

PROPOSED CHANGES TO PUBLIC CHARGE: QUICK ANALYSIS

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How the public charge rule is applied today

Under the current policy, the only benefits considered in determining who is likely to become a “public charge” are:

- Cash assistance -- such as Supplemental Security Income (SSI) and Temporary Assistance for Needy Families (TANF) and comparable state or local programs.
- Government-funded long-term institutional care.

How public charge could change

On September 22, several news outlets released a breaking story on the status of the public charge rule. The Department of Homeland Security (DHS) has also issued a [press release](#) and the [text of the proposed rule](#) that will soon be published for comment.

If the rule is finalized in its proposed form, this would mark a significant and harmful departure from the current policy. For over a hundred years, the government has recognized that work supports like health care and nutrition help families thrive and remain productive. And decades ago the government clarified that immigrant families can seek health and nutrition benefits without fearing that doing so will harm their immigration case. If this rule is finalized, we can no longer offer that assurance.

Here are some key points from the latest version of the rule:

- It radically expands the list of programs that may be considered to include not only cash and long-term care but also certain health care, nutrition and housing programs.
- Benefits that could be considered in a “public charge” determination include key programs that help participants meet their basic needs. These programs include:
 - Non-emergency Medicaid (with limited exceptions for Medicaid benefits for treating an “emergency medical condition,” certain disability services related to education, and benefits received by children of U.S. citizens who will be automatically eligible to become citizens);
 - Supplemental Nutrition Assistance Program (SNAP);
 - Medicare Part D Low Income Subsidy;
 - Housing assistance, such as public housing or Section 8 housing vouchers and rental assistance
- DHS will not consider disaster relief, emergency medical assistance, benefits received by an immigrant’s family members, or entirely state, local or tribal programs other than those specifically listed. Benefits not listed, such as education, child development, employment and job training programs are also excluded. DHS asks for input on inclusion of the Children’s Health Insurance Program (CHIP), but this program is not included in the current regulatory text.
- The rule will not be retroactive. This means that benefits -- other than cash or long-term care at government expense -- that are used before the rule is final and effective will not be considered in the public charge determination.

- Adopts a new bright-line threshold for households that hope to overcome a “public charge” test - by requiring that the immigrant (not just the sponsor) earn at least 125 percent of the Federal Poverty Level - and by weighing as “heavily positive” a household income of 250 percent of the Federal Poverty Level. This means, to avoid scrutiny under the public charge test, a family of 4 would need to earn nearly \$63,000 annually.
- Applies a similar test to applications for extensions of non-immigrant visas, and changes of non-immigrant status (e.g., from a student visa to an employment visa)
- Does not interpret or expand 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.
- Sets forth standards for immigration officials to consider when evaluating criteria such as age, health, income, and education. The rules would negatively consider applicants with limited English proficiency, as well as applicants with physical or mental health conditions that could affect their ability to work, attend school or care for themselves.
- Elevates the use of public charge bonds for people applying for lawful permanent residence (a green card). This means that people deemed inadmissible as a public charge, such as because of their income, or a health condition, may be required to pay a minimum of \$10,000 for admission, and would risk losing this bond if they use any benefits listed in the rule.
- Receipt of benefits above a certain minimal threshold in the 36 months prior to applying for status would be counted as “significant negative factors” in the public charge determination. Any non-cash benefits used prior to the rule becoming final would not be considered in this “look back” period. The threshold for counting these benefits is 15% of the poverty level for a single person (currently \$1,821) in a 12-month period for cash and cash-like (“monetizable benefits”). For benefits with an undetermined value (“nonmonetizable benefits”) such as health insurance and public housing, the limit is 12 months in a 36 month period or 9 months if you receive both kinds of benefits.

How does this differ from previous drafts of the rule?

In several ways, the rule released on September 22 is narrower than the drafts that were leaked to the media this spring. However, *any* expansion of the public charge rule will have a devastating impact on children, families and communities. Children will be harmed under this proposal, as parent and child health are inextricably linked. If adults lose access to nutrition supports under SNAP, the entire family will have less to eat. And immigrant families already have been dropping off of programs in response to press accounts about public charge. Even though the proposed changes would not take effect until the rule is finalized -- and would apply only to benefits received after that point -- the threat of changes will cause more fear and confusion about how this test works.

Things to keep in mind

Some immigrant groups are not subject to “public charge.” Certain immigrants—such as refugees, asylees, survivors of domestic violence, and other protected groups—are not subject to “public charge” determinations and would not be affected by this proposed rule. Public charge is also not a consideration when lawful permanent residents (green card holders) apply to become U.S. citizens. The regulation also proposes to exclude benefits received by active duty servicemembers, their spouses and children.

Overall circumstances considered. 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 to support, and family who will support them. They may also consider whether a sponsor has signed an affidavit of support (or contract) promising to support the noncitizen. Since the test looks at the person's overall circumstances, 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.

What happens next?

Once the proposed rule is officially published in the Federal Register, the public will be able to submit comments for 60 days. 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 at least 60 days after the date the *final* rule is published. In the meantime, 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](#)).

