DRAFT EXECUTIVE ORDER ON IMMIGRANT ACCESS TO GOVERNMENT BENEFITS AND ON IMMIGRANT SPONSORS

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Topic: Draft Executive Order entitled "Protecting Taxpayer Resources by Ensuring Our Immigration Laws Promote Accountability and Responsibility."

Overview: The **Draft** Executive Order directs federal agencies to take action regarding many topics. This fact sheets focuses on the three main topics that will affect many non-citizen immigrants and their financial sponsors:

- **Sponsor Reimbursement** - Seeking reimbursement from certain financial sponsors for the cost of benefits received by certain sponsored immigrants;

- **Public Charge** - Changing the rules relating to who is considered a "public charge," which is about when someone who receives government benefits is at risk of removal or being denied admission to the U.S.; and

- **Five-year Bar to Receiving Federal Means-Tested Benefits -** The Draft Executive Order expands the definition of federal "means tested benefits," which are benefits (like welfare, SNAP and Medicaid) individuals qualify for based on having low income. The Draft Order will increase the range of federal benefits subject to the five-year bar. As discussed in more detail on page 5 below, the five-year bar applies to certain immigrants designated as "Qualified Aliens" unless they are exempt due to: age (those under 18 or certain elderly persons); having a severe disability (those who receive a disability-based benefit); or because they have a 10-year long work history ("40 Qualifying Quarters" or the equivalent). Certain humanitarian entrants are also exempt from the five-year bar.

More Information:
We provide additional information on each of these three topics in the pages that follow. Please note that when and if the Draft Executive Order becomes final, the new rules on public charge and expanding the list of federal means tested benefits will not be final immediately, but rather will have to go through a notice and comment period. We are sharing more information below so clients and advocates are aware of what may be coming. If you are a client or have a client who needs to make a decision about benefits or an immigration issue, and you think the Draft Executive Order would affect you or your client, please consult with an attorney.

Need Help? If you have any questions or need assistance, please call our Immigration Hotline at 844-955-3425 on Fridays from 9:30am-12:30pm.

Topic # 1: Sponsor Reimbursement of Certain Government Benefits: *Will My Sponsor Have to Pay Back Government Benefits I Received?*

BACKGROUND

What is a Sponsor?
A sponsor is someone who signed a Form I-864 Affidavit of Support for an application to become a Lawful Permanent Resident (LPR, meaning a green card holder).

Do all Immigrants have Sponsors?
No. Not all immigrants need to have sponsors. If your client is an immigrant who is not required to have a sponsor, sponsor reimbursement does not apply. Some common statuses that do not require a sponsor include VAWA self-petitioners, U visa holders, victims of trafficking, refugees, asylees and children with Special Immigrant Juvenile Status (SIJS).

CURRENT LAW

What is the Sponsor Reimbursement Rule?
When a sponsor signs the Form I-864, he or she is agreeing to reimburse (pay back) the government for the cost of certain benefits if the immigrant he or she is sponsoring receives certain federal benefits. When the government seeks reimbursement from a sponsor, the government has to send a special notice. That is how a sponsor knows the government is seeking reimbursement. Sponsor reimbursement has been a part of federal law since 1996, but for the most part, it has not been enforced in New York State.

HOW THE DRAFT EXECUTIVE ORDER MAY CHANGE THE RULE

What is the change directed by the Draft Executive Order?
The Draft Executive Order directs the government to start enforcing the sponsor reimbursement rule. For New York State residents, this would be a big change. The Draft Executive Order also directs the government to expand the types of benefits that the government can seek reimbursement for (see below).

What Types of Benefits will the Government ask Sponsors to Pay Back? How does the Draft Executive Order Change Which Benefits Count?
The Draft Executive Order directs federal agencies to start enforcing sponsor reimbursement under the existing rules until the new rules are final and implemented. The chart below shows on the left-hand side which federal means-tested benefits a sponsor could be asked to repay under current law. On the right hand side is the new definition for federal means-tested benefits that is included in the Draft Executive Order, which will expand the list of benefits sponsors may be asked to repay. We do not yet know exactly which federal programs and benefits will be added to the revised list.

Benefits A Sponsor Might Have to Pay Back Under Current Law	**Benefits A Sponsor May Have to Pay Back Under Draft Executive Order Once Rules are Final**
SNAP (food stamps), non-emergency Medicaid, SSI, TANF(federally-funded welfare, called "Family Assistance" or "FA," in NY State); and State Child Health Insurance Program (SCHIP) (called "Child Health Plus" in New York State)	"[A]ll Federal programs for which eligibility for benefits, or the amount of such benefits, are determined in any way on the basis of income, resources or financial need . . ."
Note: *New York State does not currently demand reimbursement for these benefits from sponsors. As far as we know, the government will only start seeking reimbursement when and if the Draft Executive Order is signed.*	**Note:** *The Executive Order cannot change everything here – there are certain federal benefits that are exempt from sponsor reimbursement by statute, including emergency Medicaid, disaster relief, school lunches, adoption and foster care assistance, Head Start and certain forms of student aid.*

How will Sponsor Reimbursement Work?

The sponsor reimbursement rule is already part of the current law, but we are not sure of the exact details of how the new enforcement would work. We do know that sponsors who receive a notice asking for repayment have legal rights under the law. For example, the sponsor has a right to receive a notice from the government with an itemized list of the benefits for which it is seeking reimbursement. The sponsor would then have 45 days to respond to the government and can agree to payment or a payment schedule. Sponsors who receive a notice should consult a lawyer to get advice on these important rights under the law.

Is there any time limit on the Sponsor Reimbursement Rule? Can the Government Seek Reimbursement Forever?

There are limits under current law. Here are four examples of when the government can no longer enforce the sponsor reimbursement rule:

- once the sponsored person becomes a U.S. citizen;
- if the sponsored person dies;
- once the sponsored person can be credited with a certain amount of quarters of authorized work for which Social Security taxes were paid (approximately 10 years of work); or
- once it has been 10 years since the sponsored person last received any means-tested public benefit.

Note: Divorce does **not** end the obligation toward a sponsored spouse.

Considerations when Facing the Sponsor Form I-864:

If you have a client with a sponsor, ask about your client's relationship with the sponsor. Does the client have a history of domestic violence with this person? If so, consult a lawyer for advice. Even if the client has a good relationship with the sponsor, they may need help talking to the sponsor about their financial needs and about the risk that the sponsor might be asked to repay the government for public benefits the client receives. Clients should contact a lawyer, social worker or someone they trust to help think through the options and to come up with a plan.

Topic # 2: The Public Charge Rule:
Are there Any Risks to Receiving Government Benefits?

BACKGROUND

What is the Public Charge Rule?

"Public Charge" is part of current law. A person may be considered a public charge when they cannot afford to take care of themselves without government assistance. If a person is considered a public charge, they may be ineligible to obtain or keep their status as a non-immigrant or legal permanent resident (green card holder). In extreme cases, they may be placed in removal (deportation) proceedings.

CURRENT LAW

What is the current law about Public Charge?

Under current law, someone is not automatically considered a public charge if he or she receives a government benefit. And it is important to note that under current law, not all government benefits count. Only cash assistance/welfare, SSI and long-term institutional care through Medicaid currently count. In addition to receipt of these benefits, the government has to look at a range of factors before it can find that an immigrant is a public charge.

Who Does Public Charge Rule primarily affect?

a) Immigrants seeking "admission" to the U.S., whether they are physically outside the U.S. or already here;
b) Immigrants, visa holders, and others who have been admitted to the U.S. for less than five years and who are not exempt (see list of exempt immigrants in the note below); and
c) Immigrants seeking to adjust their status (get a green card).

Note - Exempt Immigrants: Immigrants with the following statuses are exempt from the public charge rule: VAWA self-petitioners, refugees, asylees, U and T visa holders, and children with Special Immigrant Juvenile Status (SIJS). This means that immigrants with these statuses who need government benefits to help support themselves do not have to worry about receiving government benefits and being considered a public charge.

What Period of Time does the Government Look at In Determining if a Person Is a Public Charge?

The first five years are the key period. For immigrants already admitted to the U.S., the only period of time that the government is concerned about the receipt of benefits is during the first five years of residence in the U.S.

Under Current Law, if a Person Received Public Benefits During The First Five Years Here, Will They Be Deported?

If an immigrant did not receive qualifying benefits during their first five years in the U.S. (Cash Assistance/welfare, SSI or long-term care), they are not at risk of being a public charge. If they did receive qualifying benefits during the first five years, the totality of the circumstances would be considered (see below). At a minimum, in order for the immigrant to be deportable as a public charge, the government would first have to make a demand for repayment from the sponsor within those first five years, and the sponsor would have to fail to pay. If both of those things do not happen, the person would not be deportable on public charge grounds. See Matter of L, 6 I & N Dec 349 (BIA 1954). Note, however, that the new Attorney General could rescind that decision and change the rules to make them worse.

HOW THE DRAFT EXECUTIVE ORDER MAY CHANGE THE RULE

How will the Draft Executive Order Change the Analysis?

The Draft Executive Order directs government agencies to make the definition of public charge stricter. The new rule will likely put more people who receive government benefits at risk of being found a public charge because more government benefits will count, and the only factor considered will likely be the mere receipt of government benefits. The chart below summarizes the differences between the current law and what the draft Executive Order directs to be changed.

Current Law on Public Charge	Changes Made to Public Charge Under the Draft Executive Order, Once Rules Final
Benefits that count - Only Cash Assistance/welfare, SSI and long-term institutional care.	**Benefits that count -** An expanded list of Federal means tested benefits. Exactly which benefits count will be unknown until the new rules are final.
Other factors considered - Many factors, including age, education, family situation, health.	**Other factors considered -** The Draft Executive Order appears to direct the agencies to consider the mere receipt of benefits as the most important (and perhaps only) factor. No other factors are mentioned.

What Else do We Know About How the Public Charge Rule Will Change?

At this time we do not know details about how the public charge rules will change as a result of the Draft Executive Order. The Draft Order directs the government to make certain changes to the rules on public charge and then lets the public comment on the proposed changes. Only after the comment period is over will a new final rule be issued. This means we will have time to try and fight the rules or change them, and then figure out how to help clients who are impacted by the final rules.

Tips for clients and community partners:

Remember who is primarily at risk of suffering because of these rules: non-exempt immigrants who were admitted in the past 5 years. For clients in this category, check to see the client's date of admission and determine if it has already been five years. Also determine if the client is in one of the exempt statuses. **If the client is not exempt, the five years are not up, and the client has or needs public benefits, speak to an attorney regarding the options.**

Topic # 3: Expanding The List of Federal Benefits Subject to the Five-Year Bar: *Will the Draft Executive Order Cause an Individual to Lose Eligibility for Any Benefits?*

BACKGROUND AND CURRENT LAW

What is the Five-Year Bar?

The five-year bar is part of current law. Under current law, not all immigrants are eligible for federally-funded benefits, only people who are considered "Qualified Aliens." Certain Qualified Aliens have to be in Qualified Alien status for five years before they are eligible for federally-funded means tested benefits. The five-year bar does not apply to persons who were lawfully present in the U.S. prior to August 22, 1996. In New York State, clients may be most familiar with the bar with respect to receipt of SNAP/Food Stamps. This is because in New York, there are state-funded versions of Cash Assistance/welfare and Medicaid for which the five year bar does not apply.

Are Some People Exempt from the Current Five-Year Bar?

Yes. As stated above, the five-year bar does not apply to persons who were lawfully present in the U.S. prior to August 22, 1996. In addition, the following groups are exempt from the five-year bar on receiving certain benefits: children under 18, certain elderly people and people with severe disabilities (those who receive a disability-based benefit), and immigrants with 40 qualifying quarters (10 year work history where Social Security

taxes were paid or the equivalent). Humanitarian entrants such as refugees, asylees, victims of trafficking, persons granted withholding of deportation and withholding of removal, conditional entrants, Cuban/Haitian entrants, Amerasians and active duty or honorably discharged members of the military and immediate relatives are also exempt from the five-year bar, regardless of age, disability or work history.

HOW THE DRAFT EXECUTIVE ORDER MAY CHANGE THE RULE

How Will the Draft Executive Order Change Which Benefits are Covered by Five-Year Bar?

The Draft Executive Order expands the definition of federal means-tested benefits. Therefore, after the new rules are final, the five-year bar will apply to more benefits than it currently does. As stated above, we do not know at this time exactly which programs and benefits will be included on the new, expanded list of means-tested benefits.

Who Will These Changes Affect?

These changes will affect persons who are considered "Qualified Aliens" under federal law who are subject to the five-year bar. These include persons in the following statuses: (1) LPRs/green card holders who have had that status for less than five years; (2) spouses of U.S. citizens or LPRs who have survived domestic violence and who have a pending or approved I-130 and proof of domestic violence, or who have a pending or approved I-360 petition/VAWA self-petition; (3) parolees for a year or more.

What if These Rules Apply to a Client? Will They Lose Benefits?

It is not likely that they would lose SNAP, SSI, federally-funded Medicaid or Cash Assistance, because if they already have these benefits either the five-year bar does not apply or they have already spent five years in Qualified Alien status. If they receive any of the newly designated federally-funded means tested benefits, and have not been in Qualified Alien status for five years, then yes, they may lose those benefits. We do not know yet which additional benefits will be on the final list, so we do not know exactly what benefits clients might lose.

When Will the New Definition Take Effect?

If the Draft Executive Order is signed, the changes to the definition of means-tested benefits will not go into effect right away because the rules have to be written, made publicly available for comment, and then the final rules have to be issued. This means we have time to try and fight the rules or at least change them, and then figure out how to help clients who are impacted by the final rules.

The Bottom Line

At this point, clients and their advisors should simply be aware that depending on the client's status, they may lose eligibility for certain federally-funded benefits because those benefits newly fall under the five-year bar.