



THE PUBLIC CHARGE RULE

On December 23, 2022, the Department of Homeland Security (DHS) began using the new public charge inadmissibility test that was published in a final rule in September. The new rule will apply to applications postmarked or electronically submitted on or after December 23, 2022. This rule restores the historical meaning of the term ‘public charge,’ which had been in effect for decades prior to the Trump Administration’s restrictive revision of that term in 2019.

The new public charge rule is essentially the same as the 1999 Interim Field Guidance on the public charge ground of inadmissibility and returns the analysis of public charge inadmissibility to that which was in place prior to 2019. In the new rule, a noncitizen is deemed likely to become a public charge if DHS determines that they are likely to become dependent on the government for subsistence based on a “totality of circumstances” analysis of the following factors:

Who Is a Public Charge?

Under Immigration & Nationality Act (INA) Sections 212 (a)(4) and 237 (a)(5), a public charge is a noncitizen “who has become or is likely to become primarily dependent on the federal government for subsistence as demonstrated by either:

- the receipt of public cash assistance for income maintenance; or
- institutionalization for long-term care at government expense.

- The noncitizen’s age; health; family status; assets, resources, and financial status; and education and skills, as required by the INA;
- The filing of Form I-864, Affidavit of Support under Section 213A of the INA, submitted on a noncitizen’s behalf when one is required; and
- The noncitizen’s prior or current receipt of Supplemental Security Income (SSI); cash assistance for income maintenance under Temporary Assistance for Needy Families (TANF); State, Tribal, territorial, or local cash benefit programs for income maintenance (often called General Assistance); or long-term institutionalization at government expense.

What Benefits Are Not Considered in the Public Charge Analysis?

In general, if a program typically does not provide the primary source of income, or it is made available without income-based eligibility rules, USCIS will not consider those programs in making a public charge determination. USCIS will not consider the following types of benefits in the public charge analysis:

- Benefits received by family members other than the applicant
- Receipt of certain non-cash benefits such as Supplemental Nutrition Assistance Program (SNAP) or other nutrition assistance programs; Children’s Health Insurance Program (CHIP); Medicaid (other than for long-term institutionalization); housing benefits; any immunization benefits; disease-testing benefits; or other supplemental or special-purpose benefits
- Specific purpose payments, such as payments for childcare, energy assistance, disaster relief, pandemic assistance, or for other specific purposes

Am I Exempt from the Public Charge Analysis?

The new rule provides a list of those who are exempt from the public charge ground of inadmissibility, such as refugees, asylees and other statutorily or regulatorily exempt humanitarian categories, as well as the limited options for requesting a waiver of a public charge determination.

For more information as to whether you are subject to the public charge ground of inadmissibility, please contact your immigration attorney or find a lawyer via <https://www.ailalawyer.org>.