

# Final Rule on Public Charge Ground of Inadmissibility

September 11, 2019

## DHS Final Rule on Public Charge

### Public Charge Rule

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On August 14, 2019, the U.S. Department of Homeland Security (DHS) published the **Inadmissibility on Public Charge Final Rule** (commonly known as “**public charge rule**”) that codifies changes to regulations governing the application of the public charge inadmissibility ground under the Immigration and Nationality Act of 1952 (INA).

Among other changes, the final rule (“new rule”) redefines a public charge as a person who receives any number of public benefits for more than an aggregate of 12 months over any 36 month period of time. The new rule also expands the list of publicly-funded programs (“Public Benefits”) that DHS will consider to determine whether a person is inadmissible to the U.S. based on his or her likelihood of becoming a public charge at any time in the future. Prior to the new rule becoming final, DHS considered receipt of three cash assistance programs—Supplemental Security Income, Temporary Assistance to Needy Families (TANF), and state general relief or general assistance—as well as Medicaid program that covers institutionalization for long-term care. Under the new rule, DHS will consider any federal, state, local, or tribal cash assistance for income maintenance, Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), Federal, state or local cash benefit programs for income maintenance, Supplemental Nutrition Assistance Program (SNAP, or formerly called “Food Stamps”) in public charge inadmissibility determination.

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*Actual statutory language is available at [FederalRegister.gov](https://www.federalregister.gov)*

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**Note:** The Final rule supersedes the *1999 Interim Field Guidance on Deportability and Inadmissibility on Public Charge Grounds* and goes into effect on October 15, 2019. Notably, there are several lawsuits across the country that may delay implementation and enforcement of the new rule.

## Scope of the Public Charge Rule

The public charge rule only applies to individuals seeking admission into the U.S. or applying for adjustment of status. Specifically, the public charge rule applies to applicants for admission, 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 nonimmigrant visas and seek to extend their stay in the same nonimmigrant classification or to change their status to a different nonimmigrant classification.

The public charge rule does not apply to U.S. Citizens and individuals whom Congress has exempted from public charge ground of inadmissibility. Accordingly, the public charge rule does not create any penalty or disincentive for past, current, or future receipt of public benefits by U.S. Citizens or individuals whom Congress has exempted from the public charge ground of inadmissibility, such as refugees, asylees, Afghan and Iraqis with special immigrant visas, and certain nonimmigrant trafficking and crime victims, individuals applying under the Violence Against Women Act, special immigrant juveniles, or those who DHS has granted a waiver of public charge of inadmissibility.

The public charge rule also provides that DHS will not consider public benefits received by children, including adopted children, who will acquire U.S. Citizenship under the INA section 320, 8 U.S.C. 1431. In addition, DHS will not consider, public benefits received by noncitizen members of the U.S. armed forces serving in active duty or in any of the Ready Reserve components, and by the service member's spouse and the service member's children.

### Is Public Charge a New Policy?

No. Public charge has been a concept in immigration law since the Immigration Act of 1882.

## Public Benefits

Under the new rule, DHS will consider the following programs in public charge inadmissibility determination:

- Any federal, state, local, or tribal cash assistance for income maintenance
- Supplemental Security Income (SSI)
- Temporary Assistance for Needy Families (TANF)
- Federal, state or local cash benefit programs for income maintenance
- Supplemental Nutrition Assistance Program (SNAP, or formerly "Food Stamps")
- Section 8 Housing Assistance under the Housing Choice Voucher Program
- Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation)
- Public Housing under section 9 the Housing Act of 1937, 42 U.S.C. 1437 et seq.
- Federally funded Medicaid (with certain exclusions)

**Note:** Benefits not listed in the public charge rule are excluded from consideration.

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## Frequently Asked Questions (FAQ)

### 1. When does the public charge rule go into effect?

- The final rule goes into effect on Oct. 15, 2019, and will only be applied to applications and petitions postmarked (or, if applicable, submitted electronically) on or after October 15, 2019.

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

- Unless specifically exempted by Congress, 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 to that of a lawful permanent resident (LPR) from within the United States are subject to the public charge ground of inadmissibility.
  - o **Note** – USCIS recently explained that while most lawful permanent residents are not subject to inadmissibility determinations, including public charge inadmissibility, upon their return from a trip abroad, 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.

### 3. Who is exempted from the public charge rule?

- Congress has exempted certain classes of individuals from the public charge ground of inadmissibility. For instance, refugees, asylees, and Afghans and Iraqis with special immigrant visas are exempt from public charge inadmissibility. The public charge rule includes provisions clarifying the classes of individuals who are exempt from this rule, as well as those who are able to obtain a waiver of public charge inadmissibility.



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## FAQ Continued

### 5. Which benefits are included in public charge inadmissibility determination?

- Any federal, state, local, or tribal cash assistance for income maintenance
- Supplemental Security Income (SSI)
- Temporary Assistance for Needy Families (TANF)
- Federal, state or local cash benefit programs for income maintenance
- Supplemental Nutrition Assistance Program (SNAP, or formerly "Food Stamps")
- Section 8 Housing Assistance under the Housing Choice Voucher Program
- Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation)
- Public Housing under section 9 the Housing Act of 1937, 42 U.S.C. 1437 et seq.
- Federally funded Medicaid (with certain exclusions)

### 6. Which benefits are not considered in public charge inadmissibility determination?

- Benefits not listed in the public charge rule are excluded from consideration. Additionally, DHS will not consider, as part of a public charge inadmissibility determination, public benefits received by noncitizen members of the U.S. armed forces serving in active duty or in any of the Ready Reserve components, and by the service member's spouse and the service member's children. Similarly, DHS will not consider:
  - o The receipt of Medicaid for treatment of an emergency medical condition;
  - o Services or benefits funded by Medicaid but provided under the Individuals with Disabilities Education Act;

- o 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;
- o Medicaid benefits received by an individual under 21 years of age; or
- o Medicaid benefits received by a woman during pregnancy and during the 60-day period beginning on the last day of the pregnancy.

### 4. Whose benefits are considered?

- DHS will only consider the direct receipt of benefits by the individual for the individual's own benefit, or where the individual is listed beneficiary of a public benefit. In other words, DHS will not consider public benefits received on behalf of another as a legal guardian or pursuant to a power of attorney for such a person. DHS will also not attribute receipt of a public benefit by one or more members of the individual's household to the applicant unless the applicant is also a listed beneficiary of the public benefit. Similarly, any income derived from such benefits received by other household members will not be considered as part of the applicant's household income.

### 6. Are there any other factors that DHS will take into consideration in public charge inadmissibility determination?

- Yes. There are several other factors, including the applicant's current and estimated income, job history, job skills, health status, assets, household size, and current or history of public benefits receipt.

## Resources

Resource	Services	Web Address	Contact Information
Asian Pacific Islander Legal Outreach	<ul style="list-style-type: none"> <li>• Asylum</li> <li>• Naturalization/</li> <li>• Citizenship</li> <li>• T &amp; U Visa Petitions</li> </ul>	<a href="https://www.apilegaloutreach.org/">https://www.apilegaloutreach.org/</a>	Oakland Office 310 8th Street, Suite 308, Oakland CA 94607 (510) 251-2846
Bay Area Legal Aid	<ul style="list-style-type: none"> <li>• VAWA Self-Petitions</li> <li>• U Visa Petitions</li> </ul>	<a href="http://www.baylegal.org">www.baylegal.org</a>	Oakland (510) 663-4755 (800) 551-5554
Catholic Charities	<ul style="list-style-type: none"> <li>• Immigration legal services</li> </ul>	<a href="http://www.cceb.org">www.cceb.org</a>	Oakland (510) 768-3100
Immigrant Legal Resource Center	<ul style="list-style-type: none"> <li>• Legal Assistant</li> <li>• Policy and Advocacy</li> </ul>	<a href="http://www.ilrc.org">www.ilrc.org</a>	San Francisco 415-255-9499
LawHelpCA.org	<ul style="list-style-type: none"> <li>• Immigration Resources</li> </ul>	<a href="http://www.lawhelpca.org/issues/immigration">www.lawhelpca.org/issues/immigration</a>	List of local resources
East Bay Community Law Center	<ul style="list-style-type: none"> <li>• Consultation</li> <li>• Intake</li> <li>• Education &amp; Outreach</li> </ul>	<a href="http://www.ebclc.org">www.ebclc.org</a>	Berkeley 510-548-4040
East Bay Sanctuary Covenant	<ul style="list-style-type: none"> <li>• Education &amp; Outreach</li> </ul>	<a href="http://www.eastbaysanctuary.org">www.eastbaysanctuary.org</a>	Berkeley 510-540-5296
Centro Legal De La Raza	<ul style="list-style-type: none"> <li>• Asylum</li> <li>• Family-based visa petitions</li> <li>• U Visas</li> <li>• Adjustment of Status</li> <li>• Naturalization</li> </ul>	<a href="https://www.centrolegal.org/#">https://www.centrolegal.org/#</a>	3400 E 12 <sup>th</sup> St, Oakland CA 94601 510-437-1554