Public Charge

On January 27, 2020, the U.S. Supreme Court lifted a nationwide injunction from October 11, 2019 that had prevented the enforcement of new public charge rule from the U.S. Department of Homeland Security and the U.S. Department of State. These new regulations redefine the terms and conditions of the public charge basis for inadmissibility and will now be enforced as of 02/24/2020.

What is “public charge” and how does it work in U.S. immigration?

Long a part of the U.S. immigration system, the term “public charge” can be broadly defined as someone who relies on the U.S. government for support. As a nonimmigrant (F, J, H, and O) you are obliged – and have always been obliged - to show that education and living expenses can be met while you are in the U.S. – including the living costs of your dependents (children and spouse), so as not to be considered a “public charge”. When you cannot meet this obligation, and rely upon certain designated public services for subsistence, a Consular Officer abroad, an adjudicator at the USCIS or even a CPB officer at a port-of-entry may deny you entry or other benefits if it is determined that you may become dependent on U.S. government services, “at any time” in the future.

What is the “new” public charge rule?

The new rule redefines the terms and conditions of the public charge ground of inadmissibility. The new rule expands the list of public benefits (see below) and how officers make decisions about public charge. The most significant change over the existing public charge rule is that the use of Medicaid and food stamps will count against an applicant (with certain exceptions -see number 5 below). Under the new rule, a “public charge” is now defined as “an alien who receives one or more public benefits” and may use designated benefits “for more than 12 months in the aggregate within any 36-month period” (which is calculated so that the use of two benefits in one month counts as having received two months of benefits).

What are the public benefits that count towards inadmissibility?

Below is the new list which count as public benefits in the new rule towards inadmissibility:

1. Any Federal, State, local, or tribal cash assistance for income maintenance (other than tax credits), including:
   - (i) Supplemental Security Income (SSI);
   - (ii) Temporary Assistance for Needy Families (TANF); or
   - (iii) Federal, State or local cash benefit programs for income maintenance (often called “General Assistance” in the State context, but which also exist under other names);

2. Supplemental Nutrition Assistance Program (SNAP) (commonly known as “food stamps”);

3. Section 8 Housing Assistance under the Housing Choice Voucher Program, as administered by HUD;

4. Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation) under Section 8 of the U.S. Housing Act of 1937;

5. Medicaid under 42 U.S.C. 1396 et seq., except for:
   - (i) Benefits received for an emergency medical condition as described in 42 U.S.C. 1396b(v)(2)-(3), 42 CFR 440.255(c);
   - (ii) Services or benefits funded by Medicaid but provided under the Individuals with Disabilities Education Act (IDEA);
   - (iii) School-based services or benefits provided to individuals who are at or below the oldest age-eligible for
secondary education as determined under State or local law;
- (iv) Benefits received by an alien under 21 years of age, or a woman during pregnancy (and during the 60-day period beginning on the last day of the pregnancy).


Who would be affected by these changes at Yale?

Those in F-1, J-1, H-1B and O status who have used public benefits on the list above for more than 12 months in the aggregate within any 36-month period may be affected if they:

- Apply for a change of status (e.g. F-1 to H-1B) or extension of status (e.g. H-1B, O)
- Apply for admission to the U.S. as a nonimmigrant or immigrant (e.g. F-1, J-1, H-1B, O, green card)

Some of the public benefits currently allow international students and scholars to use them. If we can use them, and do use them, will this still impact us negatively?

The answer is yes! Some social services are indeed made available to internationals, but accepting them may make you vulnerable to a public charge determination and the resulting adverse consequences. It is also important to remember that agencies like the Department of Homeland Security cooperate with social service agencies and will be able to obtain information on those who have availed themselves of these services.

The following resources can provide guidance on the public charge issue:


Disclaimer: This page does not constitute legal advice. As this is a complicated issue, OISS strongly recommends anyone under Yale visa sponsorship considering the use of public services consult an attorney before doing so.

H-1B/O-1 Employees

On February 24, 2020, new Homeland Security rules came into effect requiring employers who file form I-129 on behalf of nonimmigrant temporary workers to report the use of or certification for certain public benefits as of February 24. Employees at Yale who will be getting a change of status or extension of stay are subject to this reporting requirement, and Yale is obliged to collect information about their use or non-use of public benefits, and include that information as part of the documentation submitted to the Department of Homeland Security, Citizenship and Immigration Services, in the petition.

Unfortunately, OISS is not able to answer any questions about how to complete the questionnaire or evaluate what type of benefits would count as a public charge. For assistance, the employee can contact an immigration attorney or utilize the resources noted above.

Source URL: https://oiss.yale.edu/immigration/h-1b-temporary-worker/public-charge

Links:
[1] https://asianlawalliance.org/