



PUBLIC CHARGE

UPDATE: On March 9, 2021 the Department of Homeland Security (DHS) announced that the Biden Administration would no longer defend the Trump Administration's 2019 revised public charge rule that was in pending litigation before the U.S. Supreme Court. Within hours the Supreme Court dismissed all pending appeals, and the DHS filed a notice with the Federal Register announcing the removal of the Trump Administration's rule from the Code of Federal Regulations. As a result of these actions, the Trump Administration's rule has been revoked and the litigation challenging it has been dissolved.

While the Trump Administration public charge ruling has been repealed, the concept of public charge remains in effect. The 1999 Interim Field Guidance on public charge (the policy in place prior to the Trump Administration's 2019 public charge rule) has been restored and is now in effect. Thus, when reviewing petitions on or after March 9th, DHS will be using the 1999 Interim Field Guidance to determine public charge.

The 1999 Interim Field Guidance is available at: <https://www.federalregister.gov/documents/1999/05/26/99-13202/field-guidance-on-deportability-and-inadmissibility-on-public-charge-grounds>. For the USCIS website on public charge rule visit <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge>.

The document contains general information on public charge for educational purposes only; it is not legal advice. Immigrants should consult with an experienced immigration attorney with questions or concerns or who need representation.

WHAT IS PUBLIC CHARGE?

The 'public charge' inadmissibility test was established by the U.S. Congress in 1883 and allows the U.S. government to deny

- An immigrant a green card,
- An extension of a visa, or
- Admission into the U.S. (Note: There are different public charge rules that govern applications processed at consular offices abroad.)

When deciding whether to grant an applicant a green card or an extension of a visa, an immigration officer must determine whether the individual is likely to become a 'public charge,' that is, primarily dependent on the government for support.

HOW PUBLIC CHARGE DEFINED?

Public charge is not defined by statute; implementation of public charge has traditionally been governed by field guidance and regulations issued by the DHS. As of March 9, 2021, the 1999 Interim Field Guidance on Public Charge is in effect. The public charge determination is based on several factors, that is, the 'totality of circumstances,' which includes the individual's age, health, family status, financial status, education, and skills, as well as family members who may support them. Thus, no one factor is used to determine whether someone can be deemed likely to become a public charge.



WHICH PUBLIC BENEFITS ARE INCLUDED IN THE 1999 INTERIM FIELD GUIDANCE?

Under the 1999 Interim Field Guidance the following public benefits are used in the public charge determination. Please note, receipt of such benefits does not automatically render the individual a public charge, other factors, as listed above, are included in the public charge determination.

- SSI,
- TANF and state general assistance programs (Safety Net Assistance in NYS), and
- Long-term institutionalization paid for by the government (Medicaid institutionalization).

The 1999 Interim Field Guidance does NOT include non-emergency federally funded Medicaid, Supplemental Nutrition Program (SNAP), Section 8 housing assistance, or public housing. (These benefits were added under the Trump Administration's guidance but are no longer included in the public charge determination.)

The following benefit have always been **excluded** from the public charge determination:

- Child Health Plus
- Medicare Part D Extra Help
- Qualified Health Plans on the Marketplace*
- Essential Plan in NYS
- Disaster relief
- WIC
- National school lunch programs
- Foster care and adoption
- Student and mortgage loans
- Energy assistance (HEAP)
- Food pantries or soup kitchens
- Homeless shelters, and
- Head Start, among others

WHICH IMMIGRANTS ARE IMPACTED BY PUBLIC CHARGE?

The public charge inadmissibility test DOES NOT apply to all immigrants, many legally residing immigrants are specifically exempted from the public charge determination, including refugees, asylees, Amerasian immigrants, Cuban/Haitian entrants and others. Individuals should consult with an immigration attorney to determine if they are subject to public charge.

In addition, public charge does not apply to lawful permanent residents (LPR), also known as green card holders, who are seeking to become U.S. citizens. Receipt of the benefits listed above does not prevent LPRs from naturalizing unless those benefits were received fraudulently. However, LPRs who leave the country for more than six months and who seek to return to the U.S. **may** be subject to the public charge test. LPRs should speak with an immigration attorney before leaving the country for an extended period.

DHS will only consider public benefits received directly by the applicant for the applicant him or herself; that is, receipt by family members of such benefits does not count against the applicant, unless there is evidence that the family is reliant on the benefits as their sole means of support. Such determination is to be made on a case-by-case basis and upon consideration of the totality of the applicant's circumstances.



IMPACT ON THE IMMIGRANT COMMUNITY

The Trump Administration's expanded definition of public charge created uncertainty, confusion and fear within the immigrant community. This led to a chilling effect whereby individuals afraid of the revised public charge guidance chose not to obtain needed benefits out of concern that receipt could jeopardize their immigration status, their ability to stay in this country, or being separated from their families. While the public charge rule has reverted to the former guidance, uncertainty, confusion and fear remain a challenge for many immigrants. Therefore, it is important for individuals to confer with reputable immigration attorneys who can advise them about the public charge ruling and its potential impact on immigrants.

WHERE TO GO FOR HELP?

It is important that people get the facts straight and should be referred to an immigration expert to consult before taking any action.

Helpful Resources

- New York State Office for New Americans at 800-566-7636 for free legal consultation on public charge and referrals to immigration legal services providers as needed.
- ActionNYC at 800-354-0365; <https://www1.nyc.gov/site/immigrants/help/legal-services/actionnyc.page>.
- National Immigration Legal Services Directory: <https://www.immigrationadvocates.org/nonprofit/legaldirectory/search?state=NY>.
- The Immigrant Defense Project at 212-725-6422 is a lawyer referral line, and has published resources for individuals, families and providers. Visit: <https://www.immigrantdefenseproject.org>.
- NY Mayor's Office of Immigrant Affairs: <https://www1.nyc.gov/site/immigrants/help/legal-services/public-charge.page>