

## FOR WIC PARTICIPANTS TO DISCUSS WITH YOUR LAWYER: PUBLIC CHARGE AND IMMIGRANT PARTICIPATION IN WIC

July 18, 2018

The Department of Homeland Security (DHS) has indicated that it intends to redefine public charge for the purposes of admissibility. It is unclear how a rule change would impact immigrant families accessing public benefits, including the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). The National WIC Association encourages nuanced dialogue between families going through the immigration process and their attorneys, properly balancing the potential risks to legal status with the nutrition and public health needs of the family.

**PLEASE BRING THIS DOCUMENT TO YOUR LAWYER FOR FURTHER DISCUSSION.**

If you do not have a lawyer, you may consider consulting one for further advice. You can find a lawyer in your area at:

- American Immigration Lawyers Association: <https://www.aialawyer.com>
- IAmerica: <http://iamerica.org/find-legal-help>

### CURRENT POLICY AND REQUIRED DISCLOSURES

WIC clinics and agencies do not inquire or collect information about a participant's immigration or citizenship status. Federal law permits states to serve all income-eligible individuals, regardless of immigration status (8 U.S.C. 1615(b)). The only exception is Indiana, which inquires into the adult participant's status.

WIC participation is not currently weighed in public charge determinations. The 1999 Department of Justice Field Guidance clearly indicates that nutrition programs like WIC and SNAP should not be considered by immigration officials when assessing public charge. The Field Guidance instead adopts a narrow view of public charge – focused on programs like SSI, TANF, and long-term institutional care.

Nonetheless, certain immigration forms (e.g., Form I-485) require an applicant for legal status to disclose personal acceptance of any public assistance. This process may require immigration attorneys to compile documentation of past or current WIC participation. However, that information cannot be used in weighing a public charge determination and should not include participation by a child or family member.

## POTENTIAL CHANGES TO PUBLIC CHARGE

Leaked drafts of the DHS proposed rule suggest that immigration officials may soon expand the considered elements of public charge to weigh benefits use, including WIC participation. If advanced, the rule is not expected to go into effect for months and would not apply retroactively. Immigration attorneys and WIC clinics should have some notice and will be able to advise immigrant families accordingly.

In January 2018, the State Department also revised the Foreign Affairs Manual (FAM) – guidance for consular officials evaluating whether to grant visas. The FAM permits consideration of any benefit use (including WIC) – past and present – by a visa applicant, their family, a sponsor, or the sponsor’s family. The FAM vests broad discretion in consular officers, largely for national security reasons. It remains unclear how these revisions to the FAM will play out in practice.

## BALANCING RISKS AND INTERESTS

WIC provides crucial nutrition support for pregnant women and new moms, but the risks to families working toward legal status are real. Hopefully, a productive discussion with an immigration attorney can provide clarity and security to families in this time of uncertainty.