



THE BIDEN PUBLIC CHARGE REGULATION WHAT DOES IT MEAN FOR IMMIGRANT FAMILIES?

WHAT DOES THE NEW PUBLIC CHARGE REGULATION DO?

A new “public charge” immigration regulation finalized September 8, 2022, by the U.S. Department of Homeland Security (DHS) adds critical protections to secure immigrant families’ access to the health and social services safety net. The new regulation, which takes effect on December 23, 2022:

- Clarifies what is and is not considered in a public charge determination:
 - A child’s or other family member’s use of federal safety net programs will not be considered in a public charge assessment.
 - Medicaid will not be considered unless the person is receiving long-term institutional care (short term rehabilitative care and home and community based services do not count).
 - SNAP, WIC, Section 8, and other “non-cash” federal programs (and state- and locally-funded versions of those programs) also are not counted in a public charge test.
 - The new regulations direct immigration officers who are making public charge determinations to consider all of an applicant’s circumstances (age, health, income, education, and family size), as well as an Affidavit of Support, when required.
 - There are only two types of government programs that could contribute to a determination that the applicant might become a public charge: cash assistance for income maintenance (SSI, TANF, state or local General Assistance programs); and government funded long term institutional care (not short-term rehab or home- and community-based services).
 - These factors will be balanced - No one factor alone will make someone likely to become a public charge.
- Confirms that eligible immigrant families can use health care, nutrition, and housing programs without public charge concerns, and
- Makes it harder for future presidents to radically change public charge policy

WHY WAS THIS RULE CHANGE NECESSARY?

Research confirms the [now-reversed](#) Trump public charge regulations and their widespread “chilling effect” [deterred millions](#) in immigrant families from seeking health care and aid during the pandemic, undermining pandemic response and widening racial disparities in its economic and health impact. Research indicates that, long after its reversal by the Biden Administration,

persistent [information gaps](#) and concerns about the Trump policy continue to drive [lower COVID-19 vaccination rates](#), [food insecurity](#), and other disparities among immigrants of color.

HOW DID THIS RULE CHANGE HAPPEN?

The process to arrive at this final public charge regulation began in [August 2021 with an advance notice of proposed rulemaking](#) that included a 60-day window for comments from the public. It was followed in [February 2022 with a regulatory proposal](#) also with a 60-day comment period. In addition to both comment periods, DHS invited input through a series of public listening sessions in late 2021.

WHAT COMES NEXT?

It is likely that the public charge rule will be challenged in court, as many other Biden immigration policies have been. There are solid grounds for a court to uphold the rule. The Biden administration took the proper notice and comment steps in issuing the final rule. The policy is consistent with the field guidance that was in effect for 20 years.

Though the Trump public charge policy was reversed more than a year ago, the new regulation adds important protections. Using most health care and social service programs will have no public charge consequences.

Advocates caution that the immigration law's public charge provision is inherently racist and must be repealed. The 1882 public charge provision, enacted alongside the Chinese Exclusion Act, has been biased since the beginning against low-income immigrants of color, and no regulatory reform can change that. Advocates will continue urging leaders to strike public charge from the immigration law and eliminate other barriers to the health and social services safety net.