

# CHANGES TO PUBLIC CHARGE: ANALYSIS AND FREQUENTLY ASKED QUESTIONS

Updated February 3, 2020

*This document reflects the changes to public charge policy based on the Department of Homeland Security's recent rule on the public charge ground of inadmissibility. This final rule was posted in the Federal Register on August 14, 2019. Although the rule has been on hold since then, **on January 27, 2020, the United States Supreme Court set aside** the preliminary injunctions that prevented the Department of Homeland Security (DHS) public charge rule from taking effect nationwide. This means that the public charge rule will be allowed to go into effect while the litigation continues except in Illinois where it is blocked by a statewide injunction.*

*For a community-facing FAQ and other community education documents, please go to <https://protectingimmigrantfamilies.org/know-your-rights/>.*

*View our [Public Charge Dictionary](#) for common terms used when discussing immigrant eligibility for public programs.*

---

## Brief Overview of How Public Charge Policy Has Changed

On October 10, 2018, the Department of Homeland Security (DHS) [posted a proposed public charge regulation](#) (a Notice of Proposed Rulemaking) in the Federal Register for a 60-day comment period. On August 14, 2019, after completing its review of the more than 260,000 public comments submitted, DHS [published a final regulation](#) that departed only slightly from the proposed version. **The U.S. Supreme Court has allowed the DHS public charge rule to take effect nationwide while lawsuits continue (except for Illinois, where the rule remains blocked by a statewide injunction).** Per USCIS, the final rule will only apply to applications submitted on or after **February 24, 2020**. Medicaid, SNAP ("Food Stamps"), HUD public housing, and "Section 8" housing benefits received before February 24, 2020 will not be considered in the public charge determination.

The final rule marks a significant and harmful change that would fundamentally alter the immigration system, making it much harder for low- and moderate- income immigrants to obtain lawful permanent resident status (become a "green card holder"). It also will make immigrants more fearful of receiving critical supports like health care and nutrition programs that help working families thrive and remain productive.

Even before the rule took effect, it was causing significant harm. Fear and confusion - known as the "chilling effect" - are causing people to disenroll from programs or forgo benefits for which they are eligible. According to a December 2018 nationwide survey, about one in seven adults in immigrant families reported a chilling effect where individuals did not participate in a government program for fear of risking future green card status. Several states have reported drops in participation. For more information, see our [fact sheet](#). The potential impact is far-reaching, given that 13.7 percent of the U.S. population is foreign-born and one in four children in the U.S. has at least one foreign-born parent.

Please note that different rules currently govern applications processed at consular offices abroad [or to people who have their interviews for green cards or visas at consular offices abroad].

## Definition of Public Charge

Part of federal immigration law for over a hundred years, the “public charge” inadmissibility test was designed to identify people who may depend on the government as their *main* source of support. If the government determines that a person is “likely at any time to become a public charge” in the future, it can deny a person admission to the U.S. or lawful permanent residence (or “green card” status). ([Immigration and Naturalization Act section 212\(a\)\(4\), 8 USC 1182\(a\)\(4\)](#))

The DHS regulation redefines a “public charge” as a non-citizen who receives or is likely to receive one or more of the specified 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).

When seeking a visa or green card, a forward-looking test is applied. An immigration officer assesses whether a person is more likely than not to become a “public charge” in the future. This determination is made based on a “totality of circumstances” assessment that considers the applicant’s age, health, family status, income and resources, education and skills, and the validity of an affidavit of support.

The regulation treats each of the following *negatively* in public charge decisions: a minimum income threshold (earning less than 125% of the federal poverty level (FPL)), being a child or a senior, having certain health conditions, limited English ability, less than a high school education, a poor credit history, prior receipt of certain benefits, and other factors. The rule also expands the list of public assistance programs that may be considered as negative factors in a “public charge” determination, excluding anyone who is deemed more likely than not to use the enumerated cash, health care, nutrition, or housing programs in the future, as further described below.

In addition, the new regulation introduces a new test for non-immigrants seeking extensions of their visas or a change to another nonimmigrant status (e.g., from a student visa to an employment visa), penalizing those who have used a listed benefit for a designated period of time.

## Totality of Circumstances Test: New Standards and Heavily Weighted Factors

*NOTE: This summary does not include all of the details in the final rule and should not be considered or used for providing legal advice.*

- **INCOME & ASSETS** | The final rule adopts new income thresholds for households seeking to overcome a “public charge” test, and introduces specific factors to consider:
  - Negative weight is applied to immigrant households that earn less than 125 percent of the Federal Poverty Level (\$32,750 for a family of four) and do not have significant assets.
  - Heavily positive weight is applied only to households earning over 250 percent of the Federal Poverty Level (\$65,500 annually for a family of 4).
  - Household assets and resources to cover “any reasonably foreseeable medical costs.”

- Application or receipt of one of the benefit programs specified in the rule (after February 24, 2020).
- Application or receipt of a fee waiver to obtain an immigration status that is subject to the public charge determination (after February 24, 2020).
- Credit scores and history.
- **AGE** | The final rule:
  - Negatively weighs persons who are younger than 18 or older than 61.
  - Positively weighs persons between the ages of 18 and 62.
- **HEALTH** | The final rule considers:
  - Whether the non-citizen has health conditions that could require extensive treatment in the future, or that could affect a person's ability to work, attend school, or care for oneself. If the non-citizen has such a condition and does not have access to private health insurance or other resources to pay for treatment, it will be weighed as heavily negative.
  - Heavy positive weight is given to persons who have private *unsubsidized* health insurance, which the rule defines as not including ACA plans supported by Advanced Premium Tax Credits.
- **FAMILY STATUS** | The final rule considers:
  - An applicant's household size, including immediate family members as well as anyone else to whom the applicant provides at least half of their support, or who provides the applicant with half of their support.
- **EDUCATION & SKILLS** | The final rule looks at whether the applicant has adequate education and skills to obtain or maintain employment with an income sufficient to avoid becoming a public charge. It considers whether the person has:
  - A history of employment (e.g. 3 years of tax returns)
  - A high school degree or higher education, occupational skills, certificates or licenses
  - Proficiency in English or in other languages in addition to English
  - A role as the primary caretaker of someone in the household who is a child, senior, or a person who is ill or who has disabilities.
- **AFFIDAVIT OF SUPPORT** | An affidavit of support is a contract that a sponsor – usually a family member – signs to accept financial responsibility for an applicant and his/her dependents. In addition to considering the applicant's income or resources, the final rule considers whether the sponsor is likely to support the individual, based on:
  - Relationship to the immigrant
  - Whether the sponsor is residing in the same household as the applicant
  - Whether the sponsor has sponsored others too

## Benefits Considered

The proposal expands the types of benefits that could be considered in a “public charge” determination, adding several widely-used programs that help low- and moderate-income working families. These programs that can be counted under the final rule are:

- Any Federal, State, Local or Tribal cash assistance for income maintenance, including TANF, SSI and general assistance programs (countable under the previous rule as well);

- Medicaid (with exceptions including coverage for emergency services, children under 21 years old, pregnant women including 60 days of post-partum services);
- Supplemental Nutrition Assistance Program (SNAP, formerly called “food stamps”);
- Federal Public Housing, Section 8 housing vouchers and Section 8 project-based rental assistance.

Use of cash assistance programs or long-term institutional care before February 24, 2020, will be considered in public charge determinations. Use of any programs listed above for any period of time on or after February 24, 2020, may be counted, with a heavy negative weight assigned to people who use one or more programs for a threshold length of time. Note however that:

- DHS will not consider any benefits not listed in the rule (see table below).
- DHS will not consider benefits received by an applicant’s family members.
- DHS will not consider non-cash programs funded *entirely* by states, localities or tribes.
- The regulation also excludes benefits received by active duty servicemembers, military reservists and their spouses and children, but does not exclude benefits received by veterans or their families.
- Benefits received by immigrants while in a status that is exempt from a public charge determination (e.g., time spent as a refugee, VAWA self-petitioner, etc.) will not be held against them if they apply for admission into the U.S. or LPR status under a different pathway.

**NOTE: The rule is not retroactive.** This means that benefits -- other than cash or long-term care at government expense -- that are used before the rule is effective on February 24, 2020, will not be considered in the public charge determination.

Benefits Included for Public Charge	Benefits Excluded from Public Charge
<ul style="list-style-type: none"> <li>• Cash Support for Income Maintenance*</li> <li>• Non-Emergency Medicaid**</li> <li>• Supplemental Nutrition Assistance Program (SNAP or Food Stamps)</li> <li>• Housing Assistance (Public Housing or Section 8 Housing Vouchers and Rental Assistance)</li> </ul> <p>* Included under current policy as well;            ** Exception for coverage of children under 21, pregnant women (including 60 days post-partum)</p>	<p><i>ANY benefits <u>not</u> on the included list will not be applied toward the public charge test. Examples include:</i></p> <ul style="list-style-type: none"> <li>• Disaster relief</li> <li>• Emergency medical assistance</li> <li>• Entirely state, local or tribal programs (other than cash assistance)</li> <li>• Benefits received by immigrant’s family members</li> <li>• CHIP</li> <li>• Special Supplemental Nutrition for Women Infants and Children (WIC)</li> <li>• School Breakfast and Lunch</li> <li>• Energy Assistance (LIHEAP)</li> <li>• Transportation vouchers or non cash transportation services</li> <li>• Non-cash TANF benefits</li> <li>• Tax credits, including the Earned Income Tax Credit and Child Tax Credit</li> </ul>

	<ul style="list-style-type: none"> <li>· Advance premium tax credits under the Affordable Care Act</li> <li>· Pell grants and student Loans</li> <li>· Any other program not listed in the left column</li> </ul>
--	---

## Other Notable Issues

The final rule offers only one way for an immigrant to cure a public charge issue: paying a public charge bond. This means that people deemed likely to become a public charge, because of their income, a health condition like cancer, or other factors, may be required to pay a minimum of **\$8,100** for admission (or higher if private bond companies are allowed to charge them fees for advancing bond money) and would risk losing this bond if they use any public benefits listed in the rule. There is no right to overcome a public charge assessment by posting a bond. Only a person who does not have one of the heavily-weighted negative factors is permitted to post a bond, and only upon DHS’ discretionary approval.

The final rule also does not address or change the public charge ground of deportability. Under current law, a person who has become a public charge can be deported only in extremely rare circumstances. The Department of Justice [may propose a separate rule](#) that addresses this ground. To learn more, review our [FAQ on Public Charge and Deportation](#).

## Things to Keep in Mind

1. **Some immigrant groups are not subject to “public charge.”** Certain immigrants—such as refugees, asylees, many survivors of domestic violence, and other protected groups—are not subject to “public charge” inadmissibility determinations and would not be affected by this final rule. Exempt immigrants include: refugees; asylees; survivors of trafficking, domestic violence, or other serious crimes (T or U visa applicants/holders); VAWA self-petitioners; special immigrant juveniles; certain people paroled into the U.S. as well as other “humanitarian” immigrants. And lawful permanent residents (green card holders) are not subject to the public charge test when they apply for U.S. citizenship.

The rule specifies that any benefits received while in an exempt status will not be counted against applicants, if they later seek a status through a non-exempt pathway.

2. **Immigration officials must consider all of an immigrant’s circumstances.** The public charge statute — which cannot be changed by regulations — requires immigration officials to look at all factors that relate to noncitizens’ ability to support themselves, including their age, health, income, assets, resources, education/skills, family members they support, and family who will support them. They may also consider whether a sponsor has signed an affidavit of support (a contract) promising to support the noncitizen. Since the test looks at the person’s overall circumstances prospectively, no one factor is definitive. Any negative factor, such as not having a job, can be overcome by positive factors, such as having completed training for a new profession or having college-educated children who will help

support the family. Thus, use of public benefits will not automatically make one a public charge, and the applicant can present the best case for him/herself.

## FREQUENTLY ASKED QUESTIONS

### THE PUBLIC CHARGE TEST

#### **When is a public charge determination made?**

An assessment of whether a person is likely to become a public charge is typically made at two points: 1) when the person applies for admission to the U.S. (e.g., applies for a visa or undergoes consular processing for a green card from abroad), and 2) when the person applies for lawful permanent resident (LPR) status. A lawful permanent resident who leaves the country for over 180 days and seeks to reenter may also be subject to a public charge determination. There is no public charge assessment when a lawful permanent resident applies to become a naturalized citizen.

#### **Which immigrants are exempt from public charge?**

Some categories of noncitizens are not subject to a public charge test, including: refugees; asylees; survivors of trafficking, domestic violence, or other serious crimes (T or U visa applicants/holders); VAWA self-petitioners; special immigrant juveniles; certain people paroled into the U.S. and certain other “humanitarian” immigrants.

#### **Who is affected by the public charge regulations?**

The regulations would affect people who are: 1) not exempt from public charge, and 2) are eligible to have their application for lawful permanent resident (LPR) status decided *in the US*. A different test applies to non-immigrant visa holders (e.g., with H-1B, F-1 visas, etc.) who seek an extension of their visa or another non-immigrant status. Decisions about applications for admission or LPR status that are made *outside the U.S.* (at embassies or consular offices abroad) are guided by [Foreign Affairs Manual, published by the State Department](#). The State Department has issued *but has not yet implemented* an [Interim Final Rule](#), which is similar to the DHS rule. The State Department rule has been challenged in court.

#### **Does the public charge test apply to renewals of green cards?**

A person’s lawful permanent residence does not expire when the green card expires. Since there is no new admissions test when people renew their green card, the public charge ground of inadmissibility would not apply at this stage.

#### **Does the public charge determination apply to non-immigrants?**

The DHS rule applies a new test to people *in the U.S.* who seek to extend a temporary non-immigrant visa, as well as those seeking to change the category of their non-immigrant visa (e.g., from a student to an employment-based visa). It looks only at whether the person has used a listed benefit for more than a total of 12 months during a 36-month period since the nonimmigrant status was granted. Non-immigrants are generally not eligible for the listed benefits.

### **Will this rule affect immigrants who are already green card holders or U.S. citizens?**

The rule does not affect individuals who have already become U.S. citizens. Lawful permanent residents (green card holders) also are not subject to a public charge inadmissibility determination when they apply to become a U.S. citizen.

However, green card holders who leave the U.S. for more than 180 consecutive days (6 months) may be subject to a determination of admissibility, including a public charge assessment, when seeking to re-enter the U.S. They should consult with an immigration attorney prior to departure. LPRs may also be subject to an admissibility determination when they reenter if they have abandoned their residency, committed certain crimes, or if they left the country while in removal proceedings.

### **Does public charge apply to DACA recipients?**

There is no public charge assessment when people renew their DACA grants. However, DACA recipients are not exempt from public charge. DACA recipients who have an independent pathway to becoming an LPR, such as by marrying a citizen, would be subject to a public charge assessment. If they apply for status through an exempt pathway such as a U visa, they would not be subject to a public charge test.

### **Who makes the decision of whether someone is likely to become a public charge?**

For individuals applying to enter the U.S. from abroad or who need to go abroad for their green card interview, consular officials (employed by the State Department) make the public charge determination based on criteria in the Foreign Affairs Manual (FAM) and any State Department regulations. For individuals who have their green card application decided in the U.S. or who apply to extend/change their non-immigrant status, DHS' public charge policies and rules apply.

### **Can a public charge determination be retroactive?**

The public charge determination is a forward-looking/prospective test based on the totality of the applicant's circumstances. However, the government may consider the past use of benefits as one element in making prospective public charge determinations.

- **Benefits that were previously excluded from the public charge test (anything other than cash or long-term institutional care) will NOT be considered *unless received after the final rule is effective (February 24, 2020).***
- Thus, the use of non-cash benefits like SNAP, Medicaid or housing assistance before that date cannot be considered in the prospective public charge determination.

## **THE DHS FINAL RULE**

### **Which categories of immigrants are eligible for the programs in the rule, and also potentially subject to public charge grounds of inadmissibility?**

Although most immigrants who are eligible for the listed programs are not subject to public charge determinations, a small group of individuals could be penalized for using benefits for which they are eligible.

Here is an overview of the groups that could be harmed by their use of benefits in the final rule. Examples include:

- All programs: Lawful permanent residents (green card holders) who leave the U.S. for more than 6 months and attempt to re-enter the country can be subject to an inadmissibility determination, which could include a public charge test. LPRs may also be subject to an admissibility determination if they have abandoned their residency, committed certain crimes, or left the country while in removal proceedings.
- Medicaid/SNAP: Some people granted parole, withholding of removal, and a small subset of Cuban/Haitian entrants may have a pathway to permanent status (such as a family-based petition) that subjects them to public charge.
- SNAP: In addition to the groups listed above, some members of the Hmong and Lao communities that helped the U.S. during the Vietnam War may be subject to a public charge test if they seek status through, e.g. a family-based visa petition.
- Public Housing or Section 8: Some people granted parole or withholding of removal are eligible for housing programs and may be subject to public charge if they seek lawful permanent resident status through, e.g. a family-based visa petition. Citizens of Micronesia, Marshall Islands or Palau could be subject to public charge determinations if they leave the U.S. and attempt to reenter, or if they seek a green card through a family-based visa petition or another pathway where public charge is applied.

**Many more families will likely be deterred from using benefits for themselves or their families, even if they are not subject to a public charge test.** These families are likely to forego critical health, nutrition or housing programs that they need to remain healthy and employed. We have already seen people withdrawing from benefit programs due to fear, even though the final rule has not gone into effect.

### **How can the rule affect people who aren't eligible for the listed benefits?**

Even if an immigrant isn't currently receiving or eligible for a benefit, immigration officials will consider whether, in their judgment, the person is likely to use those benefits at any point in the future (when the person may become eligible). This determination is based on the person's income, age, health and other factors discussed above.

### **Are there special rules for members of the U.S. Armed Forces and their families? What about veterans?**

The DHS rule includes some special provisions for members of the U.S. Armed Forces and their families. Receipt of public benefits is not counted in the public charge determination if, at the time of receipt of the benefit OR when applying for admission or adjustment of status, the non-citizen who received the benefits is enlisted in the U.S. Armed Forces, serving in active duty or the Ready Reserve, or is the spouse or child of such an individual. In addition, the income threshold for non-citizens on active duty, other than training, in the U.S. Armed Forces, is at 100% of the federal poverty level, rather than 125%.

The rule does not make any special provisions for veterans of the U.S. Armed Forces or their families.



**The receipt of one or more public benefits for a total of 12 months within the past 36 months is assigned a “heavily negative” weight in the new rule. Does this mean they can look at benefits used prior to February 24, 2020?**

Only cash assistance and long-term care used prior to the final rule’s effective date can be considered. Receipt of any newly named benefits (Medicaid, SNAP, housing assistance) could not be considered until the rule’s effective date. Thus, USCIS will not be able to do a complete 3-year look back on the health care, nutrition and housing benefits added by the proposed rule until 3 years after the rule’s effective date.

**Will the rule consider benefits used for less than 12 months?**

Although it won’t be given a “heavy” negative weight if used for less than 12 months (counting two benefits used at the same time as two months), the rule considers the use of a designated benefit for any period of time after the effective date as relevant in a public charge determination.

**Does the rule exempt Medicaid for pregnant women and new moms?**

The final rule explicitly excludes Medicaid received by pregnant women, including through 60 days post-partum. In addition, the rule does not consider labor and delivery services covered by emergency Medicaid.

**Does the rule exclude children’s use of benefits?**

The rule excludes Medicaid for children under 21 from being considered in the public charge test. It does not exclude housing or SNAP benefits received by immigrant children. These benefits may be taken into account if the child is applying for admission or LPR status.

**Is a dependent’s use of benefits considered in the immigrant’s public charge test (e.g., does a U.S. citizen child’s use of SNAP (food stamps) affect a parent’s green card application, if the parent wasn’t receiving the benefit)?**

No. In the final rule, only the applicant’s use of benefits is taken into consideration. Receipt of benefits by dependents and other household members would not be considered in determining whether the immigrant applicant is likely to become a public charge. In cases where other members of a household may be eligible for a benefit (such as SNAP or Public Housing), only benefits received by the immigrant applying for status - not their household members - would be considered.

**Are advance premium tax credits (subsidies) under the Affordable Care Act counted in the public charge test?**

Receipt of advance premium tax credits (subsidies) under the Affordable Care Act (ACA) is not counted as receipt of a public benefit. And having subsidized health coverage under the ACA or other private health insurance can help overcome a negative weight based on a person’s health condition. But, only private insurance *without subsidies* is weighed as a heavily *positive* factor.

**Are state- or local-funded programs counted?**

Under the final rule, state, local and tribally funded programs are only counted if they are cash assistance for income maintenance. State, local and tribally funded non-cash programs are not counted. The regulation clarifies that tax credits are not considered cash assistance. Additionally, if a cash payment is tied to a specific

need (such as energy assistance or emergency disaster relief) rather than income maintenance it will not count under the final rule.

**In many states, people applying for health insurance on the exchange, or seeking state-funded health insurance, are automatically reviewed for Medicaid eligibility. Is this considered an application for Medicaid? Must it be reported?**

Where programs (either under the ACA or state funded health programs) require a Medicaid screening prior to an eligibility determination, this may be considered an application. However, immigrants will also have the opportunity to provide evidence that they were denied these benefits, and why.

**By giving negative weight to immigrants (not just sponsors) who earn under 125% of the Federal Poverty Level, is this setting an income floor for obtaining LPR status? Does income of 250% of the Federal Poverty line mean that an immigrant cannot be a public charge?**

Under the rule, people earning under 125% percent of the federal poverty level: \$32,750 annually for a family of 4) would be weighed negatively. Earning over 250% of the federal poverty level (\$65,500 annually for a family of 4) would be a heavily-weighted positive factor. Public charge remains a totality of circumstances test, weighing positive factors against any negative factors. Household income carries weight but will not necessarily be dispositive.

**How is this rule a back-door way to change the U.S. immigration system? What effect could it have?**

The final rule marks a significant and harmful change in policy that would fundamentally alter the U.S. immigration system. This Administration has sought legislative approval to restrict family-based immigration, and this rule is a back-door attempt to accomplish what Congress has rejected. Drawing upon analysis of U.S. Census Bureau data, [MPI researchers](#) applied the administration's expanded "totality of circumstances" test under the proposed rule to immigrants who had received LPR status within the past five years. They found that 69 percent had at least one negative factor under the administration's proposed test, while just 39 percent had income at or above 250 percent of the federal poverty level. MPI finds the new test would have a disproportionate effect on women, children, and the elderly. It also could shift legal immigration away from Latin America and towards Europe.

**Can this rule be stopped with litigation?**

At least nine cases are currently pending across the country challenging the Rule's illegality. Although multiple courts initially prohibited the government from implementing the rule during those cases, that prohibition has been set aside. While the litigation continues in each court, the rule is in effect for the foreseeable future.

## **ADMISSION FROM ABROAD**

**Regarding decisions by consular offices abroad, are refugees and trafficking victims exempt from public charge determinations before they enter the US?**

Yes. Congress exempted certain classes of immigrants from the public charge ground of inadmissibility, whether the decision is made inside the U.S. or abroad. Under federal law, the following categories of noncitizens are not subject to a public charge test if they apply for status through these specific pathways: refugees; asylees;

survivors of trafficking, domestic violence, or other serious crimes (T or U visa applicants/holders); VAWA self-petitioners; special immigrant juveniles; certain people paroled into the U.S.; and several other categories of immigrants.

### **Could H2A visa applicants be denied their visa if they plan to enroll in the ACA? Are they subject to the public charge rule for admission to the U.S.?**

Under the DHS final rule, subsidized ACA coverage is not considered a public benefit for purposes of the public charge determination. However, people applying for nonimmigrant visas (e.g., H2A work visas) at consulates abroad will be assessed to determine whether they are likely to become a public charge under the policies set forth in the Foreign Affairs Manual (FAM). Since the current FAM instructions on benefits are very general, it's not clear whether the State Dept is considering the likelihood that a visa applicant will use ACA subsidies in the public charge determination.

### **Will this rule apply to people who seek adjustment of status in the U.S. and those who seek admission through a U.S consulate abroad?**

This rule applies to USCIS and covers applicants for adjustment of status in the U.S. as well as nonimmigrants seeking to extend or change their nonimmigrant status in the US. In 2018, the State Department revised its instructions in the Foreign Affairs Manual (FAM) for consular officials considering individuals seeking to enter the U.S. The FAM guidance uses the previous definition of public charge (likely to rely primarily on cash assistance or long-term care). It allows the officials to consider a broad range of benefits used by the applicants, their dependents or sponsors in making this determination. More information on the FAM changes is [available here](#). The State Department has issued but has not yet implemented Interim Final Rules that are similar to DHS' rules. These rules as well as the 2018 FAM revisions have been challenged in court. Stay tuned for more developments.

## **DEPORTATION**

### **Does the immigration law allow DHS to deport lawful permanent residents if they become dependent on public benefits? Will the NPRM change this?**

Immigration law provides that individuals who have become a public charge within five years of their entry to the U.S., for reasons that existed before they entered the country may become [deportable](#) as a public charge. Case law additionally requires that all of the following be present before a person could be deported on public charge grounds:

- The person or sponsor had a legal obligation to repay the cost of a benefit
- The person or sponsor received notice of the repayment obligation within five years of the person's last entry to the U.S.
- The benefits-granting agency has obtained a legal judgment requiring repayment of the benefit, and has not received repayment.

While the DHS rule interprets the public charge grounds of inadmissibility, and does not address the public charge ground of deportability, it indicates that the Department of Justice "plans to conduct rulemaking to ensure that the standards applied in immigration court are consistent with the standards in this rule." The Department of Justice has not yet posted a proposed rule addressing the public charge ground of deportability.

**Who does the public charge deportability ground apply to and how is that different from those who may be subject to the public charge ground of inadmissibility?**

The public charge ground of deportability applies to people who have been inspected and admitted to the US, including those who have adjusted to LPR status. The public charge ground of inadmissibility applies to people applying for admission to the United States (including lawful permanent residents who seek reentry after an absence of more than 180 days), for an immigrant or nonimmigrant visa at a consulate abroad, or for adjustment to lawful permanent resident status. As previously noted, the final DHS rule applies a similar test to nonimmigrants seeking to extend or change nonimmigrant status in the US.

*For updates on the expected DOJ proposed rule please stay tuned to [www.protectingimmigrants.org](http://www.protectingimmigrants.org). For more information on the existing policy, see [Public Charge and Deportation FAQ for Advocates and Community Members](#).*