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## **What Artists Need to Know About the Status of the New Public Charge Rules & Unemployment Benefits/Maintenance of Visa Status**

*Note: This advisory, dated March 15, 2021, supersedes all prior advisories.*

***Good News:** The Trump-era public charge rule is no longer in effect, and foreign nationals in legal status in the U.S. may now make use of certain public assistance programs, including SNAP (“food stamps”) and Medicaid, without fear of negative immigration repercussions.*

On March 9, 2021, DHS Secretary Alejandro N. Mayorkas announced that the government will no longer defend the 2019 public charge rule. “The 2019 public charge rule was not in keeping with our nation’s values. It penalized those who access health benefits and other government services available to them,” said DHS Secretary Mayorkas. As a result of the government’s decision and actions to cease defending the Trump era public charge rule in the court system, the government’s 1999 interim field guidance on public charge admissibility is currently in effect.

Effective immediately, foreign nationals in legal status in the U.S. may make use of certain public assistance programs, including SNAP (“food stamps”) and Medicaid, without fear that they are putting their immigration status at risk. However, receiving cash benefits for income maintenance (like welfare) is still a public charge risk.

### **How does this affect me if I am in the U.S.?**

If you are in the U.S. and you file an application with USCIS, use of non-cash public benefits should not negatively affect your case.

### **How does this affect me if I am outside the U.S.?**

If you are outside the U.S. and are looking to get a visa issued by an embassy or consulate, the use of non-cash public benefits should not negatively impact you. Keep in mind, however, that visa services are currently suspended at most U.S. embassies and consulates throughout the world, and pandemic-related travel restrictions remain in place; see our [COVID-19 FAQ](#) for more information.

### **IMPORTANT - About Unemployment Benefits:**

Despite this announcement, it remains risky for individuals on temporary work visas (like O-1s) to enroll for unemployment benefits while maintaining their work authorized status. See below for more information on receiving unemployment benefits and maintaining visa status.

### **Receiving Unemployment Benefits and Maintaining Visa Status**

#### ***Would seeking unemployment benefits be a violation of my visa?***

Probably, but not necessarily. This is a little complex: O and P visa holders are issued their visas to allow them to do specific work in the U.S. If you fail to do that work, the government generally sees it as a violation of your visa, called a “failure to maintain status.” If you fail to maintain your status, this could remain on your record forever, and could make it difficult to get visas, green cards, and ESTA. The problem with seeking unemployment is that you are telling the government that you are not working, which strongly suggests that you are “failing to maintain your status.” But there are some loopholes, so you need to read this carefully:

#### ***For O-1 visa holders:***

If you lose your job while on an O-1, you technically *may* have up to a 60-day grace period in which you can find other work, and it *might* be okay for you to collect unemployment during those 60 days. The catch is that at the end of 60 days you must discontinue the unemployment benefits and depending on your specific situation, either (1) have some new work starting, (2) have a new visa petition filed for you, or (3) depart the U.S. Given these uncertainties and limitations, we advise against applying for unemployment if at all possible, unless you can find *some way* to continue to do some work. Please talk to your attorney about your specific situation in order to decide whether seeking or accepting unemployment benefits is advisable.

#### ***For O-2 and P visa holders:***

The 60-day grace period that O-1 holders enjoy is not available to O-2 or P visa holders. O-2 and P visa holders must maintain some degree of work, even if they seek unemployment benefits. In the event that USCIS or a consular officer wants proof of maintenance of status down the line, you will want to be able to produce records that you were still working. Given these uncertainties

and limitations, we advise against applying for unemployment if at all possible, unless you can find *some way* to continue to do some work.

***For other kinds of visa holders:***

We are talking about O and P visas here. It may be possible for holders of other kinds of employment visas to accept unemployment benefits and still maintain their status.

***How much work do I need to do to maintain my status?***

If your visa was arranged through a specific employer, and you are only allowed to work for that employer, then failing to maintain your contracted employment with that employer would be a failure to maintain status. If, however, you are on an agent-based O or P visa, any authorized work you can do—paid or unpaid, in real life or online—will help you maintain status; any documentation you can save of that work (contracts, screen shots, publicity materials, reviews) will help you at a later date prove that you maintained status. While there is no rule about how much work is needed to maintain status, the more authorized work you can prove you have undertaken, the more you can defend against an assertion of “failure to maintain status.”

**Contact TamizdatAVAIL for free legal assistance:**

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