



PUBLIC CHARGE FINAL RULE 2022

On September 8, 2022, the U.S. Department of Homeland Security (DHS) issued a final rule on public charge which provides clarity and consistency for noncitizens on how DHS will administer the public charge ground of inadmissibility. The final rule went into effect on December 23, 2022.

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 IS PUBLIC CHARGE DEFINED?

The new public charge regulation defines "likely at any time to become a public charge," as "likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense. A public charge determination also includes consideration of several statutory factors, including age, health, family status, financial status, education and skills, as well as the affidavit of support from a sponsor or co-sponsor. The determination about whether someone is deemed likely to become a public charge is based on the **totality of the circumstances**.



WHICH PUBLIC BENEFITS ARE INCLUDED?

The following public benefits are considered 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 at government expense (Medicaid institutionalization).

The following benefits are **excluded** from the public charge determination:

- SNAP
- Section 8
- Medicaid (except when pays for long-term institutionalization)
- Child Health Plus
- Medicare Part D Extra Help
- Qualified Health Plans on the Marketplace*
- Essential Plan in NYS
- 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, and more.

Assistance specifically related to COVID-19 are not considered. These are deemed noncash benefits or special-purpose cash benefits which are not used in making public charge determinations as a general matter.

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.



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>

SOURCES

- U.S. Department of Homeland Security <https://www.dhs.gov/news/2022/09/08/dhs-publishes-fair-and-humane-public-charge-rule>
- USCIS website on public charge rule <https://www.uscis.gov/newsroom/alerts/dhss-public-charge-final-rule-goes-into-effect-on-dec-23>

Please contact us at bplc@cssny.org for questions on this document.