

Public Charge

It's Impact on Survivors of Domestic Violence & Sexual Assault



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Based Violence
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Roadmap



- **Context**
- **What is public charge?**
- **Where does public charge come up?**
- **How should we talk with survivors and their families about public charge?**
- **What is happening with the DHS public charge rule?**

What's Happening w/Public Charge?

Prior Administration

Issued 2019 rule that greatly expanded definition of public charge, changed the benefits that'd be considered in determination, & changed how to weigh various factors in considering totality of circumstances

Litigation

Nine legal challenges filed against 2019 rule. In one of the cases, the district court found that the 2019 rule violated that Administrative Procedure Act. The decision was appealed to the 7th Circuit. In March 21, the Administration asked that the appeals be dismissed, meaning 1999 policy in place

Rulemaking

The Administration has proposed rule, published on February 24, 2022, there is currently a 60 day comment period, with comments due April 25.

Current Policy

Totality of Circumstances

- . Age
- . Health
- . Family status
- . Financial status
- . Education and skills
- . Affidavit of support

The public charge assessment is forward-looking



Is the person likely to rely on cash or long-term care in the future?

- No one factor (including past use of cash benefits) can alone determine whether or not someone is a “public charge”
- Positive factors can be weighed against negative factors

When the public charge test applies

APPLIES

At green card determination or when seeking to enter the U.S. with a visa.*

*Special note re: those seeking to extend, change non-immigrant status

DOES NOT APPLY

Not a consideration when lawful permanent resident (green card holders) apply for U.S. citizenship.

Does not apply to family members not seeking residency

To exempt categories

ANALYSIS OF DHS' PROPOSED RULE



Definition of Likely at Any Time to Become a Public Charge

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
- long term *institutionalization* at government expense

Public Cash Assistance for Income Maintenance:

Ongoing funds intended to pay basic living expenses

Includes

- Supplemental Security Income (SSI)
- Temporary Assistance for Needy Families (TANF)
- State and local cash assistance for income maintenance

Does Not Include

- Special purpose cash, e.g. child care assistance or energy assistance
- Disaster cash, e.g. Stafford Act or pandemic assistance
- Earned income, e.g. unemployment benefits or tax credits

Long Term Institutionalization at Government Expense

Includes

Medicaid-funded long term institutionalization

State or locally funded long term institutionalization

Does Not Include

Home and Community Based Services

Short-term Rehabilitative Care

Any other Medicaid Benefits

Receipt of Public Benefits

Counts as Receipt When

Individual is listed as a beneficiary

Current and Past Receipt

Does Not Count as Receipt When

Applying for a benefit on one's own behalf or on behalf of another

Approval for future receipt on one's own behalf or behalf of another

Solely on behalf of another, even if assists with application (e.g. parent applicant for child only TANF and child receives)

Totally of Circumstances Test

DHS will consider at a minimum all the factors:

- age; health; family status; assets, resources, and financial status; education and skills; and affidavit of support
- Will favorably consider the affidavit of support

Determination must be based on all the factors:

- No one factor, other than the lack of affidavit of support, when required, can determine whether an individual is likely at any time to become a public charge
- Current and/or past receipt of benefits on its own is insufficient
- Finding of disability under S504 of the Rehabilitation Act is insufficient

Totally of Circumstances Test (cont)

Guidance

DHS may issue guidance to adjudicators to inform the Totally Of Circumstances assessment.

Written Denial

Every written denial decision will reflect consideration of each factor and articulate the reason for the determination.

Exempt Groups

<p>Refugees, asylees, and Amerasian immigrants, at admission and adjustment to LPR</p>	<p>Nicaraguans and other Central Americans applying to adjust under NACARA</p>
<p>Afghan and Iraqi interpreters or nationals employed by US government</p>	<p>Special Immigrant Juveniles</p>
<p>Cuban and Haitian entrants applying to adjust status under IRCA, the Cuban Adjustment Act or Haitian Refugee and Immigration Fairness Act of 1998</p>	<p>People who entered the US prior to Jan 1, 1972 and meet conditions to be granted LPR status under registry</p>

Exempt Groups (cont.)

<p>People applying for TPS</p>	<p>VAWA self petitioners</p>
<p>Certain foreign government nonimmigrant visa holders</p>	<p>Certain people who have been battered or subject to extreme cruelty by a USC or LPR spouse or parent</p>
<p>Petitioners for T visas, people with certain pending T visa applications or who have a valid T visa when filing to adjust status and at adjudication</p>	<p>Petitioners for U visas, people granted U visas provided they have valid U visa at time of request and adjudication to either adjust status or to receive an immigration benefit</p>

Exempt Groups (cont.)

Applicants adjusting status who qualify for a benefit under section 1703 of the **National Defense Authorization Act**

Certain nationals of **Vietnam, Cambodia and Laos** applying for adjustment of Status

Certain **American Indians** born in Canada

Certain Polish and Hungarian Parolees paroled into the US

Texas Band of **Kickapoo** Indians

Certain **Syrian** nationals adjusting status

Liberian applicants adjusting status who qualify for a benefit under LRIFA

Any **other categories** of noncitizens exempt under any other law, under section 212(a)(4) of the Immigration and Nationality Act.

***What do we tell
immigrant
survivors and
their families?***



How the Rule works

I was just granted asylum status a few months ago. Can I get COVID tests and vaccines, or will it stop me from getting my green card.

I'm pregnant and need help. I'm currently enrolled in Medicaid but I'm afraid it will be used against me.

I lost my job because my employer went out of business during the COVID closures. Can I accept cash grants that the city is providing for immigrants? If I apply for unemployment, will it hurt my green card application?

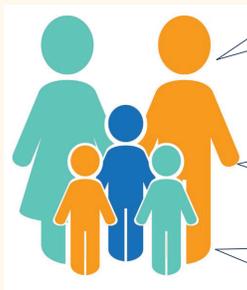


The domestic violence program has an opening in their transitional housing. I'm worried if I use it, I might hurt my immigration status.

I am on a student visa and was raped after a University event. I am worried if I go to the hospital that using healthcare might impact my visa.

I don't have status but I receive cash benefits for my kids. Should I disenroll them so it doesn't hurt my chances for a green card?

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I lost my job because my employer went out of business during the COVID closures. Can I accept cash grants the city is giving to immigrants? If I apply for unemployment, will it hurt my green card application?

The public charge test does not apply to asylees. In addition, USCIS has said COVID related benefits will not impact your green card application.

The public charge test will not consider Medicaid. We encourage you to get the health care that you and your baby need.

The public charge test will not apply to benefits that are not cash assistance for income maintenance. The preamble of the proposed regulation says "special purpose" public health emergency assistance, and earned cash benefits would not be assistance for income maintenance

How the Rule works



The domestic violence program has an opening in their transitional housing. I'm worried if I use it, I might hurt my immigration status.

I am on a student visa and was raped after a University event. I am worried if I go to the hospital that using healthcare might impact my visa.

I have a pending U-visa and I have received state cash assistance for me and my US citizen kids, who are citizens. Should I disenroll so it doesn't hurt my chances for a green card?

Housing and victim services are not cash assistance for income maintenance, and should not be considered in a public charge maintenance.

Use of medical services and free counseling will not be considered in a public charge assessment.

The public charge test does not apply to US citizens. In addition, the public charge test doesn't apply to U visa applicants or U visa holders. In cases where the parent is not in an exempt status, DHS will need to consider, looking forward, whether the applicant is likely to become primarily dependent on the government. So even if someone has used cash assistance for income maintenance, USCIS will look at totality of circumstances

DHS Rulemaking Process



ANPRM Issued

60 day Comment Period + Agency Review



NPRM Issued

Comments + Agency Review

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Final Rule Issued

DHS chose to follow a three step process to get to a final DHS public charge rule:

1) DHS Issued ANPRM (comments + agency review) - This was an optional step and not a standard part of the rulemaking process. PIF submitted sign-on comment in December, 2021

2) DHS issues NPRM (comments + agency review) - Comments Due on **Monday, April 25.**

3) DHS issues a final rule.

Resources

- U.S. Citizenship & Immigration Service (USCIS) Resource Page:
 - <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge/public-charge-resources>
- Public Charge Rulemaking Page (Federal Register)
 - <https://www.federalregister.gov/documents/2022/02/24/2022-03788/public-charge-ground-of-inadmissibility>
- Protect Immigrant Families:
 - [Protectingimmigrantfamilies.org](https://protectingimmigrantfamilies.org)
- Alliance for Immigrant Survivors:
 - <https://www.immigrantsurvivors.org/resources-1>
- Public Charge Advisory on Impact on Survivors:
 - <https://www.api-gbv.org/resources/advisory-public-charge/>

Questions & Answers



Please type your questions and comments into the chat box

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Thank you.