

## What is ‘public charge’ and how will it be applied?

“Public charge” is a term used in immigration law to refer to a person who is likely to become dependent on the government for financial and material support. Anyone deemed likely to become a “public charge” may be denied admission to the U.S. or Lawful Permanent Resident status.

This issue is likeliest to arise when applying for admission through a family petition (or less commonly, through an employer), and **does not** apply to individuals adjusting status as refugees, asylees, Special Immigrant Juveniles, U and T visa beneficiaries, or self-petitioning through the Violence Against Women Act.

Since 1999, the government has defined a public charge as someone who is likely to become “primarily dependent on the government for subsistence,” as demonstrated by either the receipt of public cash assistance such as Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI) or similar state cash assistance programs, or reliance on Medicaid for long-term institutional care.

The new policy would drastically expand the definition of “public charge” to include anyone who receives, **or is deemed likely to receive**, not only TANF, SSI or similar cash assistance programs, but also Section 8 housing assistance, Supplemental Nutritional Assistance Program (SNAP) benefits, non-emergency Medicaid coverage, subsidized housing, or long-term institutional care at government expense.

Only benefits received by the applicant – not other household members – would be directly weighed, and **only from Feb. 24, 2020 onward** (delayed from the original Oct. 15, 2019 due to litigation). Still, the family context may be considered as part of the “totality of the circumstances.” Moreover, having the sponsor file an affidavit proving they can support the applicant wouldn’t necessarily overcome dependency concerns.

The only heavily weighted **positive factor** in a “public charge” review would be **income above 250%** of the federal poverty level (\$65,500 for a family of 4 in 2020). Applicants would also be evaluated based on their age, health, family status, education level, and ability to speak English.

Although the rule does not directly provide for the removal of people who fail the “public charge” test, a policy adopted in June 2018 by U.S. Citizenship and Immigration Services (USCIS) requires issuance of a Notice to Appear in immigration court to anyone who is deemed inadmissible or deportable. Thus, anyone who is denied a green card as a “public charge” is almost certain to be placed in removal proceedings.

An individual with a green card who has been outside of the United States for at least 6 months is considered to be seeking admission when they try to re-enter the country and could be denied entry based on being a public charge. Public charge determinations **do not** apply when an individual is applying for citizenship or for renewal of a green card.

Applicants for most non-immigrant statuses must also prove that they are not likely to become public charges while in the United States. The administration intends to apply the above criteria not only to those who are applying for a non-immigrant visa, but also to those individuals seeking to extend or change their non-immigrant classification. DACA and Temporary Protected Status (TPS) renewals **would not** be affected.

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*This overview was written by Sarang Sekhvat and Marion Davis at MIRA. It was last updated on Jan. 31, 2020.*

## Redefining 'public charge': The details

The question asked by the new "public charge" test is whether someone is "more likely than not" to need public benefits someday – whether or not they receive any or are even eligible as immigrants. Income below 125% of the federal poverty level (currently \$32,750 for a family of 4 in 2020) would weigh heavily **against** an applicant; income above 250% of the FPL (\$65,500 for a family of 4) would weigh favorably.

### Whom will this impact?

- Anyone in the U.S. seeking lawful permanent resident (LPR) status through a family petition:
  - Spouses of U.S. citizens;
  - Children of U.S. citizens;
  - Parents of U.S. citizens;
  - Siblings of U.S. citizens;
  - Spouses of LPRs; and
  - Unmarried children of LPRs.
- Individuals seeking LPR status through an employment-based visa.
- Individuals seeking a non-immigrant visa or seeking to extend or change their non-immigrant status.
- LPRs coming back to the US after a trip of 6 months or more.

### Who is exempt?

- Individuals applying for or re-registering for Temporary Protected Status;
- Special Immigrant Juveniles;
- LPRs applying for citizenship;
- Individuals applying for a green card through:
  - Asylee or refugee status;
  - VAWA self-petitions, including derivatives;
  - U or T visas;
  - Amerasian petitions;
  - Afghan or Iraqi Special Immigrant petitions;
  - Cuban and Haitian Entrant petitions;
  - NACARA petitions; or
  - Haitian Refugee Immigration Fairness Act.

### Benefits considered for public charge

- Where any combination of benefits are provided for an aggregate of 12 months in the last 36 months:
  - Supplemental Nutrition Assistance Program (SNAP);
  - Section 8 Housing assistance;
  - Supplemental Security Income (SSI);
  - Temporary Assistance for Needy Families (TANF); or
  - Federal, state, or local cash assistance for income maintenance.
  - Non-emergency Medicaid benefits;
  - Subsidized housing; or
  - Institutionalization for long-term care at government expense.

### Benefits NOT considered for public charge

- Women, Infants and Children (WIC);
- Medicaid for people under 21 and pregnant women (+ 60 days postpartum);
- Children's Health Insurance Program (CHIP);
- School-based benefits (e.g. free lunch);
- Energy Assistance;
- Veteran's benefits;
- Federal Old-Age, Survivors, and Disability Insurance benefits;
- Government pension benefits;
- Government employee health insurance or transportation benefits;
- Government employee transportation benefits;
- Unemployment insurance;
- Worker's compensation;
- State disability insurance;
- In-state college tuition;
- Subsidies under Medicare Part D;
- Government loans that require repayment; or
- Disaster relief.

*Note: This summary was last updated on Jan. 31, 2020.*