



## Introduction

On August 14, 2019, the Department of Homeland Security (DHS) issued a [finalized rule](#) that drastically alters longstanding policy and the definition of “public charge,” jeopardizing certain immigrants’ ability to become a lawful permanent resident (LPR), gain admission into the U.S., and to extend or adjust their status. Importantly, while the rule does not apply to all immigrants applying for LPR status, it will lead to wide-spread fear and confusion within immigrant families and communities, heavily impacting their decisions to access benefits they may legally be eligible to receive.

The FAQs below are not exhaustive, but they provide responses to the most commonly asked questions related to this rule change.

### 1. When does the final rule take effect?

The final rule will take effect on October 15, 2019; 60 days after it was posted in the Federal Register.

### 2. How is “public charge” defined?

For the last two decades, a person has been defined as a “public charge” if they are “primarily dependent” on government benefits. Only two types of benefits have been considered in the public charge test: cash assistance and government-funded institutionalization for long-term care.

The new rule establishes a new definition for public charge which is: an immigrant who receives one or more public benefits for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two public benefits in one month counts as two months). It also expands the types of benefits that will be considered in the public charge test (see Q6).

### 3. When is a “public charge” determination applied?

A public charge determination is made when an immigrant applies for LPR status, admissibility to the U.S., or seeks to extend or adjust their status (for example, the extension of a student visa). These determinations are made by U.S. Citizenship and Immigration Services (USCIS), an agency within DHS, when assessing the above mentioned applications. Several categories of immigrants are exempt from a public charge determination (see Q4).

### 4. Who is subject to the public charge test?

Most but not all prospective immigrants who are applying for admission or adjustment of status to become LPRs (i.e. green card holders) must prove they are not likely to become a public charge as defined by this rule.

Refugees, asylees, victims of “severe trafficking” (T-Visas and U-Visas), and select other immigrant groups, are NOT subject to the public charge test. The test does not apply to LPRs applying for citizenship.<sup>3</sup>

### 5. What factors are considered when making a public charge determination?

In making a determination of public charge, the totality of circumstances<sup>4</sup> is considered. In assessing the totality of circumstances, there are factors that must be considered including the individual’s age, health, family status, education and skills, assets, resources, and financial status.

In determining the totality of circumstances, factors may be viewed as heavily weighted negative factors, negative factors, or heavily weighted positive factors.

#### Heavily Weighted Negative Factors include:

- Has received one or more public benefits (outlined in Q6) for more than 12 months in the aggregate within the prior 36 months;
- Not a full-time student and is authorized to work, but is unable to demonstrate employment, recent employment, or a reasonable prospect of future employment;

- Has a medical condition that requires extensive treatment or institutionalization and is uninsured and does not have sufficient resources to pay for medical costs related to the condition;
- Previously found inadmissible or deportable on public charge grounds.

**Negative Factors not Heavily Weighted include:**

- Public benefits considered in a public charge determination prior to the new rule going into effect October 15, 2019 rule (see Q2);<sup>5</sup>
- Having an income under 125 percent of the Federal Poverty Level (FPL).

**Heavily Weighted Positive Factors include:**

- Household has financial assets/resources of at least 250 percent of the FPL;
- Authorized to work or employed with an income of at least 250 percent of the FPL;
- Individual who has private health insurance that is not subsidized by ACA tax credits.

As an example, if a person has received one or more public benefits for more than 12 months in the aggregate within the prior 36 months, this will be heavily weighted negatively (i.e., counted against the person) in determining the totality of circumstances. On the other hand, if a person has private health insurance that is not subsidized by Affordable Care Act (ACA) tax credits, this will be heavily weighted positively (i.e., counted in favor of the person) when assessing the totality of circumstances.

**6. What public benefit programs will be considered in a public charge determination?**

The public benefits that will be considered in a public charge determination include:

- Federal, state, local, and tribal cash assistance for income maintenance (e.g. Temporary Assistance for Needy Families [TANF], Supplemental Security Income [SSI], and General Assistance);
- 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 Assistance under Section 9 of the U.S. Housing Act of 1937.

Government-funded long-term care will no longer be specifically included after October 15, 2019 because the funding sources for this type of care include Medicaid, SSI, and TANF. Applications received by the government prior to October 15, 2019, will

consider use of long-term institutional care in the public charge test.

**7. What public benefit programs will NOT be considered in a public charge determination?**

Programs that will not be considered in the public charge test include:

- Medicaid for children under 21 years of age, including the Children’s Health Insurance Program (CHIP);
- Medicaid for pregnant women, including through 60 days post-partum;
- Emergency Medicaid services;
- Medicare Part D Low-Income Subsidy;
- Medicaid funded services provided in a school setting through the Individuals with Disabilities Education Act (IDEA);
- Exclusively state/local non-cash aid programs;
- Earned Income Tax Credit (EITC); and,
- Child Tax Credit (CTC).

Additionally, benefits received for another person will not be counted in public charge determinations. For example, if an immigrant parent accesses benefits for a U.S. citizen child, those benefits will not be considered in a determination of public charge for the parent. Likewise, if a child receives Medicaid, it will not be considered as a public benefit received by the parent. A person must be listed as the beneficiary for receipt of the public benefit for that benefit to be considered in a public charge determination.

**8. Are there instances when receipt of benefits will not be considered in a public charge determination?**

Receipt of public benefits will not be considered in a public charge determination for an individual who receives a public benefit while they are part of a group that is exempt from a public charge test (see list above in Q4). For example, if a person receives SNAP while they have a T-visa, the benefit will not be considered if they attempt to adjust their status under a different visa type. Additionally, for individuals applying for a humanitarian visa (e.g., asylum), receipt of benefits while they wait for this status to be granted will not be considered.

There are additional provisions within the new rule to allow service members and their spouses and children to access benefits during certain time periods. This includes receipt of benefits by a service member, spouse, or child while a service member is on active duty.

Additionally, benefits received by foreign-born

children of U.S. citizens (who will be automatically eligible for citizenship upon entry into the U.S.) will not be considered in a public charge determination for these children. This includes foreign-born children who are either biologically related to or adopted by U.S. citizen parents.<sup>6</sup>

### 9. What time frame will USCIS look at when making a public charge determination?

USCIS will look at the 36 months prior to a person’s application for an adjustment of status. If, during those 36 months, a person has received benefits for more than 12 months cumulatively (not consecutively) it will be considered a heavily weighted negative factor. Importantly, receipt of each benefit is counted separately when determining the amount of time a person has received public benefits. For example, in the 36 months prior to application, if a person receives SNAP for six months and Section 8 housing assistance for seven months, they are considered to have received benefits for a total 13 months. If two benefits are received during the same month, it will count as two months of receipt. For example, if a person receives Medicaid and SNAP beginning July through December, it will be counted as six months of Medicaid and six months of SNAP for a total of 12 months.

### 10. Is receipt of public benefits all that matters in a public charge test?

No. USCIS will make a determination of public charge based on a totality of circumstances (see Q5). Receipt of public benefits is only one factor and no single factor will be used in making a determination of public charge.

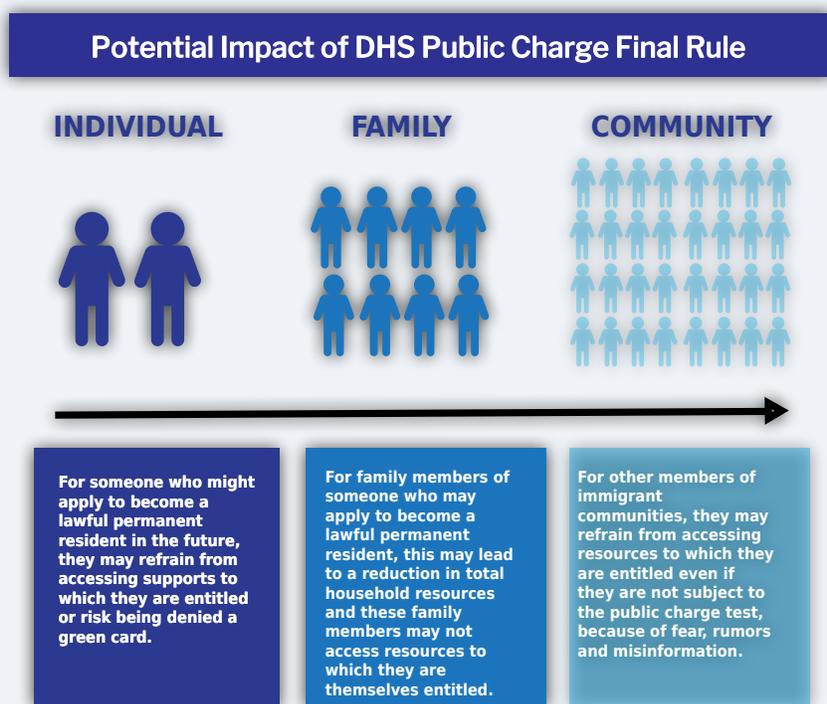
### 11. Does this public charge final rule affect deportability?

No. This rule does not affect whether a family can be deported. If someone is found to be a public charge under this rule, it only affects their ability to immigrate or to adjust their status, not whether they can be deported.

### 12. What does this rule mean for immigrant families?

This rule jeopardizes the health and well-being of immigrant families by penalizing them for receiving benefits they need and to which they are entitled. We have already seen data and heard stories from providers of immigrant families unnecessarily withdrawing from benefits including Medicaid and SNAP.<sup>7,8</sup>

Further, the rule creates fear and confusion so that many immigrant families may withdraw from public benefits that are not included in the determination of public charge. Additionally, families who are not subject to a public charge determination because



of their status (i.e. they are applying for asylum or already have LPR status) may also withdraw from accessing benefits for which they are eligible.

Additional resources for families and providers on the rule are included in Q13.

### 13. Where can I go to learn more?

For resources on where to learn more about the final rule see:

- Overview from Protecting Immigrant Families Advancing Our Future (PIF) Campaign: <https://protectingimmigrantfamilies.org/wp-content/uploads/2019/08/08.14.19-Public-Charge-Finalization-Webinar.pdf>
- Public Charge Fact Sheet from PIF Campaign: <https://protectingimmigrantfamilies.org/wp-content/uploads/2019/08/PublicChargeFactSheet-Updated-August-2019.pdf>
- Changes to “Public Charge” Inadmissibility Rule: Implications for Health and Health Coverage Kaiser Family Foundation: <https://www.kff.org/disparities-policy/fact-sheet/public-charge-policies-for-immigrants-implications-for-health-coverage/>

For resources on available legal services see:

- National Immigration Legal Services Directory for Free/low-cost immigration legal services: <https://www.immigrationadvocates.org/nonprofit/legaldirectory/>

For resources for services providers on how to talk about public charge see:

- National Immigration Law Center “How to Talk About Public Charge with Immigrants and

their Families”: <https://www.nilc.org/issues/economic-support/how-to-talk-about-public-charge-pif/>

- PIF Campaign “Community Resources”: <https://protectingimmigrantfamilies.org/community-education-resources/> and <https://protectingimmigrantfamilies.org/wp-content/uploads/2019/08/Lets-Talk-About-Public-Charge-Updated-August-2019.pdf>

### 14. How is this rule different from the reports of a Department of Justice (DOJ) public charge rule?

The Department of Justice (DOJ) is exploring the possibility of introducing a rule that would change the grounds on which individuals may be deported on public charge grounds. This rule has **NOT** been proposed yet, and it is unclear if it will be. For more information about the difference between the DHS finalized rule and the possible DOJ proposal, see:

- PIF “Public Charge & Deportation”: <https://protectingimmigrantfamilies.org/wp-content/uploads/2019/07/PIFdeportationFAQjuly.pdf>
- NILC “Key Provisions of Public Charge Policy Changes Compared”: <https://www.nilc.org/wp-content/uploads/2019/07/Public-Charge-Policy-Changes-Key-Provisions-2019.pdf>
- Immigrant Legal Resource Center (ILRC) “Public Charge as a Ground of Deportability”: <https://www.ilrc.org/public-charge-ground-deportability>

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### Endnotes

<sup>1</sup>This includes immigrants in a number of different humanitarian categories as well as those with Special Immigrant Juvenile status and those protected under the Violence Against Women Act (VAWA). See Section II.F.4. in the final rule for a full table of *Applicability, Exemptions, and Waivers* as well as Section 212(a)(4) of the Immigration and Nationality Act.

<sup>2</sup>Immigrants with Temporary Protected Status (TPS) and Deferred Action for Childhood Arrivals (DACA) status are not subject to the public charge test because of restrictions on a pathway to citizenship.

<sup>3</sup>If an LPR leaves the U.S. for 180 consecutive days, they may be subject to a public charge test in seeking return to the U.S.

<sup>4</sup>The totality of circumstances is calculated by weight all factors that are relevant to whether the individual is more likely than not at any time in the future to receive one or more public benefits.

<sup>5</sup>Only two types of benefits have been considered in the public charge test: cash assistance and government-funded institutionalization for long-term care.

<sup>6</sup>Technical language within the final rule states that “DHS also has excluded consideration of the receipt of all public benefits received by children of U.S. citizens whose lawful admission for permanent residence and subsequent residence in the legal and physical custody of their U.S. citizen parent(s) will result automatically in the child’s acquisition of citizenship; or whose lawful admission for permanent residence will result automatically in the child’s acquisition of citizenship as described in the rule.”

<sup>7</sup>Urban Institute. (May 2019). One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018 Available at: [https://www.urban.org/sites/default/files/publication/100270/one\\_in\\_seven\\_adults\\_in\\_immigrant\\_families\\_reported\\_avoiding\\_public\\_benefit\\_programs\\_in\\_2018.pdf](https://www.urban.org/sites/default/files/publication/100270/one_in_seven_adults_in_immigrant_families_reported_avoiding_public_benefit_programs_in_2018.pdf)

<sup>8</sup>Bovell-Ammon, Allison et al. “Trends in Food Insecurity and SNAP Participation among Immigrant Families of U.S. -Born Young Children.” *Children* 6(4), 55, April 2019.