



PUBLIC CHARGE: WHAT ADVOCATES NEED TO KNOW JANUARY 2023

UPDATE

The US Citizenship and Immigration Services' (USCIS) [regulations](#) on the public charge grounds of inadmissibility went into effect on December 23, 2022.¹ The regulations govern public charge inadmissibility adjudication within the United States. 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 has issued an [FAQ](#) on the regulations, and has updated [Form I-485](#), Application to Register Permanent Residence or Adjust Status, to reflect the new rules. PIF has encouraged USCIS to issue 'co-branded' guidance with federal benefits-granting agencies. Please stay tuned to PIF for updates on any changes or developments.

Read below for information on the **public charge ground of inadmissibility**.

WHAT IS PUBLIC CHARGE?

The "public charge" inadmissibility test has been part of federal immigration law for over 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 in the regulations at [8 CFR 212.23](#).

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

Decisions about applications for admission and adjustment to LPR status processed *inside the U.S.* are made by USCIS officials. Decisions about applications for admission or LPR status processed *outside the*

¹ USCIS is part of the Department of Homeland Security (DHS).

U.S. (at embassies or consular offices abroad) are made by State Department officials. DOS policies affect people seeking immigrant and nonimmigrant visas, people seeking to be admitted to the U.S. as LPRs and applicants for LPR status who are required to leave the U.S. to seek status through consular processing.

WHAT IS THE DEFINITION OF A PUBLIC CHARGE?

The regulations [define](#) 'likely to become a public charge' as: 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?

The only benefits considered are "public cash assistance for income maintenance" and long-term institutionalization paid for by the government. 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 to be cash assistance for income maintenance. 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 short-term institutionalization for rehabilitation purposes.

Long-term institutionalization is the only non-cash benefit considered in the public charge assessment. 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 paying for 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 present.

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 child of the person applying for adjustment of status.

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.

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