



Changes to Public Charge in Final Rule: Summary & Resources

The [final public charge rule](#) was officially published to the Federal Register on August 14, and will be effective October 15, if not delayed or blocked by litigation. This document was developed for local agencies to assist with understanding how the final public charge rule will change longstanding policy (Section 1), and offer tips and important points to be aware, especially for those working with immigrant families (Section 2).

Section 1. Final Public Charge Rule: What Changed from Current Law

A. What is Public Charge?

- The “public charge” test is a longstanding policy that has been part of federal immigration law since the 1880s. It was designed to identify people who have or would likely become dependent on the government as their main source of support.
 - The assessment attempts to predict a person’s future circumstances (i.e. is “forward looking”), and takes into account a number of factors such as the individual’s age, health, family status, financial status, and their level of education and skills, which is called the “totality of the circumstances.”
 - Current policy also considers past receipt of two public benefits as a factor:
 - Cash assistance for income maintenance; and
 - Institutionalization for long-term care at government expense.
 - Taken together, these factors are used to determine if the person is “likely to become primarily dependent on the government for subsistence.”
 - No one factor alone should determine whether or not someone is a “public charge.” Positive factors can be weighed against negative factors in this forward looking test.
- Generally, public charge determinations are made when a person:
 - Applies to enter the U.S.
 - Applies to adjust their immigration status to become a Lawful Permanent Resident (obtain a green card)¹

¹ The final rule also includes changes that may affect certain people seeking to adjust or extend their nonimmigrant status while in the U.S. Nonimmigrant visas are issued to persons who maintain a permanent residence outside of the U.S. but wish to be in the U.S. on a temporary basis for work, school, medical treatment, or tourism, as examples.

- Is a green card holder and is reentering the country after leaving the U.S. for more than 180 consecutive days (6 months)
- Public charge determinations are not made when/if:
 - Lawful Permanent Residents (green card holders) apply for U.S. Citizenship or apply to renew their green card
 - The individual is in an immigration status that is not subject to public charge, such as refugees and asylees, among several other groups

B. Overview of Changes Made in the Final Rule

The Department of Homeland Security’s final rule makes three key changes to public charge: 1) creates a new definition of public charge; 2) adds additional benefits that may be considered by immigration officials; and 3) changes factors, and how they should be considered, in the totality of the circumstances. These changes would take effect on October 15, if the rule isn’t blocked or delayed by litigation.

- **Final rule creates a new public charge definition:** The new definition created in the rule is a person who “receives one or more public benefits... for more than 12 months in the aggregate within any 36-month period” or who is more likely than not to fit this definition in the future.
- **Expands designated benefits:** The new regulation significantly expands the list of programs that may be considered when making public charge determinations to include not only cash assistance and long-term care,² but also certain health care, nutrition, and housing programs. These added benefits include:
 - Non-emergency Medicaid, or Medi-Cal in California.
 - The rule makes exceptions for children under age 21, pregnant women (and up to 60 days following the pregnancy), emergency services if the State determines that the treatment falls under an “emergency medical condition[s],” and certain disability services related to education.
 - Supplemental Nutrition Assistance Program (SNAP) or CalFresh in California (food stamps).
 - Housing assistance, such as public housing or Section 8 housing vouchers and rental assistance.
- Under the rule, receipt of these programs for 12 months in a 36 month period will be considered a heavily weighted negative factor in deciding whether someone is likely to become a public charge. Receiving two of these benefits, such as CalFresh and Medi-Cal, in a single month, will be counted as two months. This is true even if someone is working and

² DHS has removed the reference to long-term institutionalization within the definition of public benefit since it would be accounted for through the new benefits they have added.

only receiving a modest supplemental benefit. (Though, being employed will be counted as a positive factor under the totality of the circumstances test.)

- **Totality of the circumstances:** The final rule identifies characteristics, deemed as positive and negative factors, to determine the likelihood of an individual becoming a public charge in the totality of circumstances. In some cases, the rule identifies certain factors as being a “heavily weighted positive” or “heavily weighted negative” factor.
 - In general, being younger (under 18) or older (over 61) than working age, having health needs, lacking private health coverage, having limited income or resources, not being employed and not being a primary caregiver, having a lower education level, having limited English proficiency, and using or previously using public benefit programs would be considered negative factors.
 - The rule also establishes a new income standard of 125% of the federal poverty level (FPL); family income below that standard will be considered a negative factor.
 - Heavily weighted positive factors include having income above 250% FPL or having private health insurance that is not subsidized by Affordable Care Act tax credits.
- **The rule is not retroactive.** This means that benefits -- other than cash or long-term care at government expense, which are part of the current definition -- that are used before the rule is effective, on October 15, will not be considered in public charge determinations.

Section 2. Tips, Important Points to be Aware of, and Other Resources

1. **The regulation applies to a limited number of immigrants with legal status. Many immigrants are exempt from public charge determinations and/or parts of the final rule.**
 - Congress exempted many immigrant groups from being subject to public charge such as refugees, asylees, and a number of other vulnerable populations, which are listed as exempt in the final rule.
 - Public charge is not a consideration when Lawful Permanent Residents (green card holders) apply to become U.S. citizens, or apply to renew an existing green card.³
 - The final rule excludes considering benefits used by certain members of the U.S. Armed Forces, and their families, while the Armed Forces member is on active duty.
 - There are also several exemptions for considering receipt of Medi-Cal, such as for children under 21, pregnant women (and up to 60 days following the pregnancy), and if the State determines that the treatment falls under “emergency medical conditions.”

³ Lawful Permanent Residents should however, consult with an immigration attorney if they plan to leave the country for six months or longer.

- 2. Under the final rule, only receipt of benefits by the individual – not their family members – is considered.**
 - The final rule clarified that the Department of Homeland Security will only consider public benefits received directly by the individual that is applying for a change in status or if they're listed as a beneficiary.
- 3. Only the benefits listed in the final rule may be considered.**
 - Many other important benefits such as state-funded non-cash benefits, including comprehensive Medi-Cal coverage for undocumented children and young adults, local health coverage programs, CHIP, the Medicare Part D Low-Income Subsidy, WIC, child care, school meals, and other benefits are not included in the final rule and will not be considered in public charge determinations.
- 4. Use of public benefits alone is not automatic grounds for a public charge determination.**
 - There are many other factors considered like age, education, health, income level, and employment status – positive factors can be weighed against negative factors in this forward-looking test.
- 5. The rule is not yet in effect. Benefits (other than cash assistance or long-term care) used before October 15, 2019, will not be considered in public charge determinations.**
 - The changes made in the final rule will only apply to applications postmarked or transmitted electronically on or after October 15, 2019. Between now and then, the current policy remains in effect. And, it's still possible that the changes from this rule could be blocked or delayed from taking effect from litigation.
- 6. Each situation is different.**
 - People with questions should consult an immigration attorney or Department of Justice-accredited representative about their individual case. This [online directory](#) lists local nonprofits that provide legal help and advice, specifically including public charge.
- 7. For individuals accessing public benefits, it is recommended they seek legal guidance before the rule takes effect on October 15.**
 - Changes made in this rule will not be effective until October 15. For individuals who are currently using public benefits, it is recommended that they use this time to seek qualified legal advice (see #6 above for free or low cost options) to understand whether this rule applies to their, or their family's case, before making a decision regarding public benefits. It is important for them to have accurate information so they can make the best decision for the health and well-being of their family.