



PUBLIC CHARGE: WHAT ADVOCATES NEED TO KNOW SEPTEMBER 2022

UPDATE

On September 9, 2022, US Citizenship and Immigration Services (USCIS) published a [final rule](#) on the public charge inadmissibility ground. The new rule will become effective on December 23, 2022.

The [1999 field guidance](#) will continue to govern public charge inadmissibility adjudications in the U.S. until the final rule goes into effect. The Department of State (DOS) is applying a [similar policy](#) to applications that are processed abroad. DOS has indicated that it plans to issue proposed public charge rules, which are likely to conform with the new USCIS rule.

The final USCIS public charge rule is largely similar to the 1999 Guidance, and includes some helpful clarifications that are outlined below. USCIS plans to issue more guidance, and will revise its forms to reflect the new rules. Please stay tuned to PIF for updates on any changes or developments.

Read below for information on the **public charge ground of inadmissibility under the 1999 Field Guidance**, as well as any changes expected under the new rule.

WHAT IS PUBLIC CHARGE?

The “public charge” inadmissibility test has been part of federal immigration law for 140 years. It is designed to identify people who may depend on the government as their main source of support in the future. If an immigration or consular official determines that someone is likely to become a “public charge,” the government can deny that person’s application for admission to the United States or an application for lawful permanent resident status (LPR status, also called a “green card”).

WHO DOES PUBLIC CHARGE APPLY TO?

The “public charge inadmissibility test” affects people applying for admission to the country or for lawful permanent resident (LPR) status. It does not apply to humanitarian immigrants including refugees; asylees; survivors of domestic violence, trafficking and other serious crimes; special immigrant juveniles; and certain individuals paroled into the U.S. A more complete list is set forth at [8 CFR §212.23\(a\)](#) and is updated by the new rule at [87 Fed. Reg. 55637-9](#).

WHY ARE THERE MORE THAN ONE SET OF REGULATIONS AND POLICIES?

Decisions about applications for admission or LPR status processed *outside the U.S.* (at embassies or consular offices abroad) are made by State Department officials. The DOS regulations affect people seeking immigrant and nonimmigrant visas and people seeking to be admitted to the U.S. as LPRs. The

changes also affect applicants for LPR status who are required to leave the U.S. to seek status through consular processing.

Decisions about applications for admission and adjustment to LPR status processed *inside the U.S.* are made by officials of U.S. Citizenship and Immigration Services, which is part of DHS.

WHAT IS THE DEFINITION OF A PUBLIC CHARGE?

Under the 1999 Field Guidance, a public charge is a person who is or has become (for deportation purposes) or who is likely to become (for admission/adjustment purposes) “primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense.”

The [final rule](#) adopts a very similar definition: a person who is likely at any time to become “primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense.”

WHICH PUBLIC BENEFITS ARE CONSIDERED IN A PUBLIC CHARGE TEST?

Under the 1999 Guidance and the final USCIS rule, the only benefits considered are “public cash assistance for income maintenance” and government funded long-term institutionalization. Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF) cash assistance and General Assistance are examples of cash assistance for income maintenance. Supplemental or special purpose payments - such as payments for child care, energy assistance, disaster relief, pandemic assistance, or for other specific purposes - are not considered. Tax credits also are not considered in a public charge test. The [1999 guidance](#) notes that “earned” benefits such as Social Security, pensions and veterans benefits are not counted. The [preamble](#) to the final USCIS rule indicates that if a program typically does not provide the primary source of income, or is made available without income-based eligibility rules, USCIS would not consider those programs. USCIS indicated that it will issue more guidance in implementing its new rule.

In the final rule, USCIS clarified that long-term institutionalization does not include home and community-based services or institutionalization for short periods of rehabilitation. Food and nutrition programs, including SNAP and WIC, housing programs, including Section 8, and utility assistance including the Emergency Broadband Benefits (EBB) are not considered. Medicaid and state or locally funded health programs are not considered unless they are used to cover long-term institutionalization.

DOES USE OF THESE BENEFITS AUTOMATICALLY MAKE A PERSON LIKELY TO BECOME A PUBLIC CHARGE?

No. Both the 1999 Guidance and USCIS’ final rule make it clear that no single factor is determinative. The immigration officer will consider all of a person’s circumstances (age, health, income/resources, education, family size) and affidavit of support, where required, in determining whether a person is likely to become a public charge. The final rule indicates that an affidavit of support will be considered favorably. If a person has used cash assistance for income maintenance purposes, the officer may consider the duration, amount and how recently the assistance was received, and will weigh that against other potentially positive factors that the individual may demonstrate.

WHAT ABOUT BENEFITS USED BY FAMILY MEMBERS?

The final rule makes it clear that benefits received by a family or household member will not be considered in a public charge determination. This would include, for example, cash assistance received by a U.S. citizen child, if the parent is seeking a green card through a family-based petition.

WHAT ABOUT BENEFITS USED BY IMMIGRANTS WHO ARE EXEMPT FROM A PUBLIC CHARGE TEST?

As noted above, USCIS' final rules include a more comprehensive list of immigrants who are exempt from a public charge determination. The rules clarify that benefits used while a person is in an exempt status will not be considered, even if the person later seeks lawful permanent residence through a pathway where public charge applies. Similarly, benefits used by people who are treated like refugees for benefits eligibility purposes (such as trafficking survivors, Afghan and Iraqi Special Immigrant Visa holders, and certain Afghan and Ukrainian parolees) will not be considered - even if they seek a green card through a pathway where public charge is applied. The rule also confirms that VAWA self-petitioners, and crime survivors who have applied for or been granted T or U status are generally exempt from a public charge assessment, regardless of their ultimate pathway to adjust status.

KEY MESSAGES TO SHARE

- **The public charge inadmissibility test does not apply to all immigrants - many immigrants are exempt from a public charge test.**
- **Most immigrants who are subject to public charge are not eligible for the benefits that count under the test, and many benefits are not considered in the public charge assessment.**

WHERE CAN IMMIGRANTS GET ADVICE ON THEIR INDIVIDUAL SITUATION?

Individuals who expect to apply for a visa or lawful permanent resident status should consult an immigration lawyer. To find help in your area, visit immigrationadvocates.org/nonprofit/legaldirectory.

For more information, please visit www.ProtectingImmigrantFamilies.org