



Immigration: Public Charge Updates

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Under federal immigration law, a noncitizen (alien) who is likely to become a public charge is deemed *inadmissible*, or ineligible to be admitted to the United States as a lawful permanent resident (LPR or green card holder). Public charge determinations are made based on the totality of the circumstances for each case. In recent years, the criteria considered in public charge determinations have shifted.

Longstanding public charge guidance directed immigration officials to consider whether an individual has become or is likely to become dependent on cash benefits for income maintenance or long-term institutionalization at government expense, among other factors. In 2019, under the Trump Administration, the Department of Homeland Security (DHS) issued a new federal regulation that expanded the definition of public charge to consider whether a noncitizen was “more likely than not at any time in the future” to use certain public benefits and added consideration of certain noncash benefits. The regulation was subsequently challenged in court. The Biden Administration [chose not to defend the regulation](#) and, in March 2021, reverted to previous guidance. In February 2022, DHS published a [Notice of Proposed Rulemaking](#) (NPRM) intending to implement a new regulation.

Background

U.S. immigration law has long contained exclusion and removal provisions designed to limit government spending on indigent noncitizens. Under [Section 212\(a\)\(4\)](#) of the Immigration and Nationality Act (INA), an alien may be denied admission into the United States or adjustment to LPR status if he or she is “likely at any time to become a public charge.” An admitted alien may also be subject to removal from the United States based on a separate [public charge ground of deportability](#), but this is rarely employed. [Certain categories of aliens](#), such as refugees and asylees, are exempted from the public charge grounds of inadmissibility. There is no public charge determination for noncitizens applying to *naturalize* (become U.S. citizens).

Immigration authorities are required by [statute](#) to, at a minimum, consider the following factors when making public charge determinations: age; health; family status; assets, resources, and financial status; and education and skills. Immigration officers may also consider an [affidavit of support](#) submitted by an alien’s petitioner as well as the alien’s prospective immigration status and expected period of admission. Together, these factors comprise a *totality of the circumstances* test for public charge determinations.

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Changing Criteria: 1999 Field Guidance and 2019 Final Rule

Although the INA does not explicitly define the term *public charge*, since 1999 [agency guidance](#) had defined it to mean a person who is or is likely to become “primarily dependent on ... public cash assistance for income maintenance or ... institutionaliz[ed] for long-term care at government expense.” The 1999 guidance identified four types of public benefits for which past, current, or future receipt may be considered as part of the totality of the circumstances test:

- Supplemental Security Income (SSI);
- Temporary Assistance for Needy Families (TANF),
- [state and local cash assistance](#) (*general assistance*); and
- benefits provided for institutionalized long-term care.

During the Trump Administration, public charge criteria were revised in a [DHS final rule](#) published August 14, 2019. The rule added consideration of certain *noncash* benefits receipt in a public charge determination. These included the [Supplemental Nutrition Assistance Program \(SNAP\)](#), [Medicaid](#) (with exceptions), and certain [public housing benefits](#).

The 2019 rule explicated how officers should evaluate each of the statutory factors, setting new standards and evidence for each factor. There were four heavily weighted negative factors: unemployment, past receipt of (or approval to receive) public benefits for more than 12 of the previous 36 months, inability to cover medical costs, and prior public charge determination; and three heavily weighted positive factors: household income or assets of at least 250% of federal poverty guidelines (FPG), individual annual income of at least 250% of the FPG, and having private health insurance.

Supporters of the 2019 rule contended that it reflected a more [contemporary consideration of government benefits](#) and would [save taxpayers money](#). Others [opposed the rule](#) and analysts found [decreased participation in](#) and [avoidance of](#) public benefits programs among eligible noncitizens and immigrant families, including those with [U.S. citizen children](#). Such fears were associated with concerns about future green card applications and perceived risks of immigration enforcement.

The regulation faced several [legal challenges](#). After the Biden Administration took office, DHS chose not to defend the rule in court and [Executive Order 14012](#) ordered review of agency actions on public charge inadmissibility. DHS’s [U.S. Citizenship and Immigration Services](#) stopped applying the 2019 rule in March 2021 and reverted to the 1999 interim field guidance. In February 2022, the Biden Administration published a new proposed rule in the *Federal Register*.

2022 NPRM: Proposed New Policy

In the [NPRM](#) published February 24, 2022, DHS proposes to codify in the Code of Federal Regulations a definition of the term *likely at any time to become a public charge* based on a standard similar to the 1999 guidance. Together with the statutory factors listed above, DHS proposes to consider past or current receipt of the following public benefits in a public charge determination:

- SSI;
- TANF cash assistance;
- state, tribal, territorial, and local cash assistance for income maintenance; and
- long-term institutionalization at government expense.

The NPRM specifies that the agency will not consider noncash benefits. It also states that participation in certain cash assistance programs would not be considered in public charge determinations because it would not connote primary dependence on the government for subsistence (e.g., childcare assistance or

the [Low Income Home Energy Assistance Program](#)). DHS proposes “to consider the statutory minimum factors in their totality, without separately defining each factor and its weight.”

The proposed rule is open for a 60-day public comment period, ending April 25, 2022.

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