

Frequently Asked Questions: Final Public Charge Rule

UPDATE: *On January 27, 2020, the Supreme Court ruled that the Administration can implement its public charge rule, after a previous lower court injunction prevented the rule from being implemented on its original effective date of October 16, 2020.*

Key Points

- ✓ The “Inadmissibility on Public Charge Grounds” rule establishes how the Department of Homeland Security can deny an alien admission, change in status, or extension of stay in the United States for being a public charge.
- ✓ The updated rule will consider non-cash public benefits such as SNAP, Medicaid, and housing subsidies in addition to previously considered cash benefits (e.g. TANF, SSI) when making a public charge determination.
- ✓ Receipt of public benefits for 12 months within a 36-month period will be considered a heavily weighted negative factor in a public charge determination.
- ✓ U.S. Citizens and legal permanent residents (green card holders) are not subject to the public charge determination in addition to certain exempt alien groups.

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Overview of the Public Charge Rule

Who or what is a public charge?

Federal immigration law defines a public charge as someone who is “primarily dependent” on the government for subsistence. Individuals deemed to be or likely to become a public charge can be denied admission to the United States or lawful permanent residence (green card status).

What is changing about the public charge rule?

Through guidance issued in 1999, the Department of Homeland Security (DHS) defined a public charge as an alien who is likely to become primarily dependent on the government for subsistence, as demonstrated by either:

- Receipt of public cash assistance for income maintenance; or,
- Institutionalization for long-term care at government expense.

Under the updated rule, DHS has expanded its interpretation of public charge to include consideration of the following benefits:

- Supplemental Nutrition Assistance Program (SNAP)
- Medicaid
- Housing vouchers and other housing subsidies

Furthermore, the term “public charge” has been defined as whether an individual receives one or more designated public benefits for more than 12 months within any 36-month period (such that receipt of two benefits in one month counts as two months).

Does the public charge rule change eligibility criteria used for SNAP or other public benefits?

No. The public charge rule only effects the criteria used by the federal government to review an individual for admission to the United States.

When does the new rule go into effect?

The rule was originally scheduled to go into effect on October 16, 2019; however, implementation was delayed due to a preliminary injunction granted. On January 27, 2020, the preliminary injunction was stayed by the Supreme Court and, as a result, the rule is now able to be put into effect by the Administration. It is expected that the Department of Homeland Security will be issuing a notice clarifying when it will begin implementing the public charge regulation.

If a client receives benefits prior to the effective date of the new rule, can these benefits be considered in their status review?

Prior to the new rule being enforced, only cash benefits considered under the prior guidance (i.e. SSI, TANF, general assistance) can be considered under a public charge determination. For programs added in the updated rule (i.e. SNAP, Medicaid, housing subsidies), only benefits received after the effective date can be considered in a public charge determination.

Are there additional resources I can direct customers to that are inquiring about the rule?

There are many organizations that are developing tools and resources to help affected individuals understand how the rule applies to them. A sample of information developed by other organizations are listed below. APHSA does not endorse or verify for accuracy the materials distributed by these or other organizations.

- [Immigrant Legal Resources Center](#)

- [Protecting Immigrant Families](#)
- [Catholic Legal Immigration Network](#)
- [American Immigration Lawyers Association](#)
- [Migration Policy Institute](#)

What Populations are Impacted?

Does the rule apply to U.S. citizens and lawful permanent residents (i.e. those with green cards)?

No. The rule only applies to non-exempt aliens applying for admission to the United States and individuals seeking to extend or change their nonimmigrant status.

Are certain immigrants exempt from the public charge rule?

Yes, the following groups are generally exempted from the public charge rule. These include:

- Victims of Severe Form of Trafficking in Persons (T) Nonimmigrants
- Victims of Criminal Activity (U) Nonimmigrants
- Individuals classified under the Violence Against Women Act (VAWA)
- Refugees and asylees with pending or approved applications for status

Are there any exceptions to the public charge rule for non-exempt immigrant groups?

Yes. There are certain exceptions to how public benefits are counted under the public charge rule for non-exempt immigrant groups. These include:

- Individuals receiving public benefits on behalf of another
- Medicaid received by aliens under age 21
- Medicaid received by pregnant women during pregnancy and during the 60-day period after pregnancy
- Public benefits received by military servicemembers and their spouses and children
- Public benefits received by children of U.S. citizens whose lawful admission for permanent residence in the custody of their U.S. citizen parent will result in the child's acquisition of citizenship

Information on Public Benefits Considered Under Public Charge Rule

What programs are considered a public benefit under the updated public charge rule?

The following programs are considered a public benefit under the public charge rule:

- Medicaid (with exceptions for emergency services and coverage of children under 21 and pregnant women)
- Supplemental Nutrition Assistance Program (SNAP)
- Public housing, Section 8 housing vouchers, and project-based Section 8
- Cash assistance through SSI, TANF, or other state, local, or tribal programs

What programs are not considered a public benefit under the updated rule?

Any program not listed above cannot be considered a public benefit under the updated rule. Some examples of excluded programs are:

- WIC
- LIHEAP
- Child care
- School meals
- State or locally funded non-cash benefits, including health care and nutrition programs

Does the public charge rule consider receipt of non-cash TANF benefits?

No. Under the original guidance issued in 1999, only TANF cash assistance used for income maintenance can be considered for public charge purposes, and the guidance explicitly states non-cash TANF benefits are exempt. While several programs

providing non-cash benefits have been added to the new rule, TANF non-cash benefits is not among them. Additional guidance on implementation of the rule is expected to be received by HHS/ACF.

Can a client receive public benefits for a period before they are considered under the public charge rule?

Yes. DHS has defined a public charge as receipt of public benefits for 12 months within a 36-month period. However, there are several important factors to consider in how this definition is applied:

- If an individual receives two public benefits within one month, the individual is counted as receiving two months of benefits.
- DHS may consider receipt of public benefits below the 12 month threshold when assessing the totality of an individual's circumstances when making a public charge determination.
- DHS may only consider public benefits newly added to the public charge rule (SNAP, Medicaid, and housing subsidies) that are received after the effective date of the new rule.

Can a client be denied admission to the United States solely due to receipt of public benefits?

No. DHS is required to look at the totality of an individual's circumstances when making a public charge determination. DHS has identified a number of factors that are weighted when making such a determination that consider age, income, education and skills, health, family size, and affidavits of support. Some positive factors include:

- Individuals that are a primary caregiver for other household members are considered as an education and skill factor.
- Individuals that have private health insurance for the expected period of admission that is not subsidized through the Affordable Care Act.
- Individuals with sufficient assets and resources to cover reasonably foreseeable medical costs.

Some negative factors include:

- Individuals receiving 12 months of benefits in the aggregate within a 36-month period.
- Individuals with medical conditions that makes them more likely than not to become a public charge.

Each situation is different and people with questions should consult with an immigration attorney or DOJ-accredited representative about their individual case.