



A CLOSER LOOK AT PUBLIC CHARGE POST-ELECTION

This resource breaks down what we can anticipate from the incoming administration as it pertains to public charge.

DECEMBER 2024

THE LATEST ON PUBLIC CHARGE:

The new president cannot quickly change public charge law. Any proposed changes will take time, and we will have a lot of advance notice.

Until then, the [Biden rule](#) that went into effect on December 23, 2022 remains in effect. Under this rule, health care programs, including Medicaid and COVID care, housing, food programs, and many other vital services [are safe to use](#). Only applicants deemed likely to be primarily dependent on cash aid for income maintenance or long-term care at government expense could be denied for public charge.

Remember, the public charge test only applies to some programs and some immigrants; a new president cannot change this.

- It never applies to U.S. citizens, including the U.S. citizen children of immigrants.
- It also doesn't apply to most people with a green card, or asylees, refugees, people with U visas, T visas, VAWA, and many others.

*If you are leaving the United States to do an immigration process at a consulate, it is important to check in with your legal provider before leaving under the new administration.

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STEPS A SECOND TRUMP ADMIN CAN TAKE ON PUBLIC CHARGE:

- **Negative rhetoric:** Trump and others in his administration will talk a lot about immigrants and public charge, but just talking about it does not change the law.
- **Litigation:** States could file a lawsuit again challenging the Biden rule on public charge that is currently in effect, but the last time Texas and other states tried to do this, they were denied based on having no legitimate basis to sue (“standing”) so they would have to overcome that hurdle if they try again.
- **Rulemaking:** Trump could try to do a new rule on public charge that would replace the Biden rule, but this will take time. Rulemaking to replace the Biden public charge rule will require the Trump administration to start a new rule process from scratch. The law requires advance notice of any proposed changes and the opportunity to comment. Extensive comment campaigns, like with the last Trump rule, can delay a final rule. Litigation can also delay implementation of a new final rule.

WHAT CAN BE CHANGED RIGHT AWAY?

The easiest and quickest thing for a new president to change would be to start talking negatively about immigrants and public benefits again. Just talking about it instills fear and creates a *chilling effect*. We saw this happen under the previous Trump administration when people dis-enrolled or did not enroll in public benefits programs for themselves or their children out of fear about public charge (regardless of whether they were actually subject to public charge or the public benefits programs they were using raised a public charge concern).

Additionally, although the Biden administration created a final rule on public charge inadmissibility that applies to U.S. Citizenship and Immigration Services (USCIS) decisions, there is no comparable rule for public charge determinations at U.S. consulates or embassies abroad. Small changes to policies for making decisions

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about public charge in consular cases could impact these cases. Even so, we expect consulates to follow the definition of public charge that appears in the current rule that applies to USCIS cases. Under that rule healthcare, housing, and other vital safety net programs are [safe to use](#).

WHAT WILL TAKE TIME TO CHANGE?

In order to change the public charge rule that applies to adjustment of status cases decided by USCIS, the new administration will have to engage in *rulemaking* which requires a lengthy process including a public comment period before any new rule is finalized.

CURRENT RECOMMENDATIONS FOR COMMUNITY MEMBERS:

Continue using the public benefits programs you and your family qualify for and need! If you have questions about how it might impact your immigration situation, contact a trusted legal services provider. To find free or low-cost assistance go to ilrc.me/gethelp.

Also, keep updated on changes to public charge at <https://www.ilrc.org/pc-updates>.

Are you a California Community College (CCC) or a California State University (CSU) student? If so, you qualify for **FREE** immigration legal services!

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