



# Fact Sheet

## Public Charge Inadmissibility Rule

***\*This information is provided on background and reportable as fact\****

### General Background

- The public charge inadmissibility rule:
  - Ensures that those seeking to come to or remain in the United States do not depend on public resources to meet their needs, but rather, rely on their own capabilities and the resources of their families, sponsors, and private organizations;
  - Is now revised to better ensure that immigrants coming to the United States are equipped to be self-sufficient and have the tools they need to succeed in this country, independent of government assistance. By faithfully executing our nation's long-standing immigration laws, the public charge regulation preserves the promise of the American dream for those equipped to obtain it;
  - Does not impact eligibility for public benefits; public-benefit granting agencies at the federal, state, and local level are in charge of administering and managing public benefits programs. The final rule would not eliminate access to any public benefits for which an alien may be eligible; and
  - Does not create any penalty or disincentive for past, current, or future receipt of public benefits by U.S. citizens, including U.S. citizen children born to foreign nationals. The final rule does not apply to U.S. citizens, even if the U.S. citizen is related to an applicant who is subject to the public charge ground of inadmissibility.
- Public charge has been a part of U.S. immigration law for more than 100 years as a ground of inadmissibility, and has existed in its current form since 1996 in section 212(a)(4) of the Immigration and Nationality Act (INA).

### Key Terms

- Currently, public charge is not defined in statute or regulation—this rule changes that. The final rule defines “public charge” as an alien who receives one or more designated public benefits for more than 12 months, in the aggregate, within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months).
- “Public benefit” is defined as any cash benefits for income maintenance, including Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF) and General Assistance, the Supplemental Nutrition Assistance Program (SNAP), most forms of Medicaid, Section 8 Housing Assistance under the Housing Choice Voucher Program, Section 8 Project-Based Rental Assistance, and public housing. The rule expands the list of public benefits from what is considered under the current 1999 Interim Field Guidance.
- The list of public benefits in the rule is exhaustive with respect to non-cash benefits; however, cash benefits for income maintenance may include a variety of general purpose means-tested cash benefits provided by federal, state, local, or tribal benefit granting agencies. Any non-cash public benefits not listed in the rule are excluded from consideration. Notably, the rule does not include consideration of emergency medical assistance, disaster relief, national school lunch programs, WIC or CHIP, foster care and adoption, student and mortgage loans, energy assistance, food pantries and homeless

shelters, and Head Start.

#### Then/Now

- Since 1999, immigration agencies have interpreted “public charge” to mean a person who is “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,” as detailed in the May 26, 1999, Interim Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, issued by legacy Immigration and Naturalization Service (INS).
- Under the 1999 Interim Field Guidance, reliance on or receipt of noncash benefits such as SNAP, Medicaid, and housing vouchers/subsidies is not considered when determining whether someone is likely to become a public charge.
- The final rule supersedes that 1999 Interim Field Guidance. DHS’s new definition of “public charge” better ensures that aliens subject to the public charge ground of inadmissibility are self-sufficient i.e., rely on their own capabilities and the resources of family members, sponsors, and private organizations rather than public resources.

#### Inadmissibility Determinations: Prospective Determination Based on the Totality of the Alien’s Circumstances

- The DHS Public Charge Inadmissibility Rule only applies to inadmissibility determinations for applications for admission and adjustment of status purposes, and sets a public benefit condition for extensions of stay or changes of status.
- This rule does not change the removal grounds administered by the Department of Justice.
- This rule includes an exhaustive list of public benefits that are considered in public charge inadmissibility determinations and in the public benefit condition for extension of stay and change of status requests.
- DHS will not consider the receipt of designated public benefits received by an alien who, at the time of receipt, or at the time of filing the application for admission, adjustment of status, extension of stay, or change of status was a member of the U.S. armed forces, serving in active duty or in any of the Ready Reserve components. DHS also will not consider the receipt of public benefits by spouses and children of such aliens.
- DHS will not consider public benefits received by certain children, including adopted children, who will acquire U.S. citizenship under INA 320, 8 U.S.C. 1431, or who are entering the United States for purposes of attending an interview under INA 322.
- DHS will not consider the receipt of Medicaid benefits received: (1) for the treatment of an “emergency medical condition,” (2) as services or benefits provided in connection with the Individuals with Disabilities Education Act, (3) as school-based services or benefits provided to individuals who are at or below the oldest age eligible for secondary education as determined under state or local law, (4) by aliens under the age of 21, and (5) by pregnant women and by women within the 60-day period beginning on the last day of the pregnancy.
- In making a public charge inadmissibility determination under this final rule, DHS will at a minimum consider the alien’s age, health, family status, assets, resources and financial status, education and skills, the alien’s prospective immigration status and period of admission, and any sufficient Affidavit of Support under INA section 213A, if required to be submitted.
- No single factor alone, including the receipt of public benefits, is outcome determinative: The determination of an alien’s likelihood of becoming a public charge at any time in the future must be based on the totality of the alien’s circumstances and by weighing all of the factors that are relevant to the alien’s case.

### Heavily Weighted Factors

Negative: The following factors will weigh heavily *in favor* of a finding that an alien is likely at any time to become a public charge:

- The alien 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.
- The alien has received, or has been certified or approved to receive, one or more public benefits for more than 12 months, in the aggregate, within any 36-month period, beginning no earlier than 36 months before the alien applied for admission or adjustment of status on or after Oct. 15, 2019.
- The alien 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, attend school, or work, and he or she is uninsured and has neither the prospect of obtaining private health insurance nor the financial resources to pay for reasonably foreseeable medical costs related to a medical condition.
- The alien has previously been found by an immigration judge or the Board of Immigration Appeals to be inadmissible or deportable based on public charge grounds.

Positive: The following factors will weigh heavily *against* a finding that an alien is inadmissible as likely at any time to become a public charge:

- The alien has household income, assets, or resources, and support of at least 250 percent of the Federal Poverty Guidelines for the alien's household size;
- The alien is authorized to work and is currently employed in a legal industry with an annual income, of at least 250 percent of the Federal Poverty Guidelines for the alien's household size; or
- The alien has private health insurance appropriate for the intended duration of the alien's stay, (excluding any subsidies in the form of premium tax credits under the Patient Protection and Affordable Care Act).

### Vulnerable Populations

- In accordance with federal law, the public charge inadmissibility rule does not apply to humanitarian-based immigration programs such as refugees, asylees, and certain trafficking victims (T nonimmigrants), victims of qualifying criminal activity (U nonimmigrants), victims of domestic violence (VAWA self-petitioners), or Special Immigrant Juveniles (SIJs).

### Effective Date

- The rule is effective Oct. 15, 2019.
- DHS will apply the public charge final rule only to applications and petitions postmarked (or, if applicable, submitted electronically) on or after the effective date of the final rule.
- Applications and petitions already pending with USCIS on the effective date of the rule will be adjudicated under the 1999 Interim Guidance.

### Consideration of Public Benefits Received before the Effective Date of the Final Rule

- DHS *will not* consider the receipt of public benefits that were *excluded* from consideration under the 1999 Interim Field Guidance (e.g., SNAP, Section 8 Housing Vouchers) if the benefit(s) was received before the effective date of the final rule.
- DHS *will* consider the receipt of public benefits that were included in the public charge consideration under the 1999 Interim Field Guidance, and that were received before the effective date of the final rule, in the totality of the circumstances, however such receipt *will not* be weighted heavily.

Public Charge Bond

- Under the final rule, USCIS, in its discretion, may permit an adjustment of status applicant who is inadmissible only on the public charge ground to adjust status to that of a legal permanent resident upon posting of a public charge bond.