



MARICOPA
COMMUNITY COLLEGES

Office of the
General Counsel

TO: MCCCDC F-1 Student Services Committee

FROM: Melissa Flores, Assoc. General Counsel, Sr.

DATE: February 12, 2020

PUBLIC CHARGE RULE AND THE IMPACT ON F-1 STUDENTS

Implementation Date: February 24, 2020

Rule: USCIS may deny requests to change or extend nonimmigrant status for foreign nationals who receive *one or more public benefits for a total of one year in a three year period.* (8 C.F.R §212.21(c)).

Focus of the Rule: USCIS is looking for public benefits programs that provide cash assistance for income maintenance or support food, nutrition, housing, and healthcare with a relatively high overall expenditure.

Applicability: This rule applies to F-1 students (and F-2 dependents) when they apply for extension (such as when an international student received a date-specific admission to attend high school and is seeking an extension to attend college) or a change of status using an I-539 form, as the government wants to see that international students are not likely to need money or public assistance. Much of this is not new because the USCIS always checks for financial support documents to prove the student has funds to support their education and expenses. What is new is that USCIS will check to ensure the student has not used any of the identified public benefits for an aggregate of 12 months (1 year) during the last 36 months (3 years). USCIS has clarified that it does NOT require a student to have employment history to determine for public charge.

The rule makes no mention of OPT or STEM OPT directly, but they do fall under the F-1 student category and are therefore, similarly affected by the rule.

Reality: F-1 students are already screened twice for their ability to support themselves. Once with the international student advisor making sure financial documents are

“received, reviewed, and evaluated” (8 CFR §214.3(k)(2), 8 CFR §214.4(a)(2)(x), and 8 CFR 214.2(f)(1)(i)(B)) and again at the visa interview where they must show they “possesses sufficient funds to cover expenses while in the United States or can satisfy the consular officer that other arrangements have been made to meet those expenses” (22 CFR §41.61(b)(1)(ii), 9 FAM 402.5-5(G)(1)).

Look Back: USCIS can look back on any three-year period during which a student maintained the status where renewal or change is sought (8 CFR §214.1(a)(3)(iv), (4)). This look back does not cover the period of time a person is in a status other than the one for which they are seeking either a renewal or a change.

Triggering Public Benefits: The following public benefits will trigger the public charge determination.

1. Any federal, state, or local cash assistance for income maintenance
2. Supplemental Security Income (SSI)
3. Temporary Assistance for Needy Families (TANF)
4. Federal, state or local cash benefit programs for income maintenance (often called “General Assistance”)
5. Supplemental Nutrition Assistance Program (SNAP)
6. Section 8 and 9 housing assistance
7. Section 8 Project-based rental assistance
8. Federally funded Medicaid (with certain exclusions)

Excluded Public Benefits: The following public benefits are excluded from the inadmissibility determination.

1. Pell grants and other student aid programs (84 Fed. Reg. 41391).
2. Emergency medical assistance
3. Disaster relief
4. School lunch programs
5. Foster care and adoption
6. Student and mortgage loans
7. Energy assistance
8. English as a Second Language (ESL) or workforce development programs
9. Food pantries and homeless shelters
10. Head Start
11. Specifically excluded programs (8 CFR §212.21(b)):
 - a. Medicaid for an emergency medical condition
 - b. Medicaid benefits received by a woman during pregnancy and for 60 days after giving birth
 - c. Medicaid benefits received by a foreign national under 21 years old
 - d. 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.

- e. Public benefits received by noncitizen members of the U.S. Armed Forces serving in active duty or in any of the Ready Reserve components, and by the service member's spouses, and/or children.

Health Insurance: F-1 students should maintain health insurance for their entire time in the United States. The Presidential Proclamation on health insurance requirements for consular-processed green card applicants highlights the increased focus on health insurance as a major public charge. This order does not apply to immigrants already in the United States who will not have immigration applications processed abroad.