



The New Public Charge Rule (fact sheet updated January 31, 2020)

Background: On August 14, 2019, the Trump administration published an administrative rule change that aims to limit the number of people allowed to obtain certain immigration benefits in the United States based on their health, age, use of certain public benefits, English proficiency, and financial resources.

Several lawsuits stopped the rule from going into effect, but on January 27, 2020, the U.S. Supreme Court allowed the new rule to take effect while lawsuits challenging the rule are going through the courts. The administration announced that they will begin applying the rule on February 24, 2020.

The rule aims to expand the meaning of “public charge,” a long-standing ground for inadmissibility in immigration law. It sets an unprecedented high bar for demonstrating that applicants for legal permanent residence (green cards) and family-based visas are not now and never will be dependent on public assistance.

The Department of State has already denied thousands of visa applicants abroad based on the new public charge determination, which includes health, age, English proficiency, and financial resources, as well as use of public benefits.

The Department of Homeland Security (DHS) aims to expand the benefits programs that would trigger the public charge test for applicants within the United States as follows. Impacted immigrants can only use these programs for less than 12 months in a 36-month period, and use of two of these programs at the same time will count as two months, use of three will count as three months, etc.

Benefits included in Public Charge test	Benefits excluded
<p>Included under current policy:</p> <ul style="list-style-type: none"> • Minnesota Family Investment Program (MFIP) • Supplemental Security Income (SSI) • General Assistance • Medical Assistance for long-term care 	<p>The following benefits are Not Included in the rule change:</p> <ul style="list-style-type: none"> • Emergency Medical Assistance • Disaster Relief • School lunch or school breakfast programs • Foster Care and adoption • MinnesotaCare • Head Start • Entirely state, local or tribal-funded programs (other than cash assistance) • Earned Income Tax Credit or Child Tax Credit • Subsidized Health Insurance Under the Affordable Care Act • Special Supplemental Nutrition Program for Women, Infants and Children (WIC) • Child Health Insurance Program (CHIP or SCHIP) • Energy Assistance • Unemployment • Student loans and state and federal scholarships • Non-cash TANF benefits • Advance premium tax credits under the Affordable Care Act • Transportation vouchers or non-cash transportation services • Benefits received by immigrant’s family members • Benefits received by active duty service members, military reservists and their spouses and children
<p>Included under new public charge rule (effective beginning February 24, 2020):</p> <ul style="list-style-type: none"> • Minnesota Family Investment Program (MFIP) • Supplemental Security Income (SSI) • General Assistance • Medical Assistance for long-term care • Medicaid (with exceptions for emergency services, and coverage of children under age 21 and pregnant women up to 60 days after the birth of their child) • Supplemental Nutrition Assistance Program (SNAP, formerly known as food stamps) • Public Housing, Section 8 housing vouchers, and Project-Based Section 8 	

What will happen now that the rule is in effect?

* Current as of January 31, 2020

Approximately 3% of applicants did not pass the previous public charge test.

Now enacted, the rule will keep potentially hundreds of thousands of immigrants from adjusting their status and obtaining immigration benefits. The new rule will favor wealthy immigrants over low and moderate-income immigrants. Though legally qualifying immigrants are currently encouraged to remain enrolled in public benefits programs, immigrant families will likely feel forced to choose between programs that keep them healthy and adjusting their immigration status.

Who does this rule impact?

Now enacted, the government **will apply** the public charge test when someone tries to enter the United States by obtaining a visa at a U.S. consular office abroad; when someone inside the United States applies to adjust status to become a lawful permanent resident (green card holder); or when a green card holder leaves the United States for more than 180 consecutive days (6 months) and re-enters.

The Public Charge test **does not apply** to U.S. citizens, lawful permanent residents applying for citizenship; refugees and asylees adjusting status; VAWA self-petitioners, U and T visa applicants, special immigrant juveniles, and certain other groups of non-citizens. Though some immigrants fall under the exempt category, they may not pass the public charge test when they apply for relatives to reunite with them in the future. Please consult an immigration attorney to determine if you may be impacted by this rule change.

What were the consequences of the proposed rule change?

Before going into effect, the proposed rule change had already prompted families to withdraw from food assistance, secure housing, and benefits that keep their families healthy. Families disenrolled from programs that were rumored to be – but not included – on the list of programs covered by the public charge rule. Some families were worried that they might hurt their chances at adjusting their immigration status, even though they were among the exempt groups of immigrants.

Immigrants who fear that they may be impacted by the rule should consult with their benefits providers and an immigration attorney before withdrawing from benefits programs.

Other considerations:

In addition to the use of the expanded list of public benefits, DHS will also consider other criteria in a **totality of the circumstances test** to further determine whether someone is or is likely to become a public charge. DHS will weigh positive and negative factors to determine public charge. The new calculation will make it even more difficult for low and moderate-income immigrants to pass the public charge test.

Positive Factors	Negative Factors
<ul style="list-style-type: none">• Age: Between Age 18 and 60• Health: Perfect health• Income*: 250% Federal Poverty Level or higher• Language Ability: Fluent in English• Education: Higher degree and/or skills, certification, license• Private unsubsidized health insurance	<ul style="list-style-type: none">• Age: Under 18 or 61 and older• Diagnosed with a medical condition that may interfere with ability to work or study• Income: 125% of Federal Poverty Level or lower• Language Ability: Not proficient in English• Education: No high school degree (or equivalent)• Use of or application for some public benefits

* DHS can consider the following when weighing the applicant's financial resources: income of household members and household size, assets in cash or savings accounts, application for fee waivers (for immigration benefits), credit history or credit score, enrollment in private sector insurance or money to pay for extensive medical treatment or institutionalization.

Under the current policy, DHS takes into account the **affidavit of support** from sponsors and joint sponsors if the applicant's income is under 125% FPL. Under the new rule, the affidavit of support is a positive factor, but not heavily weighted. **This is a dramatic departure from current practice.** DHS would consider: the sponsor's financial status, the relationship to the applicant and whether they live together, and the likelihood that the sponsor would actually provide financial support.

The proposed rule is **not retroactive**. DHS will apply the new public charge rule only after it goes into effect on February 24, 2020. However, if the applicant receives the cash-based benefits already considered under the public charge test, DHS will consider receipt of those benefits before the proposed rule changes are enacted.

Household use. Receipt of benefits by dependents (including U.S. citizen children) will not directly be a factor in the applicant's public charge test. If a child or family member is an immigrant, his/her own use of benefits counts toward his

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or her own public charge determination; dependents are included in the calculation of household size and may make it harder for immigrants to meet the income test.

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