



## **Public Charge Regulation Summary**

### **Introduction**

The Department of Homeland Security has issued final regulations that would redefine the meaning of the legal term “public charge” in a way that will result in the rejection of many immigrants applying for an immigrant visa (e.g. green card), if they have previously accessed or are deemed likely to rely on certain forms of public assistance in the future. The new rule will also be applied to foreigners on temporary visas seeking to extend their stay in the U.S. or trying to change from one immigration status to another.

This new rule will make it more difficult for legal immigrants to come to the U.S. and likely will continue to have a chilling effect on immigrant families who are eligible for assistance. The regulation was published on August 14, 2019 and goes into effect on October 15, 2019.

### **What is a “public charge,” and what does it have to do with immigration?**

One of the grounds for which an immigrant may be denied admission to the U.S. is his or her likelihood of becoming a “public charge.” The exclusion of immigrants who could be a public charge has been a part of immigration law since 1882. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) made noncitizens ineligible for admission or adjustment of status if the government determined that a noncitizen was likely to become a public charge based on the immigrant’s circumstances — including his or her age; health; family status; assets, resources and financial status; and education and skills. That law also established the requirement that an immigrant’s sponsor sign an “affidavit of support” showing ability to support the sponsored immigrant at a minimum of 125 percent of the federal poverty level.

Regulations issued in 1999 interpreted “public charge” as meaning an individual who becomes primarily dependent on the government for subsistence. Under those guidelines, dependence on the government was demonstrated by the use of certain cash benefit programs or reliance on government programs for long-term institutional care.

### **How is public charge defined?**

The rule defines a noncitizen as a public charge if the individual received one or more specified public benefits (see list below) for a period of 12 months in the aggregate during any 36-month period. Receipt of two benefits in one month will count as two months toward the 12-month threshold.

Also, a complex set of factors are used to determine whether an individual is “likely” to become a public charge at any time in the future. (See [Federal Register](#) page 41502, 8 CFR §212.22.) Government officials will consider the “totality of the immigrant’s circumstances” — whether the immigrant has a financial sponsor, plus the immigrant’s age, health, family status, assets, resources, financial status, education and skills. Congress mandated consideration of these factors, without defining them, in 1996 in IIRAIRA. Considering all these attributes, if negative

factors and circumstances outweigh positive factors, DHS will consider the individual likely to become a public charge. The rule defines “likely” as “more likely than not.”

### **How will the new rule affect immigrants and their children?**

The new rule could have a dramatic impact on legal immigration by limiting who can come to the U.S. and by slowing down the processing for those eligible to come to the U.S. or eligible to change visa status. DHS broadens the definition of who is “likely at any time to become a public charge” and changes how the government considers factors including age, health, education and skills.

Because the rules for making public charge determinations are complicated, immigrants may [drop out of or forgo enrollment](#) in benefits programs for themselves or their children — even U.S. citizen children — out of fear of the immigration consequences of using government assistance. This abstention is likely even if they are eligible to receive the assistance and the benefit program would have no impact on a public charge finding. A reduction in use of benefits by immigrant households could have a negative impact on children, including those with working parents. The new rule acknowledges that the rules could lead to the following negative consequences arising from a drop in benefits usage: worse health outcomes, increased use of emergency rooms, increased prevalence of communicable diseases, and more. There are already widespread [reports](#) of immigrants disenrolling from nutritional and other programs for which they are eligible because they have heard news about the rule change.

### **Under the new rule, who will be subject to the public charge determination?**

In addition to the categories of immigrants and non-immigrants already subject to a public charge test, the new rule will require individuals on non-immigrant visas who are applying to extend their stay or to change their status from one visa to another type of visa (or whose employers are applying for new visas for them) to show they have not received specified public benefits during their stay. These benefits include those received as part of their lawful participation in specified health and nutrition programs. In all, more than three dozen categories of non-immigrants eligible to apply for an extension of stay or change of status may be subject to the new public charge rule.

### **Who will not be subject to the public charge rule?**

Refugees, asylees, and several categories of immigrants in permanent or temporary statuses that are mostly humanitarian in nature — specifically, special vulnerable populations such as Cuban and Haitian entrants, juveniles who are eligible for special immigrant visas, applicants for Temporary Protected Status, victims of trafficking, and several others — are not subject to the new rule. Also, the rule does not apply to noncitizens who are enlisted in the U.S. Armed Forces and who are serving in active duty or the Ready Reserve; the spouses and children of these service members; immigrants who received a public benefit during a period in which they were exempt from or received a waiver for a public charge admissibility determination; and certain noncitizen adopted children coming to the U.S..

The entire list of exempt categories of permanent and temporary immigrants are listed in the rule published in the [Federal Register](#) (beginning on page 41504, 8 CFR §212.23).

Additionally, lawful permanent residents (LPR) generally are not considered applicants for admission upon their return from a trip abroad, and usually do not need to satisfy the new

public charge standard. In certain limited circumstances (such as when the LPR has been outside the U.S for a continuous period over 180 days) an LPR is subject to an admissibility determination during which immigration officials would apply the public charge test.

### **Will immigrants already living here as permanent residents be deported if they use public benefits?**

This rule defines public charge determinations for admissibility. It will not govern rules for deportability. However, the Justice Department is [drafting](#) proposed revisions to existing regulations governing public charge and deportation that, in draft form, reportedly resemble these DHS regulations. Those proposed regulations have not been published.

### **Under the new rule, receipt of which public benefits could lead to a finding that an immigrant is likely to become a public charge?**

Public benefits proscribed in this rule are:

- Federal, state, local or tribal cash assistance for income maintenance, including:
  - Supplemental Security Income (SSI);
  - Temporary Assistance for Needy Families (TANF);
  - Federal, State or local cash benefit programs for income maintenance (for example, state general assistance programs)
- Supplemental Nutrition Assistance Program (SNAP)
- Section 8 Housing Assistance under the Housing Choice Voucher Program
- Section 8 Project-Based Rental Assistance
- Medicaid, except for:
  - benefits received for an emergency medical condition;
  - Medicaid-funded services or benefits provided under the Individuals with Disabilities Education Act;
  - school-based services or benefits provided to individuals who are at or below the oldest age eligible for secondary education (determined under state or local laws);
  - benefits received by individuals under 21 years of age, or a pregnant woman during pregnancy and through the 60-day period following pregnancy.

### **Under the new rule, which public benefits would an immigrant still be allowed to receive and not be found a public charge?**

The rule will exclude from the definition of “public benefit” any non-cash public benefit not listed in the rule. This includes forms of government assistance that are provided to the public more generally, as well as benefits that are excluded by law, for example, public education, disaster relief, tax credits and deductions available to the general public, public health assistance for immunizations, and certain benefits that the U.S. is required to pay by reciprocal agreements. It also excludes certain benefits such as Social Security based on work history, government pensions and other employee benefits, workers compensation, unemployment benefits, veterans benefits, certain disability insurance benefits, and general Medicare benefits.

Also, DHS will only consider an individual to have received or applied for a public benefit if the individual is a named beneficiary of the benefit. For example, if a parent files on behalf of her U.S. citizen child, the parent will not be considered as having applied for or having received a public benefit.

## **How will the various factors be weighed when considering the likelihood that someone becomes a public charge?**

The public charge test involves consideration of the “totality of circumstances.” The new rule describes how the factors will be considered and the weight, or relative importance, of certain factors in relation to others.

Heavily weighing in favor of an individual will be:

- Possession of financial assets, resources, support or annual income of at least 250 percent of the federal poverty guidelines. For 2019, 250 percent of the federal poverty guidelines is \$31,225 for an individual and \$64,375 for a family of four;
- Work authorization and current employment with an annual income of at least 250 percent of the federal poverty guidelines;
- Having private health insurance appropriate for the expected period of admission, but not including health insurance purchased with subsidies through the Affordable Care Act.

Heavily weighing against an individual will be:

- Absence of current employment, employment history, and the reasonable prospect of employment;
- Current receipt of or certification or approval for use of one or more specified public benefits for more than 12 months in the aggregate in the 36-month period beginning 36 months prior to the application for admission or adjustment of status (received after the effective date of the rule);
- A medical condition that will likely require extensive treatment or institutionalization, or that will interfere with the individual’s ability to be self-sufficient and work, and a lack of private health insurance coverage or some other non-subsidized means of paying for treatment; and
- A previous finding of inadmissibility on public charge grounds.

Specific factors include:

- **Sponsorship:** Most family-sponsored immigrants and some employment-based immigrants are required by current law to have their sponsor sign an “affidavit of support,” promising to support the immigrant at least at the level of 125 percent of the federal poverty guidelines. If the sponsor has not filed an affidavit of support, the immigrant is considered inadmissible. With the new regulation, however, having an affidavit of support is only a threshold factor in considering whether the immigrant is likely to become a public charge; an immigrant can be found a public charge if there are other factors weighing against the individual. Also, the government will look at evidence to determine whether the individual’s sponsor will actually provide the promised support.
- **Age:** DHS will consider age in relation to the individual’s ability to work. Specifically, DHS will consider an individual’s age between 18 and 61 years of age as a positive factor. DHS will consider being under 18 (generally, the minimum age of full-time employment) and over 61 (with 62 being the “early retirement” age when an individual may begin collecting Social Security benefits) as a negative factor.

- **Health:** DHS will consider whether the individual has a medical condition that may affect the individual's ability to work or that may otherwise make it more likely that the individual becomes a public charge.
- **Family Status:** DHS will consider whether being a dependent or having dependents makes the individual more or less likely to become a public charge. DHS will consider household size in making its public charge inadmissibility determination. An immigrant in a larger household will have to show greater income or assets — so all members of the household can be supported at least at the level of 125 percent of the federal poverty guidelines.
- **Assets, Resources and Financial Status:** At a minimum, an individual should have assets, resources, or annual income to support him or herself and all dependents at a level of at least 125 percent of federal poverty guidelines. In 2019, 125 percent of the federal poverty guidelines is \$15,612, and for a family of four it is \$32,187. In addition, DHS will consider whether any aspect of an individual's financial situation other than assets and resources makes the person more or less likely to become a public charge. This includes an examination of past receipt of public benefits, the use of fee waivers for immigration benefits requiring an admissibility determination (not, for example, for a naturalization application fee waiver, which does not require an inadmissibility determination), credit histories and credit scores, and whether an individual has private health insurance coverage or financial resources to pay for medical costs.
- **Education and Skills:** DHS will consider whether the individual will have sufficient education and skills to obtain or maintain full-time employment (if authorized for employment). As evidence, DHS will consider (among other things) the individual's history of employment, educational degrees, occupational certifications and licenses, proficiency in English and other languages in addition to English, and whether or not the individual is a primary caregiver in his or her household.
- **Prospective Immigration Status and Expected Period of Admission:** DHS will consider the type of immigration benefit the individual is seeking and whether the person can be expected to be self-sufficient during his or her expected period of stay in the U.S.

### **When does the new rule about public charge go into effect?**

The new rule goes into effect on October 15, 2019. However, several lawsuits have been filed challenging the new rule which could delay when the new rule goes into effect.

Immigration applications filed by this date will not be impacted. Receipt of public benefits from the expanded list included in this regulation prior to the effective date will not be considered a negative factor in a public charge determination. The use of public benefits that are currently proscribed — SSI, TANF, cash assistance, and programs supporting institutionalization for long-term care — will be considered a negative factor, even if received before the effective date of the new regulation.

### **Will there be exceptions to the public charge determinations?**

At the discretion of DHS (and in limited circumstances), an individual who has been determined to be inadmissible based on public charge grounds may be admitted after posting a minimum \$8,100 public charge bond, adjusted annually for inflation.