



Office of the Deputy Mayor for Health and Human Services

## Public Charge Rule Frequently Asked Questions for DC Residents\*\*

**\*\* THE NEW FINAL PUBLIC CHARGE RULE IS SUSPENDED UNTIL FURTHER NOTICE UNDER TWO NATIONAL PRELIMINARY INJUNCTIONS ISSUED BY THE SOUTHERN DISTRICT OF NEW YORK AND FEDERAL DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON. THE RULE WILL NOT GO INTO EFFECT ON OCTOBER 15, 2019 AS PLANNED.<sup>1</sup>**

*Washington, DC celebrates our diversity and respects all DC residents no matter their immigration status. We are a sanctuary city because we know that our neighborhoods are safer and stronger when no one is afraid to call on our government for help, and when our police can focus on protecting and serving. One of our key values is making sure residents understand their rights and where they can go for questions or help, including about the public charge process. The questions and answers below are designed to provide more information about the [new final public charge rule](#) issued by the Federal government on August 14, 2019.*

**Please note: these FAQs should not be used as a substitute for legal advice. Individuals with questions about whether the public charge rule applies to them should seek the advice of an immigration attorney, or reach out to the Mayor’s Office of Community Affairs Immigrant Justice Legal Services (IJLS) Grantees for guidance. Their contact information can be found at <https://dc.gov/immigration-resources>.**

### 1. What is the public charge test?

Federal immigration officials use the public charge test for individuals seeking immigrant visas and for individuals seeking lawful permanent resident (LPR) (“green card” holder) status. The public charge test is intended to assess whether an individual, based on the totality of his or her circumstances, is likely to rely or depend on the U.S. government for assistance in the future. If the federal immigration authorities determine that an individual is likely to become a public charge, they may deny the individual’s application for a visa or LPR status.

### 2. Why is the public charge test getting so much attention now?

Until August 14, 2019, the federal government defined the term “public charge” as a person who is primarily dependent on the government for support.<sup>2</sup> However, the final

---

<sup>1</sup> <https://www.npr.org/2019/10/11/769376154/n-y-judge-blocks-trump-administrations-public-charge-rule>

<sup>2</sup> “Public Charge.” National Immigration Law Center. <https://www.nilc.org/issues/economic-support/pubcharge/>.

federal rule and guidance expand the definition to include any individual who receives certain public benefits, even if they are not primarily dependent on those benefits. Additionally, although previously the public charge test only looked at an individual's use of federal, state, and local cash assistance programs (including SSI and TANF), as well as public assistance for institutional long-term care, including Medicaid long-term care, the final federal rule expands this list. Under the rule, as of October 15, 2019, many other public benefit programs are now part of the public charge test, including benefits like health coverage through Medicaid, Food Stamps (SNAP), and housing programs. The public charge test also now applies to persons with a visa who want to renew or change their visa status.

### 3. When does the final federal rule go into effect?

The changes were scheduled to go into effect on October 15, 2019, but were delayed until further notice under a national injunction issued by two federal district courts on October 11, 2019. The rule will be applied only to applications and petitions postmarked (or, if applicable, submitted electronically) on or after the effective date. Applications or petitions that are postmarked prior to the effective date of the rule, will not be subject to the rule. According to the rule, if any of these **new benefits** (Medicaid, SNAP, and housing programs) were received **prior to** the effective date, they **will not** be counted as part of the public charge test. All benefits applied for or received after that date will be included in the calculation.

### 4. What factors will be taken into account in determining whether an individual is a public charge?

The public charge determination is based on a totality of an individual's circumstances, including, at a minimum, age, health, family status, assets, resources, financial status, education, and skills. In general, factors that may be considered negatively include being younger or older than working age,<sup>3</sup> having certain health needs, lacking private health coverage, having lower income or resources (income below 125 percent of the federal poverty level or \$26,663 for a family of three in 2019), not being employed or a primary caregiver, having a lower education level, having limited English proficiency, and currently or previously using public benefit programs.

In making this determination, the rule says some factors will be weighted more heavily – heavily weighted negative factors are more likely to result in a public charge determination while heavily weighted positive factors are more likely to result in someone not being considered a public charge. Although receipt of the identified public benefits does not automatically mean that someone will be considered a public charge, the final rule counts receiving public benefits as one of four **heavily weighted negative factors** in the public charge test.

**Heavily weighted negative factors** include:

- Receipt of benefits for more than 12 months in a 36-month period, beginning no earlier than 36 months prior to the application for admission or adjustment of

---

<sup>3</sup> Individuals ages 18 to 61 are considered working age.



status on or after the effective date. The rule counts each benefit received within a month as one month for the purposes of counting the number of months using public benefits. This means, for example, that if an individual receives both Medicaid and SNAP in one month, the individual's use of benefits will count as two months for the purposes of determining whether the individual is a public charge;

- A previous finding of inadmissibility (or deportability) on public charge grounds;
- Whether an individual is authorized to work but is unable to demonstrate employment (including recent or a prospect of future employment) and is not a full-time student nor a primary caregiver; and
- Whether an individual has a medical condition that requires extensive treatment or institutionalization but is uninsured or has insufficient resources to pay.

**Heavily weighted positive factors** in the public charge test include:

- Currently having private health insurance that is not subsidized by Affordable Care Act tax credits;
- Having household assets/resources of at least 250 percent of the federal poverty level;<sup>4</sup> and
- Being authorized to work or employed with an income of at least 250 percent of the federal poverty level.

Additionally, although it is not a “heavily weighted positive factor,”, having private health insurance that includes Affordable Care Act tax credits, including coverage available through DC Health Link, is still a positive consideration.

**5. Under the final federal rule, what are the public benefit programs that federal agencies will consider to determine whether an individual is a public charge?**

The rule defines public benefit to include only the following federal, state, or local cash benefits for income maintenance, and federal health, nutrition, and housing programs:

- Supplemental Security Income (SSI)
- Temporary Assistance for Needy Families (TANF)
- Supplemental Nutritional Assistance Program (SNAP)
- Medicaid for non-pregnant adults over 21 years of age (not including certain types of Medicaid listed in Question 6)
- Housing programs:
  - Subsidized public housing
  - Section 8 Housing Assistance under the Housing Choice Voucher Program
  - Section 8 Project-Based Rental Assistance
- Any federal, state, local, or tribal cash benefits for income maintenance, including the following:
  - Program on Work Employment and Responsibility (POWER)
  - Interim Disability Assistance (IDA), and

<sup>4</sup> See 2019 U.S. Federal Poverty Guidelines. <https://aspe.hhs.gov/poverty-guidelines>.



- General Assistance for Children (GC)

**6. Enrollment in which programs *will not* be considered negatively as part of public charge determination under the final rule?**

Under the final rule, the following programs ***will not*** be considered public benefits in a public charge determination:

- Certain Medicaid benefits:
  - Medicaid for pregnant women
  - Medicaid benefits for individuals under 21 years of age
  - Medicaid for emergency medical services (Emergency Medicaid)
  - Medicaid for school-based services, including those provided under the Individuals with Disabilities Education Act (IDEA)
- Children’s Health Insurance Program (CHIP) benefits
- Locally-funded health coverage:
  - DC Healthcare Alliance Program
  - DC Immigrant Children’s Program
- Private health insurance, including:
  - Plans purchased through DC Health Link
  - Tax credits/subsidies received for such coverage
- Certain Nutrition benefits:
  - Special Supplemental Nutrition Program for Women, Infants and Children (WIC)
  - Free and Reduced School Meals (School Lunch Program)
  - Disaster Supplemental Nutrition Assistance
- Head Start
- Healthy Start
- Pell Grants
- Social Security Disability Insurance
- Non-governmental non-cash services or aid, such as homeless shelters and food pantries

**7. If an individual just applies for one of the benefits but does not enroll, is that still considered a public charge?**

Yes. Under the final rule, the U.S. Department of Homeland Security will consider whether an individual has applied for, been approved for, or disenrolled from public benefits as one of several factors taken into account in considering the “totality of an individual’s circumstances.” Note that the following circumstances involving application or use of public benefits will ***not*** be considered in the public charge test:

- Public benefits sought by, approved for, or received by an individual’s child or other family members; (for more detailed information, see Question 11 below)
- Benefits received by active duty or reserve service members and their families;
- Benefits received by an individual during periods when the individual was in an immigration category that is exempt from a public charge determination; and
- Benefits received by foreign-born children of U.S. citizen parents who will be automatically eligible to become citizens.



**8. I am a Lawful Permanent Resident (LPR) and have a green card. Will benefits I receive while in LPR status affect my application for citizenship?**

The public charge test generally does not apply to individuals who are already LPRs, and nothing in the final rule changes this. However, there are some exceptions related to criminal activity, extended absences outside the country (longer than 180 days), or abandonment of LPR status where the public charge test would apply.

**9. Does this public charge rule impact everyone who wants to immigrate to the United States?**

No. The following individuals are not subject to public charge determinations:

- Refugees, asylees, and individuals under Temporary Protective Status;
- Survivors of trafficking, domestic violence, or other serious crimes;
- Certain immigrants and public officials protected under law listed in the rule;
- Certain international adoptees and children acquiring U.S. citizenship;
- Specific Afghan and Iraqi Interpreter, or Afghan or Iraqi national employed by or on behalf of the U.S. Government;
- Certain Cuban and Haitian entrants applying for adjustment of status;
- Certain Nicaraguans and other Central Americans applying for adjustment of status;
- Certain nationals of Vietnam, Cambodia, and Laos applying for adjustment of status;
- Non-immigrants seeking to attain or retain visas associated with International Organizations, Diplomatic Missions (embassies), or NATO; and
- Anyone else who successfully applies for and receives a waiver from the U.S. Department of Homeland Security.

**10. If my children use public program benefits, will I be considered a public charge?**

No. Public charge test only looks at the benefits received by the individual who is applying and does not take into account any benefits received by the individual's children or other family members.

**11. Is there any chance that I can be deported for using public programs now?**

Yes, but it is very rare and will only occur if: (1) you were using cash assistance or long-term care within the first five years after immigration, (2) you or your sponsor were asked to pay for services used, and (3) you or your sponsor refused to pay. The final U.S. Department of Homeland Security public charge rule does not make changes to the public charge deportability grounds.

**12. What should individuals do if they are worried about becoming a public charge or about how the final rule affects their family?**

Individuals with additional questions about being considered a public charge should seek the advice of an immigration attorney. You can also reach out to the Mayor's Office of Community Affairs Immigrant Justice Legal Services (IJLS) Grantees. Their contact information can be found at <https://dc.gov/immigration-resources>.

**13. Can I sponsor my family members if I use public programs?**



While you can still petition to bring your family members to the U.S., if you are using public programs, you may not be able to file an “affidavit of support” to show that you can financially support them. If you have additional questions, you should seek the advice of an immigration attorney. You can also reach out to the Mayor’s Office of Community Affairs Immigrant Justice Legal Services (IJLS) Grantees. Their contact information can be found at <https://dc.gov/immigration-resources>.

**14. I am undocumented. If I apply for Medicaid, SNAP, or other programs for my children, can staff report me to immigration enforcement?**

No. Under current law, information you share when you apply for public programs is not shared with the Immigration and Naturalization Service for immigration enforcement purposes. If you apply for your child, you will only be required to provide information about your child’s immigration status. If you are undocumented and applying on behalf of a child, you should not provide any information about your own immigration status. However, future rules may be imposed for LPR or visa changes that require states to share applications, determinations or receipt of benefits with the U.S. Department of Homeland Security.

