



U.S. Citizenship
and Immigration
Services

PUBLIC CHARGE INADMISSIBILITY

USCIS National Engagement



NEW FINAL RULE

Dec. 20, 2022

Today's Agenda and Speakers



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Opening Remarks

- **Eva Millona** – Chief, Office of Citizenship, Partnership, and Engagement

Public Charge Overview

- **Overview and History** - Doug Rand, Senior Advisor to the Director
- **New Rule - Additional Considerations and Resources** - Andrew Parker, Office of Policy & Strategy

Today's Interagency Speakers



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U.S. Department of Health and Human Services (HHS)

- **Robinsue Frohboese** (she/her/hers) - Principal Deputy
- **Annie Hollis** (she/her/hers) - Technical Director, Division of Medicaid Eligibility Policy, Children & Adults Health Programs
- **Vicki Gottlich** (she/her/hers)- Director, Center for Policy and Evaluation

U.S. Department of Agriculture (USDA)

- **Alberto Gonzalez** -Senior Advisor for External Engagement

U.S. Department of Housing and Urban Development (HUD)

- **Elly Kugler**, Senior Counsel, Office of General Counsel

Reminders



- All lines are muted.
- You can submit written questions through the Q&A box on the right side of your screen.
- Today's presentation is not intended for media attribution.
- Today's presentation will not be recorded.
- If you are a member of the media, please reach out to USCIS Office of Public Affairs with any inquiries at media@uscis.dhs.gov.
- Any congressional staffers may contact the USCIS Office of Legislative Affairs.



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OPENING REMARKS

Eva Millona, Chief, Office of Citizenship,
Partnership, and Engagement



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PUBLIC CHARGE **OVERVIEW & HISTORY**

Doug Rand, Senior Advisor to the Director

WHAT IS THE PUBLIC CHARGE GROUND OF INADMISSIBILITY?



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Under the Immigration and Nationality Act (INA), any noncitizen who, at the time of application for a visa, admission, or adjustment of status, is likely at any time to become a public charge is inadmissible.

INA section 212(a)(4)

RECENT HISTORY OF PUBLIC CHARGE



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August 2019: Public charge rule published by previous administration.

February 2020: 2019 Rule implemented.

March 9, 2021: Federal Court order vacating 2019 Rule goes into effect; DHS stops applying 2019 Rule and reverts to applying the statute consistent with the 1999 Interim Field Guidance.

RECENT HISTORY OF PUBLIC CHARGE



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Aug. 23, 2021: DHS published Advance Notice of Proposed Rulemaking.

Feb. 24, 2022: DHS published new Notice of Proposed Rulemaking.

Sept. 9, 2022: DHS published new final rule, *Public Charge Ground of Inadmissibility*, which goes into effect on Dec. 23, 2022.

Before the new final rule takes effect on Dec. 23, 2022, DHS will continue to apply the public charge ground of inadmissibility consistent with the 1999 Interim Field Guidance.



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PUBLIC CHARGE

NEW FINAL RULE

Andrew Parker, Office of Policy & Strategy

PUBLIC CHARGE INADMISSIBILITY UNDER THE NEW FINAL RULE



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DHS determines whether a noncitizen is likely at any time to become a public charge by determining whether they are likely at any time to become primarily dependent on the government for subsistence as evidenced by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense.

FACTORS USCIS WILL CONSIDER IN A PUBLIC CHARGE INADMISSIBILITY DETERMINATION



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In determining whether an applicant is likely at any time to become a public charge, USCIS will consider:

- Age
- Health
- Family status
- Assets, resources, and financial status
- Education and skills

FACTORS USCIS WILL CONSIDER IN A PUBLIC CHARGE INADMISSIBILITY DETERMINATION



- Current and/or past receipt of the following public benefits:
 - *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 (General Assistance); or*
 - *Long-term institutionalization at government expense.*
- A sufficient Form I-864, Affidavit of Support Under Section 213A of the INA (if required)

BENEFITS USCIS WILL NOT CONSIDER UNDER NEW FINAL RULE



- Supplemental Nutrition Assistance Program (SNAP)
- Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
- Children's Health Insurance Program (CHIP)
- Medicaid (other than for long-term institutionalization)
- Housing benefits
- Immunizations
- Testing for communicable diseases
- COVID-19 vaccines, testing and treatment
- Home and community-based services (HCBS)
- Benefits under the Emergency Food Assistance Act (TEFAP)
- Child and Adult Care Food Program (CACFP)
- Food Distribution Program on Indian Reservations (FDPIR)

BENEFITS USCIS WILL NOT CONSIDER UNDER NEW FINAL RULE



- Services provided by the Indian Health Service (IHS), Tribes, and Tribal organizations
- School lunch programs
- Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) provided by local communities or through public or private nonprofit organizations
- Attending public school
- Non-cash transportation services
- Others not specifically enumerated in the rule

EXAMPLES OF CASH BENEFITS NOT CONSIDERED



- Certain guaranteed income programs
- Stafford Act disaster assistance
- Disaster assistance
- Childcare assistance or childcare-related services
- Health insurance coverage through the Health Insurance Marketplace
- Housing assistance
- Educational benefits
- Student loans and home mortgage loan programs
- Publicly funded scholarships and educational grants
- Foster care and adoption benefits
- Pandemic-related cash assistance programs
- Aid for survivors of trafficking or crime
- Earned cash benefits
- Tax credit or deduction
- Other supplemental or special-purpose benefits (such as transportation vouchers, etc.)

RECEIPT OF PUBLIC BENEFITS EXPLAINED



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- USCIS will consider **only** public benefits provided to the applicant for admission or adjustment of status where the applicant is listed as a beneficiary of the benefit.
- USCIS will **not** consider receipt of public benefits by an applicant's family members.

TOTALITY OF THE CIRCUMSTANCES



- Public charge inadmissibility is determined based on the **totality of the applicant's circumstances.**
- DHS will consider an applicant's age; health; family status; assets, resources, and financial status; education and skills; a sufficient Form I-864; and current and/or past receipt of public benefits.
- Current and/or past receipt of public benefits is not, by itself, sufficient to lead to a finding that an applicant is inadmissible.

SPECIAL CIRCUMSTANCES



USCIS will not consider:

- Public benefits received by the noncitizen while in the United States in a category that was exempt from the public charge ground of inadmissibility or while in the United States after obtaining a waiver of inadmissibility.
- Public benefits received by a noncitizen who, while not a refugee, was eligible for resettlement assistance, entitlement programs, and other benefits available to refugees.
 - Includes certain Afghan nationals and Ukrainians

CATEGORIES EXEMPTED UNDER STATUTE



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Certain categories of noncitizens are **exempt** from the public charge ground of inadmissibility based on statute. For example:

- Refugees and Asylees
- Temporary Protected Status beneficiaries
- T and U nonimmigrants
- VAWA self-petitioners



FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS

USCIS will accept:

- Form I-485 (edition 12/23/22) on or after Dec. 23, 2022.

USCIS will not accept:

- The 07/15/22 edition of Form I-485 if postmarked on or after 12/23/22.
- The 12/23/22 of Form I-485 edition if it is postmarked on or before 12/22/22.

What's New in Form I-485?



Public Charge

61. Are you subject to the public charge ground of inadmissibility under INA section 212(a)(4)?
- Yes No

If you answered "Yes" to **Item Number 61.**, complete **Item Numbers 62. - 68.d.** below. If you answered "No" to **Item Number 61.**, go to **Item Number 69.a.** If you need extra space to complete this section, use the space provided in **Part 14. Additional Information.**

62. What is the size of your household?

63. Indicate your annual household income.

- \$0-27,000
 \$27,001-52,000
 \$52,001-85,000
 \$85,001-141,000
 Over \$141,000

64. Identify the total value of your household assets.

- \$0-18,400
 \$18,401-136,000
 \$136,001-321,400
 \$321,401-707,100
 Over \$707,100

65. Identify the total value of your household liabilities (including both secured and unsecured liabilities).

- \$0 \$1-10,100 \$10,101-57,700 \$57,701-186,800 Over \$186,800

66. What is the highest degree or level of school you have completed?

- Grades 1 through 11 12th grade - no diploma High school diploma, GED, or alternative credential
 1 or more years of college credit, no degree Associate's degree Bachelor's degree
 Master's degree Professional degree (JD, MD, DMD, etc.) Doctorate degree

67. List your certifications, licenses, skills obtained through work experience, and educational certificates.

What's New in Form I-485?



68.a. Have you ever received Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), or State, Tribal, territorial, or local, cash benefit programs for income maintenance (often called “General Assistance” in the State context, but which also exist under other names)? Yes No

68.b. Have you ever received long-term institutionalization at government expense? Yes No

68.c. If your answer to **Item Number 68.a.** is “Yes,” list the specific benefit(s) you received, the start and end dates of each period of receipt, and the dollar amount of benefits received.

Benefit Received	Start Date	End Date	Dollar Amount

68.d. If your answer to **Item Number 68.b.** is “Yes,” list the name, city, and state for each institution, the start and end dates of each period of institutionalization, and the reason you were institutionalized.

Institution Name/City/State	Date From	Date To	Reason

USCIS Policy Manual



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The Policy Manual contains additional guidance about how the new Final Rule will be applied, including information about:

- Definitions used in the 2022 Final Rule
- Factors considered in a public charge inadmissibility determination;
- Totality of the circumstances analysis, including relevant examples;
- Notable circumstances such as consideration of public benefits received by children or active-duty service members;
- The Affidavit of Support Under Section 213A of the INA; and
- Public charge bonds.

RESOURCES



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Public Charge Resources Page:



USCIS Policy Manual: uscis.gov/policy-manual/volume-8-part-g

USCIS Form I-864 Webpage: uscis.gov/i-864

USCIS Form I-485 Webpage: uscis.gov/i-485

Public Charge Rule Stakeholder Meeting



December 20, 2022

U.S. Department of Health and Human Services



HHS PROGRAMS- MEDICAID, CHIP and CASH ASSISTANCE

Cash assistance for income maintenance:

- Includes Temporary Assistance for Needy Families (TANF)
- Considered in the totality of the circumstances

Medicaid and CHIP:

- Medicaid benefits are NOT considered in a public charge determination, other than long-term institutionalization at government expense
- Medicaid funded Home and Community Based Services are NOT considered
- CHIP benefits are NOT considered in a public charge determination
- DHS will NOT consider in public charge determinations benefits received by family members other than the applicant.

Long-term institutionalization:

- Does NOT include short-term rehabilitation stays
- Evidence of unjustified institutionalization in violation of federal law considered
- Considered in the totality of the circumstances



DISABILITY AND AGE

Disability:

- Disability alone is not sufficient for a determination that an individual is likely to become a public charge

Age:

- Considered in the totality of the circumstances



RESOURCES

- Important Information for Immigrant Families to Know About Medicaid and CHIP
<https://www.insurekidsnow.gov/sites/default/files/2021-10/12127.pdf>
- ACL's blog on the public charge rule <https://acl.gov/news-and-events/acl-blog/departments-homeland-security-finalizes-public-charge-immigration-rule>
- Information on filing a complaint with the HHS Office for Civil Rights
<https://www.hhs.gov/ocr/complaints/index.html>



USCIS Public Charge National Stakeholder Engagement

Alberto A. Gonzalez, Jr.
Senior Advisor, External Engagement
USDA's Food and Nutrition Service (FNS)
Tuesday, December 20, 2022

FNS's Nutrition Assistance Programs

- 15+ federal nutrition assistance programs, incl.*
 - Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
 - Summer Food Service Program (SFSP)
 - National School Lunch Program (NSLP)
 - School Breakfast Program (SBP)
 - Supplemental Nutrition Assistance Program (SNAP)
- Aim to provide low-income children and families equitable access to nutritious food and promote nutrition education.
 - Serve 1 in 4 individuals each year.
 - Reach 41 million via SNAP.
 - Serve more than 30 million children via NSLP/SBP.
 - Nearly ½ of all infants via WIC.

*This is not an exhaustive list. A complete list of FNS's 15+ federal nutrition programs can be found at fns.usda.gov/programs.



Final Public Charge Rule and FNS Programs

- Codifies into regulation DHS's longstanding guidance.
- Noncitizen's application for or receipt of federal nutrition assistance benefits administered by FNS are not considered when making public charge determinations.
- Applying for or receiving SNAP or another FNS program will not affect your ability to remain in the U.S., get or keep a Green Card/Permanent Legal Resident Status, or become a U.S. citizen.
- You can also apply for SNAP or another FNS program on behalf of the eligible immigrants or U.S. citizens in your family, even if you do not want to apply for benefits for yourself, without affecting your or their immigration status.



Engagement Efforts

- Goal:
 - Eliminate confusion or misinformation about the public charge final rule
- What FNS is doing:
 - Letter to SNAP Commissioners.
 - Guidance for State Agencies.
 - Social media promotion.
 - Blog post and fact sheet.
- What you can do:
 - Help us spread the word about FNS programs.
 - Let us know how we can work with you/your partners to ensure all those eligible for FNS programs are able to receive food assistance.



Resources

- [Public Charge](#) Ground of Inadmissibility (September 2022)
- FNS 2022 [Commissioners Letter](#) on New DHS Public Charge Final Rule (September 2022)
- [Statement](#) from USDA Secretary Tom Vilsack on the 2022 Public Charge Final Rule (September 2022)
- FNS-USCIS [Joint Letter](#) to SNAP Commissioners and Community Partners (January 2022) (w/ content available in Spanish).
- “[Tri-Agency Letter](#)” to State Health, Human Services, Food Policy Officials (incl. [Q/A](#)) (2011).
- [Report](#) on FNS’s 15+ Federal nutrition programs (September 2022)
- For general information about SNAP, please call 202-720-2791 (English and Spanish) to be connected to your state's SNAP hotline.
- For more information about FNS Programs, visit [FNS.USDA.GOV](https://www.fns.usda.gov).



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