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Public Charge DHS Proposed Rule

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On February 24, 2022, the Department of Homeland Security (DHS) published a [Notice of Proposed Rulemaking \(NPRM\) Public Charge Ground of Inadmissibility](#) to reconsider public charge grounds of inadmissibility determinations. The proposed rule stands in contrast to the August 2019 Final Rule, aiming to limit public charge to the receipt of public cash assistance for income maintenance and long-term institutionalization at government expense. Written comments and related materials will be accepted for 60 days until April 25, 2022.

Key Points

- ✓ The proposed rule would NOT consider non-cash public benefits (such as SNAP, most forms of Medicaid, Section 8 Housing, and Public Housing) when making a public charge determination. It would only consider long-term institutionalization at government expense as a non-cash benefit.
- ✓ In contrast to the 2019 Final Rule, the proposed rule would adopt a standard in line with the one used in the 1999 Field Guidance and Notice of Proposed Rulemaking (outlined below).
- ✓ U.S. Citizens and legal permanent residents (green card holders) are not subject to the public charge determination in addition to certain exempt noncitizens. The rule only applies to non-exempt noncitizens applying for admission to the United States and individuals seeking to extend or change their nonimmigrant status.
- ✓ The noncitizen's receipt of benefits, only when the noncitizen is named beneficiary, would be considered in public charge inadmissibility determination. For example, the receipt of public benefits by the noncitizen's relatives (including U.S. citizen children or relatives) would not be considered.
- ✓ Current and/or past receipt of public benefits alone would not be sufficient basis to determine whether an applicant is likely to become a public charge.

The American Public Human Services Association advances the well-being of all people by influencing modern approaches to sound policy, building the capacity of public agencies to enable healthy families and communities, and connecting leaders to accelerate learning and generate practical solutions together.

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Public Charge Timeline - August 2019 to February 2022

- **August 2019:** DHS publishes the [Final Public Charge Rule](#), expanding interpretation of the public charge ground of inadmissibility to include consideration of SNAP, Medicaid, housing vouchers, and other housing subsidies. Also considered receipt of public benefits for 12 months within a 36-month period a heavily weighted negative factor in public charge determinations.
- **February 2020:** Before the 2019 Final Rule could go into effect, several federal courts issue injunctions to block DHS from implementing the rule. The Supreme Court eventually lifts all nationwide injunctions, and the Final Rule goes into effect on February 24th.
- **July 2020:** The 2019 Final Rule is again blocked amidst the COVID-19 national emergency and is vacated by the federal district court in November 2020.
- **February 2021:** President Biden signs executive order directing the Secretary of State, the Attorney General, DHS, and other agencies to reassess public charge within 60 days and provide recommendations.
- **March 2021:** The November 2020 district court decision becomes final and the USCIS ceases all application of the 2019 Rule in public charge inadmissibility determinations starting March 9th.
- **March 2021-Current:** As it stands, the DHS is administering the [public charge inadmissibility statute \(section 212\(a\)\(4\) of the Immigration and Nationality Act\) consistent with the 1999 Interim Field Guidance](#) to determine whether a noncitizen is inadmissible on the public charge ground. The 1999 Interim Field Guidance is the policy that was in place before the 2019 Public Charge Final Rule.
- **February 2022:** The new proposed public charge rule would regulate how DHS applies the public charge ground of inadmissibility. This proposed rule, if finalized, would implement a different policy than the August 2019 Final Rule.

Changing Definitions of Public Charge

**The definition of public charge in the 2022 Proposed Rule is in line with the 1999 Interim Field Guidance and NPRM; However, nuances between the two rules are highlighted below.*

	1999 Interim Field Guidance and NPRM (Current Policy)	2022 Proposed Rule	2019 Final Rule
“Likely at any time to become a public charge”	Current rule is consistent with the 1999 Interim Field Guidance and NPRM. Defines public charge as “a noncitizen who has become (for deportation purposes) or who is likely to become (for admission/ adjustment purposes) ‘primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense.’”	Adopts a standard in line with the 1999 Field Guidance and NPRM, defining public charge as “likely at any time to become primarily dependent on the government for subsistence , as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense. ”	Defines public charge as “a noncitizen who 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).”

	1999 Interim Field Guidance and NPRM (Current Policy)	2022 Proposed Rule	2019 Final Rule
Public benefits	<p>Current rule uses the 1999 Interim Field Guidance to consider a “noncitizen’s past, current, or future receipt of public cash assistance for income maintenance and long-term institutionalization at government expense.”</p> <p>Consistent with the 1999 Interim Field Guidance, DHS does not consider supplemental, special purpose cash benefits in public charge determinations because these benefits are not evidence of primary dependence on the government for subsistence.</p>	<p>Proposes to consider the same list of public benefits that are considered under the 1999 Interim Field Guidance with a few clarifications.</p> <p>Similar to the approach taken in the 1999 NPRM and 1999 Interim Field Guidance, not all cash assistance would be relevant for public charge inadmissibility purposes. The 2022 Proposed Rule clarifies that non-cash benefits, except for long-term institutionalization at government expense, would be excluded in a public charge inadmissibility determination. It also clarifies what types of programs are exempt from public charge determinations (i.e. special purpose cash assistance programs like those established in response to the COVID-19 pandemic).</p>	<p>Expanded the list of benefits considered a public charge, including certain non-cash benefits such as:</p> <ul style="list-style-type: none"> • SNAP • Most emergency forms of Medicaid • Section 8 Housing Assistance under the Housing Choice Voucher (HCV) Program • Section 8 Project-Based Rental Assistance • Public housing under the Housing Act of 1937
Public cash assistance for income maintenance	<p>Consistent with the 1999 Interim Field Guidance and NPRM, receipt of public cash assistance for income maintenance includes:</p> <ul style="list-style-type: none"> • SSI • Cash assistance for income maintenance under TANF • State and local cash assistance programs that provide benefits for income maintenance (often called “General Assistance” programs). 	<p>Consistent with the 1999 Interim Field Guidance and NPRM, receipt of public cash assistance for income maintenance includes:</p> <ul style="list-style-type: none"> • SSI • Cash assistance for income maintenance under TANF • State, Tribal, territorial, or local cash benefit programs for income maintenance (often called “General Assistance in the State context) <p>The proposed rule clarifies that non-cash benefit programs like SNAP and most forms of Medicaid would be excluded.</p>	<p>Any Federal, State, local, or Tribal cash assistance for income maintenance (other than tax credits), including:</p> <ul style="list-style-type: none"> • SSI • TANF • Federal, State, or local cash benefit programs for income maintenance (often called “General Assistance” in the State context) • Specified non-cash benefits such as SNAP, Section 8 Housing Assistance, Section 8 Project-Based Rental Assistance, most forms of Medicaid, and Public Housing.
Long-term institutionalization at government expense	<p>Consistent with the 1999 Interim Field Guidance and NPRM, DHS considers institutionalization for long-term care at government expense, such as in a nursing home or mental health institution. This includes Medicaid-funded long-term institutionalization.</p> <p>Current rule clarifies that institutionalization for short periods of rehabilitation does not constitute primary dependence.</p>	<p>Defined as uninterrupted, extended periods of stay in an institution, such as a nursing home or a mental health institution (i.e. Medicaid payment for long-term institutionalization services under section 1905(a) of the Social Security Act).</p> <p>Clarifies that long-term institutionalization does not include imprisonment for conviction of a crime or institutionalization for short periods or for rehabilitation purposes. It also does not include the prior or current receipt of, or eligibility for, home and community-based services (HCBS).</p>	<p>DHS removed the reference to long-term institutionalization within the definition of public benefit, as the long-term institutionalization benefits that DHS has in the past considered, and intended to consider under this rule, were already part of the public benefit definition, i.e., Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), and Medicaid.</p>

	1999 Interim Field Guidance and NPRM (Current Policy)	2022 Proposed Rule	2019 Final Rule
Receipt (of public benefits)	<p>Under the current rule, DHS does not consider the benefit a family member receives—unless that benefit is the family's only means of financial support and the applicant lives in the same household. In that case, DHS may consider such benefit in making the applicant's public charge determination.</p> <p>Similarly, in the 1999 Interim Field Guidance and NPRM, DHS considered the receipt of (covered) public benefits received by relatives but only where such benefits constitute the sole source of support for the noncitizen, and only along with other factors in the totality of the circumstances.</p>	<p>Clarifies that only the receipt of specific benefits covered by the rule, only by the noncitizen applying for the immigration benefit, and only where such noncitizen is named beneficiary would be taken into consideration.</p> <p>DHS would not consider public benefits received by the noncitizen's relatives (including U.S. citizen children or relatives).</p>	<p>Does not take into consideration receipt of public benefits by U.S. citizens who are part of the noncitizen's household, including benefits received by U.S. citizen children. The receipt of public benefits by household members is not considered as part of a noncitizen's application.</p>

Questions & Answers About the February 2022 Proposed Public Charge Rule

For more questions and answers about public charge, visit the [USCIS Public Charge page](#).

- 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 noncitizens 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 proposal?
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
 - Applicants for adjustment of status under Liberian Refugee Immigration Fairness (LRIF)
 - **Certain Syrian nationals adjusting status under Public Law 106-378**
 - **Noncitizens applying for Temporary Protected Status**
- Are there any exceptions to the public charge rule proposal 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
 - 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
- What programs are NOT considered a public benefit under the proposed rule?

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

- **Supplemental Nutrition Assistance Program (SNAP)**
- **Medicaid (with exceptions for long-term institutionalization)**
- **Children's Health Insurance Program (CHIP)**
- **Housing benefits and transportation vouchers**
- Women, Infants, and Children Program (WIC)
- Childcare
- School meals
- Cash payments provided for child-care assistance
- Special purpose benefits like energy assistance (i.e. LIHEAP)
- Disaster assistance (i.e. Stafford Act assistance, FEMA's Individuals and Households Program, and State, Tribal, territorial, or local government disaster assistance)
- Supplemental, special purpose cash assistance programs established in response to public health emergencies (i.e. Economic Impact Payments and California Pandemic Emergency Assistance Fund)
- Assistance targeted to aid survivors of trafficking or crime
- Earned cash benefits (i.e. Title II Social Security benefits, government pension benefits, unemployment insurance payments, and veterans' benefits)
- Home and community-based services (HCBS), including Medicaid-funded HCBS

The proposed public charge rule was published in the February 24th Federal Register at www.federalregister.gov. Written comments and related materials will be accepted for 60 days until April 25, 2022.