



THE CENTER ON
IMMIGRATION
AND CHILD WELFARE

FACT SHEET: PUBLIC CHARGE FINAL RULE CHANGE

What is “public charge”?

Public charge is a concept within federal immigration law designed to identify people who may depend on the government as their main source of support. If the government determines that a person is likely to become a “public charge,” it can deny that person admission to the U.S. or lawful permanent resident status (LPR or a “green card”).

On August 14, 2019, the Department of Homeland Security (DHS) issued a final rule that would drastically alter longstanding policy and the definition of “public charge,” jeopardizing certain immigrants’ ability to become a lawful permanent resident or to extend or adjust their status. This rule applies to immigration cases that will be processed within the U.S. Although this new DHS rule has been blocked from going into effect while legal challenges continue, the Department of State (DOS) issued its own rule, adopting most of the changes in the DHS rule, that went into effect on October 15, 2019. The DOS rule only applies to cases that will be processed at a U.S. consulate or embassy, including those applying for visas from abroad but also some people currently within the U.S. who are required to process their case abroad. These rules mark a significant and harmful change in policy that would fundamentally alter the immigration system and make immigrants fearful of accessing critical public benefits like health care, nutrition programs, and housing assistance, which help families thrive and remain productive.

Who can be considered a “public charge”?

Immigrants applying for admission to the U.S. or for adjustment of status to become LPRs are subject to a public charge assessment, or “test.” Congress has exempted certain classes of immigrants from this public charge test, including refugees, asylees, Afghans and Iraqis with special immigrant visas, special immigrant juveniles, and victims of crimes or “severe trafficking” (i.e., U Visas and T Visas). LPRs who are applying for citizenship or to renew their green cards are not subject to a public charge test either.

What factors are considered in making a public charge determination?

The new rule would direct immigration officers to consider factors such as age, health, family status, assets, resources, financial status, education, and skills when considering the totality of one’s circumstances in making a public charge determination. It would also direct officers to consider prospective immigration status in the U.S. and expected period of admission. It is expected that the weight of various positive and negative factors considered will make the public charge test much more difficult to pass for low-income immigrants. These factors are now considered under the new DOS rule in processing cases outside of the U.S. (at consulates and embassies), but are still pending under the DHS rule.

What factors weigh negatively in a public charge determination?^a

1. The individual is not a full-time student and is authorized to work but cannot show current employment, recent employment history, or a reasonable prospect of future employment.
2. The individual has received one or more public benefits for more than 12 months within any 36-month period.
3. The individual has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with his or her ability to provide for him or herself.
4. An immigration judge or the Board of Immigration Appeals has previously found the individual to be inadmissible or deportable based on public charge grounds.

^a Currently, this list of factors only applies to cases processed outside of the U.S. through the Department of State (DOS).

What factors weigh positively in a public charge determination? ^a

1. The individual has household income, assets, or resources, and support of at least 250% of the Federal Poverty Guidelines.
2. The individual is authorized to work and is currently employed in a legal industry with an annual income of at least 250% of the Federal Poverty Guidelines.
3. The individual has private health insurance that is not subsidized by Affordable Care Act tax credits.

^a Currently, this list of factors only applies to cases processed outside of the U.S. through the Department of State (DOS).

Benefits considered under the new DOS rule and pending DHS public charge rule

The final rule targets key programs that help participants meet basic needs, such as:

- Medicaid (with exceptions for emergency services, coverage of children under age 21, and pregnant women including 60 days postpartum)
- Supplemental Nutrition Assistance Program (SNAP)
- Public Housing, Section 8 housing vouchers, and Project-Based Section 8
- Cash assistance under SSI, TANF or similar state, local, or tribal programs^b
- Long term institutionalized care paid for by the government^b

Benefits that will not be considered

- Pell Grants, school meals, WIC, child care assistance, foster care and adoption assistance
- Medicaid for pregnant women and children
- State or locally funded non-cash benefits, including health care and nutrition programs

Individuals, such as parents, can submit applications on behalf of their eligible family members, including eligible children. The rule would NOT consider benefits received by an immigrant's eligible family members, including their children, against them.

^bThis program is included in the current and past version of the public charge rule

When will this policy take effect?

It's unclear. The DHS rule was slated to go into effect on October 15, 2019, but federal courts blocked its implementation for now. That decision may not hold, depending on the final outcome of the legal challenges. In the event that the DHS rule does go through, its implementation date will be set in the future. In the meantime, families can continue to access benefits without consequences for public charge determinations. However, the new DOS rule, which applies to cases processed at U.S. consulates or embassies abroad, did go into effect on October 15, 2019. Any benefits received prior to the effective date will not be considered unless they were already considered in public charge determinations prior to the policy change.

Where can I find more resources?

- ▣ [Immigrant Legal Resource Center](#)
- ▣ [Protecting Immigrant Families Campaign](#)
- ▣ [The Center for Law and Social Policy](#)
- ▣ [The Center on Immigration and Child Welfare](#)

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