ample notice of any formal action and be able to advise participants accordingly.

8. If I choose to terminate my participation in WIC, should I return unused food checks, breast pumps, or other benefits I received from WIC?

NO. Past use of WIC benefits are not likely to be considered in any public charge determination. You should be able to use any benefits that were issued to you before a formal change to the rule without any consequence to your immigration status. Only rental pumps must be returned, single user pumps do not.

9. If I choose to terminate my participation in WIC, can WIC delete records of my prior use of the program?

NO. WIC clinics or agencies generally cannot delete WIC records, including those of past participation and receipt of benefits. However, WIC records are bound by privacy rules and are not shared with other agencies for purposes outside of the administration of the WIC program, with limited exceptions. Even

though WIC cannot delete your participant file, it should not be shared with ICE, USCIS, or other immigration officials.

10.If the proposed rule goes into effect, will I need to pay back WIC for all of the benefits I've received?

NO. In January 2017, there was a leaked draft executive order that indicated an immigrant's sponsor would have to pay back any and all benefits received by the immigrant participant. This was not a viable document and was not issued and has no legal effect. That language is not included in draft for rulemaking that was published on February 8, 2018. As a result, we do not anticipate that idea will be advanced.