

Congressional Hispanic Caucus

“Public Charge” Guidance

Updated 2.24.2020

Effective Date for DHS “Public Charge”: [February 24, 2020](#)

The final DHS rule will apply to applications and petitions submitted on or after [February 24, 2020](#). The rule will go into effect nationwide after the Supreme Court [voted](#) 5-4 on February 21, 2020 to allow the government to enforce the rule in the state of Illinois. Illinois was previously subject to a state-wide injunction barring implementation of the rule.

What is the DHS “public charge” test?

The test has been part of federal immigration law for decades and is designed to identify people who may depend on government benefits as their main source of support. The government can refuse an application for lawful permanent resident (LPR) status or other immigration benefits if it determines that the beneficiary is likely to become a “public charge” (i.e., rely on benefits as their primary source of support). Decisions about applications for LPR status *inside* the U.S. are guided by regulations and policy from U.S. Citizenship and Immigration Services (USCIS) in DHS.

Who does DHS public charge apply to?

1. **U.S Citizens- The DHS public charge test does NOT apply**
2. **Current Green Card Holders Seeking to Renew Their Green Cards or Apply for Citizenship- The DHS public charge test does NOT apply**
3. **Certain Exempt Immigrants:** *refugees; asylees; survivors of trafficking, domestic violence, or other serious crimes (T or U visa applicants/holders); VAWA self-petitioners; special immigrant juveniles; certain people paroled into the U.S. as well as other “humanitarian” immigrants-* **The DHS public charge test does NOT apply**
4. **Other (Nonexempt) Immigrants Planning to Apply for a Green Card or Other Immigration Benefits- The DHS public charge test may apply. These constituents should talk with an expert for advice on their case before making any decisions.**

Litigation Update

After the Trump administration published the final rule, states, counties, and NGOs filed a total of nine legal challenges to the rule. Several courts issued preliminary injunctions, some of which were stayed. On January 27, 2020, SCOTUS blocked the last nationwide preliminary injunction that remained in effect, allowing the DHS public charge rule to be implemented while litigation is ongoing. On February 21, 2020 the Supreme Court [voted](#) 5-4 to allow the government to enforce the rule in the state of Illinois. Litigation in multiple federal courts is now moving forward on the merits of the public charge rule.

Trump Administration Public Charge Changes

On August 14, 2019, the Trump administration published a final rule that changes the definition of “public charge” and adds specific details about how immigration officials will consider the applicant’s income, health, age, education, skills, family status, and English proficiency. The potential impact is far-reaching.

The Chilling Effect

Millions of immigrants and their family members will be chilled from applying for (or staying enrolled in) public benefits programs. According to the [Migration Policy Institute](#), 10 million noncitizens could disenroll from benefits, and the rule will particularly impact Latinos and Asian American/Pacific Islanders. Some groups are more likely to be viewed as having negative factors—notably women, the elderly, and children. Impacts will be

far greater for individuals from Central America and Mexico, where 60 percent of subjects in the MPI research had two or more such factors.

New Public Charge Definition

For over 120 years, a public charge was defined as an individual likely to become dependent on the government for his or her primary source of support. The new DHS regulation redefines a “public charge” as a non-citizen who receives or is likely to receive one or more of the specified public benefits for more than 12 months in the aggregate within any 36-month period. The rule aggregates benefits such that a person who received two benefits in one month would be considered to have received two months of benefits.

When seeking a green card or another immigration benefit, a forward-looking test is applied. An immigration officer will assess whether the beneficiary is more likely than not to become a “public charge” in the future. This determination is based on a “totality of circumstances” assessment that considers the applicant’s age, health, family status, income and resources, education and skills, English proficiency, and the validity of an affidavit of support.

The regulation treats each of the following negatively in public charge decisions: an income below 125% of the federal poverty level, being a child or a senior, having certain health conditions, limited English ability, less than a high school education, a poor credit history, prior receipt of certain benefits, and other factors. The rule also expands the list of public assistance programs that may be considered as negative factors in a “public charge” determination.

<i>Benefits Considered for Public Charge</i>	<i>Example of Benefits Excluded from Public Charge</i>
<ul style="list-style-type: none"> • Any Federal, State, Local, or Tribal cash assistance for income maintenance, including TANF, SSI and general assistance programs; • Medicaid (with exceptions including coverage for emergency services, children under 21 years old, pregnant women including 60 days of post-partum services); • Supplemental Nutrition Assistance Program (SNAP); • Federal Public Housing, Section 8 housing vouchers and Section 8 project-based rental assistance <p><i>Public Charge BEFORE Feb 24th: Only use of cash assistance programs or long-term institutional care before February 24, 2020, will be considered in public charge determinations. Use of any programs listed above for any period on or after February 24, 2020, may be counted, with a heavy negative weight assigned to people who use one or more programs for a threshold length of time. DHS will not consider any benefits <u>not</u> listed in the rule.</i></p>	<ul style="list-style-type: none"> • Disaster relief • Emergency medical assistance • Entirely state, local or tribal programs (other than cash assistance) • Benefits received by the immigrant’s family members • CHIP • Special Supplemental Nutrition for Women Infants and Children (WIC) • School Breakfast and Lunch • Energy Assistance (LIHEAP) • Transportation vouchers or non-cash transportation services • Non-cash TANF benefits • Tax credits, including the Earned Income Tax Credit and Child Tax Credit