

# **Final Public Charge rule: What does it really do?**

Under current law, “Public charge” is a term used in the immigration context to refer to a person who is dependent on government cash assistance or institutionalization for long term care for over half of their support.

## When is likelihood of becoming a public charge assessed?

Under current law, an individual's likelihood of becoming a public charge is assessed when someone:

- Applies for **adjustment of status**, which is when someone applies to become a Lawful Permanent Resident (LPR or “green card” holder) from inside the United States, or
- Applies **to enter the U.S.**

If immigration officials determine an individual is likely to become a public charge at any time in the future, the individual's application for admission or adjustment of status may be denied.

## What factors have been traditionally considered during the adjustment of status process?

Required: immigration agents must consider –

- Health
- Age
- Family status
- Financial status
- Education and skills
- Affidavit of support

Permitted: Only two types of public benefits may be considered -

- Receipt of Cash Assistance for income maintenance
- Institutionalization for long-term care

## Things to keep in mind...

- The test is **not** applied during the citizenship application process
- Certain immigrants, including refugees, asylees, individuals with visas for survivors of trafficking, domestic violence and other serious crimes, and others are **not** subject to the public charge test when they apply for a green card.
- The decision is **forward-looking** and can't be based only on what happened in the past. Current circumstances must be considered.
- No single factor determines whether a person is likely to become a public charge. **Use of public benefits is not determinative, it is one factor.** (“totality of circumstances” test).

## What's happening with public charge?

- On October 10, 2018, the Department of Homeland Security (DHS) published a proposed public charge rule in the Federal Register
- After publication of the proposed rule, there was a 60-day public comment period. **Over 200,000 comments were submitted, the large majority of which were opposed to the rule.**
- On August 14, 2019 DHS published the final rule in the Federal Register.
- The rule will not go into effect until October 15, 2019 and may be delayed further due to litigation.
- Four lawsuits have been filed to stop the rule from taking effect.

## What's in the final rule?

The final rule changes the standard for public charge. Under the final rule a public charge is **an individual** who uses ...

- Medicaid (exceptions)
- SNAP
- Federal Housing assistance programs; or
- State or federal cash assistance programs

... for 12 months in a 36 month period (where use of 2 benefits in one month counts as 2 months, 3 benefits in one month as 3 months, etc.)

## Medicaid Exceptions

- Medicaid-reimbursed services provided in schools
- Emergency Medicaid
- Medicaid services used by children under 21 and pregnant women through the 60-day postpartum period

## General exceptions

- Benefits used by active duty service men and women and their families
- Benefits used while someone is in an immigration status that is exempt from public charge, including -
  - Refugee status
  - Asylum status
  - Temporary Protected Status (TPS)
  - T Visa
  - U Visa
  - VAWA Self-petitioner
- Foreign adoptee children



## What this means...

Use of Medicaid, SNAP, federal housing programs, and federal cash assistance programs **will generally not cause problems for green card applicants because immigrants are generally not eligible** and thus can't use those programs before they get their green card. The most common benefits immigrants may qualify for/use are exempted

- Children and pregnant/postpartum women on Medicaid (exempted from new rule)
- Emergency Medicaid (exempted)
- Refugees, asylees and people granted other statuses for humanitarian reasons can qualify for all listed programs. (also exempted)

So...this part of the new rule is largely about politics and creating fear

## **What you should know**

Use of state cash assistance programs may cause problems for green card applicants under the new rule. Some states, including Colorado, have cash assistance programs that may be accessible to people that don't have their green card but can establish lawful presence. Colorado's cash assistance programs include -

- Old Age Pension
- Aid to the Needy Disabled
- Aid to the Blind

## Example 1: program eligibility

Family: Susan (age 31, pregnant, temporary student); David (age 40, not pregnant, temporary student); Lucy (age 2, citizen)

### Medicaid

Susan - eligible

David - not eligible

Lucy - eligible

### SNAP

Susan - not eligible

David - not eligible

Lucy - eligible

### Federal housing

Susan - not eligible

David - not eligible

Lucy - eligible

### Federal cash assistance

Susan - not eligible

David - not eligible

Lucy - eligible

### State cash assistance

Susan - eligible

David - eligible

Lucy - eligible



## Beyond the programs/supports:

The rule changes the “**totality of circumstances**” test by identifying positive and negative factors.

Negative factors, include -

- Under 125% of the federal poverty level
- Under 18 or over 61
- Serious illness without demonstrated ability to pay for treatment
- Inability to demonstrate English proficiency

Positive factors, include -

- Over 250% of the federal poverty level
- Unsubsidized health insurance

## Implications for example family

- Everyone who applies for adjustment of status will be subject to the totality of circumstances test. Susan and David are the people who still need to go through the process in order to live in the United States permanently.
- Lucy, as a citizen, does not need to apply for adjustment of status or entry, and will not be subject to the public charge test.



## Cliff notes version:

- **“Totality of circumstances”** is the bigger change in the rule and will affect more people because income, English proficiency, illness, and age will be bigger factors. This should not deter people from using benefits that won’t count against them, especially if using benefits could help them improve their “totality of circumstances.”
- Final public charge test’s integration of additional programs/supports that may be considered **will apply to very few people** and only applies to the individual and their use of any benefits (not the family).
- Multiple legal challenges to the final rule are in progress.



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