

Public Charge Frequently Asked Questions

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On September 9, 2022, the Department of Homeland Security (DHS) published a new public charge rule.¹ Its purpose is to implement the public charge of inadmissibility in a manner consistent with congressional direction that will be easily understandable for officers and noncitizens and which will result in fair and consistent adjudications.² The new rule, effective December 23, 2022, makes significant changes designed to revert the “chilling effect” of a prior 2019 rule, which never was implemented because of court challenges.³ Until December 23, the DHS is following interim field guidance issued in 1999.⁴

The following frequently asked questions (FAQs) are not exhaustive but may help you understand some key aspects of the rule.

1. Who is exempted from the public charge rule?

The public charge rule does not apply to various noncitizens, including but not limited to:

1. Refugees, at the time of admission;⁵
2. Asylees;⁶
3. Refugees and asylees applying for adjustment to permanent resident status;⁷
4. Amerasian Immigrants (for their initial admission);⁸
5. Afghan and Iraqi Interpreter, or Afghan or Iraqi national employed by or on behalf of the U.S. Government as described in section 1059(a)(2) of the National Defense Authorization Act for fiscal year 2006;⁹
6. Cuban and Haitian entrants applying for adjustment status under section 202 of the Immigration Reform and Control Act of 1986;¹⁰
7. Individuals applying for adjustment of status under the Cuban Adjustment Act;¹¹
8. Nicaraguans and other Central Americans applying for adjustment of status under section 203 of the Nicaraguan and Central American Relief Act;¹²

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¹ Public Charge Ground of Inadmissibility [hereinafter 2022 Public Charge Rule], 87 Fed. Reg. 55,472 (Sept. 9, 2022) (effective Dec. 23, 2022).

² *Id.* at 55,474.

³ *Id.* at 55,474 n.9.

⁴ USCIS, Public Charge Interagency Letter, https://www.uscis.gov/sites/default/files/document/legal-docs/USCIS_Public_Charge_Interagency_Letter_11.16.21.pdf (last visited Nov. 5, 2022).

⁵ 8 C.F.R. § 212.23(a)(1), (2).

⁶ 2022 Public Charge Rule, *supra* note 1, at 55,604 (Table 9).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

9. Haitians applying for adjustment of status under section 902 of the Haitian Refugee Immigration Fairness Act of 1998;¹³
10. Lautenberg parolees as described in section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990;¹⁴
11. Special immigrant juveniles as described in § 245(h) of the Immigration and Nationality Act (INA);
12. Individuals who entered the United States before January 1, 1972, and who meet the other conditions for being granted lawful permanent residence under INA § 249;¹⁵
13. Individuals applying for or reregistering for temporary protected status pursuant to INA § 244(c)(2)(ii);¹⁶
14. Members of the Kickapoo Tribe of Oklahoma;¹⁷
15. Ambassadors, public ministers, career diplomats, or consular officers, or immediate family or other foreign government official or employee, or immediate family pursuant to INA § 1102;¹⁸
16. Nonimmigrants classifiable as C-2 (alien in transit to U.N. headquarters) or C-3 (foreign government official) pursuant to 22 C.F.R. § 41.21(d);¹⁹
17. Principal resident representatives of recognized international organizations and related individuals pursuant to INA § 102;²⁰
18. Nonimmigrants classifiable as NATO representatives and related categories, pursuant to 22 C.F.R. § 41.21(d);²¹
19. Individuals with a pending application that sets forth a prima facie case for eligibility for nonimmigrant status as victims of severe form of trafficking pursuant to INA § 212(d)(13)(A);²²
20. Individuals in T nonimmigrant status who are seeking an immigration benefit;²³
21. Applicants for or individuals who are granted nonimmigrant status as victims of criminal activity pursuant to INA § 212(a)(4)(E)(ii);²⁴
22. Certain Syrian nationals adjusting status under Pub. L. No. 106-378;²⁵
23. Applicants for an adjustment of status who qualify for a benefit under the Liberian Refugee Immigration Fairness act, pursuant to section 7611 of the National Defense Authorization Act for fiscal year 2020;²⁶
24. Violence Against Women Act self-petitioners under INA § 212(a)(4)(E)(i);²⁷
25. A “qualified alien” described in section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;²⁸

¹³ *Id.*

¹⁴ *Id.* at 55,605.

¹⁵ *Id.*; 8 C.F.R. Part 249.

¹⁶ 2022 Public Charge Rule, *supra* note 1, at 55,605 (Table 9).

¹⁷ *Id.*; Pub. L. No. 97-429 (Jan. 8, 1983).

¹⁸ 2022 Public Charge Rule, *supra* note 1, at 55,605 (Table 9).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.* at 55,605–06.

²⁴ *Id.* at 55,605.

²⁵ *Id.* at 55,606.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

26. Nationals of Vietnam, Cambodia, and Laos applying for adjustment of status under section 586 of Pub. L. 106-429;²⁹ and
27. Polish and Hungarian parolees who were paroled into the United States from November 1, 1989, to December 31, 1991, under section 646(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.³⁰

2. What benefits are not considered for public charge purposes?

The U.S. Citizenship and Immigration Services (USCIS) will not consider the receipt of, or certification or approval for future receipt of, non-cash assistance not referenced in 8 C.F.R. § 212.21(b) or (c), such as:

1. The Supplemental Nutrition Assistance Program (SNAP) (also known as food stamps),
2. The Children's Health Insurance Program (CHIP),
3. Medicaid (other than for long-term use of institutional services under section 1905(a) of the Social Security Act),
4. Special Supplemental Nutrition Program for Women, Infants, and Children (WIC),
5. Housing benefits such as Federal Rental Assistance,
6. Benefits related to immunizations or testing for communicable diseases,
7. Disaster or pandemic assistance, including hurricanes or wildfires, or pandemics and their aftermath,
8. Free or subsidized school lunches, home energy assistance, childcare assistance, or special nutritional benefits for children and pregnant individuals,
9. The use of home and community-based services, or
10. Other non-cash, supplemental, or special-purpose benefits programs.³¹

3. What public benefits implicate the public charge rule?

USCIS guidance specifies that the following benefits may be considered as part of a public charge determination:

1. Receipt of federal, state, local, or tribal cash assistance for income maintenance, including Supplemental Security Income (SSI) and Temporary Assistance for Needy Families (TANF).³²
2. Long-term institutionalization at government expense, including Medicaid when used for that purpose.³³

4. Does receiving state-based subsidized health insurance implicate public charge concerns?

No, provided that the state-based subsidized health insurance is not funding long-term institutionalization.³⁴

²⁹ *Id.*

³⁰ *Id.*

³¹ 8 C.F.R. § 212.22(a).

³² 2022 Public Charge Rule, *supra* note 1, at 55,517.

³³ *Id.* The longer ago a noncitizen received cash benefits or was institutionalized on a long-term basis at government expense, the less weight these factors will have as a predictor of future receipt. *Id.*

³⁴ *Id.*

5. If a state uses federal funds to provide health insurance, would this create a public charge?

No. The DHS does not consider health insurance when making public charge determinations, unless the insurance funds long-term institutionalization at the government's expense.³⁵

6. Does using Medicare Part D implicate public charge considerations?

No. Noncitizens may always use Medicare without implicating public charge concerns.³⁶

7. If a natural disaster impacts me, may I accept cash assistance from federal, state, and/or local governments without implicating public charge concerns?

Yes. Disaster relief does not implicate public charge considerations. The DHS permits noncitizens to accept any federal, state, or local relief for disasters and pandemics.³⁷

8. Does the public charge rule apply retroactively?

Maybe. The USCIS will consider past receipt of public benefits in determining whether a person is likely to become primarily dependent on the government for subsistence.³⁸

9. Can I accept donations from charitable organizations such as the Salvation Army, religious groups, or other private groups without implicating public charge concerns?

Yes. Public charge determinations are only made based on public benefits, not donations from private groups.³⁹

10. Can I accept food from my local or state-funded food bank without implicating the public charge?

Yes. Non-cash assistance is not considered in the public charge determination.⁴⁰

11. Can I accept housing assistance?

Yes. Non-cash assistance is not considered in the public charge determination.⁴¹

12. Do visits to the emergency room implicate public charge concerns?

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 55,518.

³⁸ *Id.* at 55,476.

³⁹ 8 C.F.R. § 212.22(a).

⁴⁰ *Id.*

⁴¹ *Id.*

No. Health care is not included in the public charge determination, unless it is funding long-term institutionalization at the government's expense.⁴²

13. Can my child receive school lunch or school-based nursing care without implicating public charge concerns?

Yes. Non-cash assistance is not considered in the public charge determination.⁴³

14. If I am a primary caregiver, am I exempt from the public charge rule?

Status as a primary caregiver is not a relevant factor in the public charge inadmissibility determination.⁴⁴

15. The coronavirus has impacted me. May I access public benefits without implicating public charge concerns?

Yes. Pandemic assistance is not considered in the public charge determination.⁴⁵

16. I am a pregnant woman. Can I use Medicaid for non-pregnancy related medical visits?

Yes. The use of Medicaid will not be considered in the public charge determination unless it is used for long-term institutionalization at the government's expense.⁴⁶

17. I am having trouble feeding my newborn child. May I apply for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)?

Yes. WIC benefits are not considered in the public charge determination.⁴⁷

18. Can my child use Medicaid after the sixty-day window for pregnant women closes?

The 2019 DHS public charge rule is no longer in effect. The abolishment of that rule effectively nullified the specific rules implemented for pregnant women. Pregnancy Medicaid services are no longer considered under the public charge determination. You can use Medicaid freely without implicating the public charge rule unless it is to fund long-term institutionalization at the government's expense.⁴⁸

19. I had a miscarriage. Am I still entitled to use Medicaid?

⁴² 2022 Public Charge Rule, *supra* note 1, at 55,517.

⁴³ 8 C.F.R. § 212.22(a).

⁴⁴ 2022 Public Charge Rule, *supra* note 1, at 55,535.

⁴⁵ *Id.* at 55,518.

⁴⁶ *Id.* at 55,517.

⁴⁷ 8 C.F.R. § 212.22(a).

⁴⁸ 2022 Public Charge Rule, *supra* note 1, at 55,517.

Yes. Medicaid services are not included in the public charge determination unless it is used to fund long-term institutionalization at the government's expense.⁴⁹

20. My child and I were in a car accident and we suffered an injury. May we seek emergency medical care without implicating the public charge?

Yes. Emergency medical care and insurance programs do not implicate the public charge.⁵⁰

21. I have a high fever and believe I should go to the emergency room. Is that an emergency medical condition that would not implicate the public charge?

You no longer need to fall within a specific category for your emergency medical condition because medical assistance is no longer considered in the public charge determination, other than for long-term institutionalized at the government's expense.⁵¹

⁴⁹ *Id.* at 55,517.

⁵⁰ 8 C.F.R. § 212.22(a).

⁵¹ 2022 Public Charge Rule, *supra* note 1, at 55,517.