

PUBLIC CHARGE & FARMWORKERS

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Agenda

- Overview of U.S. farmworker population
- Overview of Public Charge
- What's in the final rule
- How the final rule will affect farmworkers
- Resources
- Questions

Who are Farmworkers

- **~2.5 million** workers in the U.S.
 - Approximately 4 million people including **farmworker families**
- **76%** of workers are foreign-born **
 - 69% from Mexico, 6% from Central America, 1% from other regions
- **More than half (~51%)** of workers have work authorization **
 - Approximately 5-10% of farmworkers nationwide are H-2A workers

Who are H-2A Workers

- H-2A workers are in the U.S. on nonimmigrant (temporary) visas
 - Must work for employers who sponsor them
 - Allowed to work in the United States for up to 10 months
 - Minimum wage required – may vary by state
 - Employers provide housing, transportation to and from their home country, workers' compensation insurance, among other protections.
- Vast majority are from Mexico
- Most are men between 18 and 35 years old
 - Not allowed to bring other family members with them
- H-2A workers do not have a path to citizenship. Apply for visas at U.S. consulates in their home countries.



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What is Public Charge?

INA 212(a)(4) - Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible

- Current definition – Someone who is likely to become **primarily dependent** on the government to support themselves
- New definition – Someone who receives **one or more public benefit** for more than 12 months in the aggregate within any 36 month period (such that, for instance, receipt of two benefits in one month counts as two months)
 - Applies to those who enter the U.S and those who apply to become a Lawful Permanent Resident. Does not apply to all categories of immigrants. Many immigration statuses are exempt from public charge`
 - Exempted statuses include: refugees, asylees, U-visa applicants, T-visa applicants, among others
 - H-2A and H-2B workers **are** subject to the public charge determination when they apply for their visas at U.S. consulates
- Future-looking test
 - Totality of circumstances – must consider all factors when determining if applicant should be considered a public charge
- Set to go into effect on October 15

What is considered a public benefit in the final public charge rule?

- **Cash assistance from federal, state, local, or tribal programs (incl. TANF, SSI, and General Assistance)**
- **SNAP**
- **Housing Assistance (section 8 and public housing)**
- **Medicaid**
 - ***Except emergency Medicaid, Medicaid for children under 21, Medicaid for pregnant women and postpartum care for 60 days)***



Only the benefits listed in the previous slide will be considered in a public charge determination

NOT INCLUDED (non-exhaustive list):

- Head Start
- WIC
- ACA subsidies
- Sliding fee discount schedule at community/migrant health centers
- CHIP
- LIHEAP (energy assistance)

Public benefits – Important considerations

- Use of SNAP, Medicaid, and housing assistance only applies to applicants on/after Oct. 15 (when rule goes into effect)
- Programs entirely state-funded (except cash assistance) will NOT be considered
- Applicants will not be penalized for benefits used by family members
 - Only the receipt of benefits for which the applicant is the beneficiary will be considered
 - Can apply on behalf of an eligible family member without being penalized as long as they are not the beneficiary

Totality of Circumstances

- Likelihood to become a public charge based on totality of circumstances
- Factors in totality of circumstances are weighed and assigned positive and negative values
 - Some factors are heavily weighted as positive or negative
- Highly discretionary



Factors in the Totality of Circumstances test

- **Age**

- 18-62 = positive
- Under 18, over 62 = negative

- **Health**

- Diagnosed with medical condition that is likely to require extensive medical treatment/institutionalization or will interfere with ability to provide/care for self, attend school, or work= negative

- **Family status**

- Household size

- **Prospective immigration status and expected period of admission**

- **Affidavit of support**

- **Assets/resources/financial status**

- Below 125% FPL = negative
- Below 125% FPL but assets that equal 5 times the difference between household FPL and 125% FPL threshold = positive
- Above 125% FPL = positive

- **Receipt of public benefits**

- **Education and skills**

- Lack of high school/high school equivalent degree = negative
- Limited English proficiency = negative
- Employment history/occupational skills, certifications, licenses = positive

Heavily Weighted Factors

Negative

- Diagnosed with a medical condition that will require extensive medical treatment or interfere with ability to work, attend school AND is uninsured without financial resources to pay for medical costs
- Receipt of one or more public benefits for more than 12 months within any 36 month period
- Not a full-time student and authorized to work but unable to demonstrate current employment
- Previously found inadmissible or deportable on public charge grounds

Positive

- Income above 250% FPL
- Has private, unsubsidized health insurance coverage during time in U.S.

Overcoming the negative factors will be extremely difficult for low-wage farmworkers and their families

- Average household income: \$20,000 to \$24,999
- 33% of farmworker families earn below 100% FPL
- Almost 2/3 of farmworker families with 6 or more members in their household are below 100% FPL
- Farmworkers did not work approximately 11 weeks in the previous year
- 47% of farmworkers have health insurance
 - Only 29% of those insured workers have employer-provided health insurance
 - 18% of workers reported that their employer offered comprehensive health insurance
- Average 8th grade education
- 62% of farmworkers reported low or limited English proficiency



H-2A workers and Public Charge

- H-2A workers **ARE** subject to public charge at U.S. consulates
 - Department of State made initial revisions to Foreign Affairs Manual (FAM) in January 2018
 - FAM will be further revised to reflect standards in final rule
- Some H-2A workers have their visas extended while in U.S.
 - Under final rule, DHS will consider whether the applicant received the designated public benefits for more than 12 months in the aggregate within a 36 month period since obtaining the nonimmigrant status up until their adjudication
 - Will not be subject to future-looking public charge assessment
- H-2A workers are not eligible for Medicaid, SNAP, or other public benefits but are still vulnerable to the other factors under the Totality of Circumstances



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Strategies for Outreach/Education to Farmworkers

- Bring message to workers where they live and work
 - Develop partnerships with health centers, legal services organizations, growers*
- Send trusted messengers to provide education
 - *Promotores de salud*/community health workers
 - Outreach workers from community-based organizations
- Develop easy-to-understand materials that respond to the unique needs/concerns of farmworker communities

Questions



Resources

- FJ's Fact Sheet -
https://www.farmworkerjustice.org/sites/default/files/resources/FJ%20Public%20Charge%20Fact%20Sheet_8.21.19.pdf
- Protecting Immigrant Families –
www.protectingimmigrantfamilies.org
- CA Primary Care Association Immigration Resources page -
https://www.cPCA.org/cPCA/CPCA/CPCA/HEALTH_CENTER_RESOURCES/PUBLIC_CHARGE.aspx

For more information...

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