

GOVERNMENT OF THE DISTRICT OF  
COLUMBIA  
Executive Office of Mayor Muriel Bowser



Office of the Deputy Mayor for Health and Human Services

## Public Charge Rule Frequently Asked Questions for DC Residents

**\*\* BASED ON GUIDANCE FROM THE U.S. CITIZENSHIP AND IMMIGRATION SERVICES, THE NEW RULE WILL BECOME EFFECTIVE FOR NEW VISA, RENEWAL, OR LAWFUL PERMANENT RESIDENT APPLICATIONS SUBMITTED OR POSTMARKED ON OR AFTER FEBRUARY 24, 2020.\*\***

*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>.**

**The public charge rule does not stop people from obtaining all government benefits. Benefit programs in Washington, DC seek to help as many people in need as possible, and many benefit programs are open to all, regardless of immigration status. Even if receipt of a benefit may be considered by immigration officials sometime in the future, the most important thing to do is protect your health and your family.**

### 1. What is the public charge test and to what programs does it apply?

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.

**The Federal public charge test will have less applicability to District of Columbia non-cash programs or benefits – and more to certain federal programs, like Section 8 housing, Medicaid, and SNAP Benefits (formerly known as food stamps).**

**Notably, every resident in the District may use the following programs, without regard to immigration status:**

- The District of Columbia Special Supplemental Nutrition Program for Women, Infants, and Children (WIC);
- DC Health clinics for sexually transmitted diseases and immunization clinics;
- DC Health HIV/AIDS Housing and Supportive Services and AIDS Drug Assistance Program;
- Public schools and programs offered through schools, such as breakfast and lunch; after school (Out-of-School Time) programs; and Summer Food Service;
- Health insurance through the DC Healthcare Alliance or Immigrant Children’s Program;
- The Department of Behavioral Health’s Access HelpLine, available at 1(888)7WE-HELP/1-888-793-4357;
- DC DMV Limited Purpose Driver License; and
- Language Access Services.

**Some federal programs are not covered by the public charge rule and exemptions exist for certain populations. For instance:**

- Medicaid or CHIP (Children’s Health Insurance Program) received by applicants who are: (1) under age 21, (2) during pregnancy and up to 60 days after a pregnancy, or (3) receiving emergency care;
- Many immigrant categories are exempt from the “public charge” grounds for inadmissibility:
  - Asylees, refugees, U visa holders and T visa holders are exempt; and
- Green card holders applying for citizenship are not subject to the public charge test.

**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>1</sup> However, the final 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, 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 and how do these changes affect my current use of federal benefits?**

The changes were scheduled to go into effect on October 15, 2019, but were delayed through injunctions by several federal district courts. In January, the U.S. Supreme Court lifted the last nationwide injunction preventing the implementation of the rule. According to the U.S. Citizenship and Immigration Services, the rule will be applied only to applications and petitions postmarked (or, if applicable, submitted electronically) on or after February 24, 2020 (“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,

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<sup>1</sup> “Public Charge.” National Immigration Law Center. <https://www.nilc.org/issues/economic-support/pubcharge/>.

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. Note that this rule continues to be challenged in court on the merits; however, a final decision on the merits could take months or years.

#### 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>2</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 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>3</sup> and
- Being authorized to work or employed with an income of at least 250 percent of the federal poverty level.

<sup>2</sup> Individuals ages 18 to 61 are considered working age.

<sup>3</sup> See 2019 U.S. Federal Poverty Guidelines. <https://aspe.hhs.gov/poverty-guidelines>.

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.

Remember, the DC Government welcomes all persons, regardless of citizenship. Don’t hurt your families now for fear that a rule that takes a forward-looking approach about whether you are likely to become a public charge in the future may be applied to you. Learn what you may be eligible for, and what the potential consequences of using the program are – don’t count your family out without the facts.

**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
  - 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?**

Under current law, information you share when you apply for public programs is not shared with the U.S. Citizenship and Immigration Services (USCIS) for immigration enforcement purposes; however, under federal law, for some programs the DC Government may be required to report denials due to immigration status to USCIS. 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.