



## U.S. Citizenship and Immigration Services

# Proposed Change to Public Charge Ground of Inadmissibility

Self-sufficiency has long been a basic principle of United States immigration law. Since the 1800s, Congress has put into statute that individuals are inadmissible to the U.S. if they are unable to care for themselves without becoming a public charge and federal laws have stated that foreign nationals generally must be self-sufficient. Despite this history, public charge has not been defined in statute or regulations, and there has been insufficient guidance on how to determine if an alien who is applying for a visa, admission, or adjustment of status is likely at any time to become a public charge.

### The Law:

[Section 212\(a\)\(4\)](#) of the INA: Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible[...]. In determining whether an alien is excludable under this paragraph, the consular officer or the Attorney General shall at a minimum consider the alien's-(I) age; (II) health; (III) family status; (IV) assets, resources, and financial status; and (V) education and skills . . . .”

[8 U.S.C. § 1601 \(PDF\)](#)(1): “Self-sufficiency has been a basic principle of United States immigration law since this country’s earliest immigration statutes.”

[8 U.S.C. § 1601 \(PDF\)](#)(2)(A): “It continues to be the immigration of the United States that aliens within the Nation’s borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations.”

### DHS Proposed Rule:

A [Notice of Proposed Rulemaking](#) (NPRM) related to the public charge ground of inadmissibility under INA section 212(a)(4) was published in the Federal Register for a 60-day comment period. This allows members of the public to provide input on how DHS should administer this rule. After the comment period ends, DHS will carefully consider public comments and will publish a final rule in the Federal Register, along with the date it will go into effect.

This NPRM (proposed rule), if finalized, would enable the federal government to better carry out provisions of U.S. immigration law related to the public charge ground of inadmissibility. This proposed rule would change the standard that is used when determining whether an alien is likely at any time in the future to become a public charge, and is therefore inadmissible under section 212(a)(4) of the INA, ineligible for adjustment of status, or ineligible for admission or a visa. The rule would also make nonimmigrant aliens who are public charges generally ineligible for change of status and extension of stay. USCIS believes this proposal is more consistent with Congressional intent regarding the public charge ground of inadmissibility.

The proposed rule would apply to individuals seeking admission to the United States from abroad on immigrant or nonimmigrant visas, individuals seeking to adjust their status to that of lawful permanent residents from within the United States, and individuals within the United States who hold a temporary visa and seek to either extend their stay in the same nonimmigrant classification or to change their status to a different nonimmigrant classification.

This rule would not impact groups of aliens that Congress specifically exempted from the public charge ground of inadmissibility, such as refugees, asylees, Afghans and Iraqis with special immigrant visas, nonimmigrant trafficking and crime victims, individuals applying under the Violence Against Women Act, and special immigrant juveniles. Additionally, the rule excludes consideration of benefits received by U.S. citizen children of aliens who will acquire citizenship under either section 320 or 322 of the INA, and by alien service members of the U.S. Armed Forces.

## Questions and Answers

### Q. When does this rule go into effect?

A. With the advance posting of the NPRM on its website and in the Federal Register, DHS is announcing a *proposed* rule, not a final rule. After DHS carefully considers public comments received on the proposed rule, DHS plans to issue a final public charge rule that will include an effective date. In the interim, and until a final rule is in effect, USCIS will continue to apply the current public charge policy (*i.e.*, the 1999 INS Interim Field Guidance).

### Q. What changes does the rule propose?

A. The proposed rule would change the standard that DHS uses when determining whether an alien is likely to become a “public charge,” at any time in the future and is therefore inadmissible and ineligible for adjustment of status or admission into the United States. The rule would also make nonimmigrant aliens who receive or are likely to receive designated public benefits above the designated threshold generally ineligible for change of status and extension of stay.

### Q. Who is subject to the public charge inadmissibility ground?

A. Individuals seeking immigrant or nonimmigrant visas abroad, individuals seeking admission to the United States on immigrant or nonimmigrant visas, and individuals seeking to adjust their status from within the United States. The proposed rule also would consider certain receipt of public benefits by individuals within the United States in a nonimmigrant (*i.e.*, temporary) status who are seeking to either extend their stay or change their status.

While some lawful permanent residents can be subject to the public charge ground of inadmissibility because specific circumstances dictate that they be considered applicants for admission, most lawful permanent residents are not subject to inadmissibility determinations, including public charge inadmissibility. Therefore, lawful permanent residents who subsequently apply for naturalization would *not* be subject to inadmissibility determinations, including a public charge inadmissibility determination.

### Q. Who is exempt from this rule?

A. Congress has exempted certain classes of aliens from the public charge ground of inadmissibility. For instance, refugees, asylees, and Afghans and Iraqis with special immigrant visas are exempt from public charge.

In addition, DHS is proposing not to consider in the context of a public charge determination, receipt of public benefits by alien members of the U.S. armed forces, serving in active duty or in any of the Ready Reserve components, or received by the alien spouse or children of such service members. Similarly, DHS would not consider Medicaid benefits received by foreign-born children, as defined in section 101(c) of the INA, who either have U.S. citizen parents, have been adopted by U.S. citizen parents, or who are coming to the United States to be adopted by U.S. citizens, and where such children will automatically acquire citizenship pursuant to section 320 or 322 of the INA upon or soon after their admission to the United States.

### Q. Which benefits are included in public charge inadmissibility determinations?

A. Public charge adjudications would only account for receipt of designated public benefits, including cash assistance for income maintenance, Medicaid (with limited exceptions for Medicaid benefits paid for an “emergency medical condition,” and for certain disability services related to education), Medicare Part D Low Income Subsidy, the Supplemental Nutrition Assistance Program (SNAP, or food stamps), any benefit provided for institutionalization for long-term care at government expense, Section 8 Housing Choice Voucher Program, Section 8 Project-Based Rental Assistance, and Public Housing.

The covered benefits generally represent the largest Federal programs for low-income people by total expenditure that address basic living needs such as income, housing, food, and medical care.

Under the proposed rule, receipt of public benefits that are not covered by the 1999 Interim Field Guidance (i.e., Medicaid, the Medicare Part D Low Income Subsidy, SNAP, and the designated housing benefits) would not be considered for public charge purposes unless the receipt occurred after a final rule becomes effective.

### Q. What amount of public assistance matters?

A. The proposed rule contains three different types of thresholds, as follows:

- The proposed threshold for those benefits that can be monetized easily (cash benefits, SNAP or food stamps, and Section 8 vouchers and rental assistance) is 15 percent of the Federal Poverty Guidelines (FPG) for a household of one within any period of 12 consecutive months, based on the per-month FPG for the months during which the benefits are received. For 2018, the equivalent 15 percent of the FPG dollar value is \$1,821. As a result, under the proposed rule, if DHS determines that within any period of 12 consecutive months, an individual is likely to receive these “monetizable” benefits in a cumulative amount above the threshold, DHS would consider the alien inadmissible and ineligible for adjustment of status on public charge grounds.
- The proposed threshold for those benefits that cannot be monetized easily (Medicaid, the Medicare Part D Low Income Subsidy, and Public Housing) is receipt of such benefits for more than 12 months in the aggregate within a 36-month period (such that, for instance, receipt of two non-monetizable benefits in one month counts as two months). As a result, under the proposed rule, if DHS determines that in any 36-month period in the future, an individual is likely to receive these “non-monetizable” benefits for a cumulative duration above the threshold, DHS would consider the alien inadmissible and ineligible for adjustment of status on public charge grounds.
- The proposed rule also contains a third standard, under which a person would be considered likely to become a public charge if he or she is likely to receive a monetizable benefit below the threshold, plus one or more non-monetizable benefits for longer than 9 months.

### Q. What period of benefits receipt is considered?

A. By law, the public charge inadmissibility determination is a prospective determination based on the totality of the circumstances. In making this determination, DHS would consider any current and past receipt of included public benefits above the designated thresholds as a factor in the totality of the circumstances to the extent probative in the determination; e.g., receipt of a small amount of public benefits for a short period of time many years ago would be less probative than more recent receipt of a greater amount and longer duration. The proposed rule also contains a “heavily weighted negative factor” for current receipt of public benefits or past receipt above the designated threshold within the past 36 months, i.e., within the past 36 months preceding the time of submission of an application or petition.

### Q. Whose benefits are considered?

A. Under the proposed rule, DHS would only consider the direct receipt of benefits by the individual alien applicant. Receipt of benefits by dependents and other household members would not be considered in determining whether the alien applicant is likely to become a public charge. Similarly, any income derived from such benefits received by other household members could not be considered as part of the alien applicant's household income.

**Q. Which benefits are not considered?**

A. Many benefits are not considered as part of the proposed rule. In fact, the rule does not include consideration of emergency medical assistance, disaster relief, national school lunch programs, foster care and adoption, and head start. While the Department will take public comments on what benefits should be included or excluded, it is important to note that the proposed rule only includes certain public benefit programs mentioned above.

**Q. How will DHS determine whether someone is likely to become a public charge for admission or adjustment purposes?**

A. Inadmissibility based on the public charge ground is determined by looking at the mandatory factors set forth in INA section 212(a)(4) and making a determination of the applicant's likelihood of becoming a public charge at any time in the future based on the totality of the circumstances. This means that the adjudicating officer must weigh both the positive and negative factors when determining whether someone is likely at any time in the future to become a public charge. At a minimum, a U.S. Citizenship and Immigration Services (USCIS) officer must consider the following factors when making a public charge inadmissibility determination:

- Age;
- Health;
- Family status;
- Assets, Resources, and Financial status; and
- Education and skills.

DHS is also proposing to consider the alien's prospective immigration status, expected period of admission, and affidavit of support, when an affidavit of support is required under section 212(a)(4)(C) or (D) of the Act.

**Q. What factors weigh heavily in favor of a determination that alien is likely to become a public charge?**

A. The following factors would generally weigh heavily in favor of a finding that an alien is likely to become a public charge:

- The alien is not a full-time student and is authorized to work, but is unable to demonstrate current employment, and has no employment history or no reasonable prospect of future employment;
- The alien is currently receiving or is currently certified or approved to receive one or more of the designated public benefits above the threshold;
- The alien has received one or more of the designated public benefits above the threshold within the 36 months immediately preceding the alien's application for a visa, admission, or adjustment of status;
- The alien has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide for him- or herself, attend school, or work, and the alien is uninsured and has no prospect of obtaining private health insurance; or
- The alien had previously been found inadmissible or deportable based on public charge.

**Q. What factors would weigh heavily against a determination that an alien is likely to become a public charge?**

A. The following factors would weigh heavily against a finding that an alien is likely to become a public charge:

- The alien has financial assets, resources, and support of at least 250 percent of the Federal Poverty Guidelines for a household of the alien's household size; or
- The alien is authorized to work and is currently employed with an annual income of at least 250 percent of the Federal Poverty Guidelines for a household of the alien's household size.

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