

Recent Changes To The Public Charge Rule



What is the public charge rule and how does it affect immigrants who are filing for public benefits?

The public charge rule was introduced in the Immigration and Nationality Act of 1952. Since that time there has always been some form of public charge ground of removability or inadmissibility. Prior to the previous administration's attempt to change the definition of public charge, the 1999 rule was in effect.

2019 Public charge rule: Public charge was defined as an individual receiving one or more public benefits for a period of 12 months during a 36-month period.

1999 Public charge rule: Public charge was defined as an immigrant who has become or is or likely to become primarily dependent on the government for subsistence. This was demonstrated by receipt of either cash assistance (TANF or SSI) for income maintenance or institutionalization for long-term care at the government expense.



July 29, 2020- Southern District of NY enjoined the 2019 rule due to COVID but 2nd Circuit issued a full stay on September 11, 2020. On March 9, 2021- both sides agreed to dismiss case in front of SCOTUS. USCIS announced they will no longer pursue appellate review and moved to dismiss all appellate cases- leaving ND IL case and reverting to 1999 public charge rule.

November 2, 2020- Northern District of IL determined the 2019 violated the Administrative Procedures Act but the 7th Circuit stayed this the next day.

Consistent with President Biden's Executive Order 14012 directing the review of the Public Charge Rule, on March 9, 2021, DHS announced that it will no longer pursue appellate review of judicial decisions invalidating or enjoining enforcement of the 2019 Public Charge Final Rule.

| Benefits Included for Public Charge | Benefits Excluded from Public Charge |
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| <ul style="list-style-type: none"> • Cash Support for Income Maintenance • Non-Emergency Medicaid for Long-Term Care or institutionalization | <p><i>ANY benefits not on the included list will not be applied toward the public charge test. Examples include:</i></p> <ul style="list-style-type: none"> • Disaster relief • Emergency medical assistance • Entirely state, local or tribal programs (other than cash assistance) • Benefits received by immigrant’s family members • CHIP • Special Supplemental Nutrition for Women Infants and Children (WIC) • School Breakfast and Lunch • Energy Assistance (LIHEAP) • Transportation vouchers or non cash transportation services • Supplemental Nutrition Assistance Program (SNAP or Food Stamps) • Housing Assistance (Public Housing or Section 8 Housing Vouchers and Rental Assistance) • Non-cash TANF benefits • Tax credits, including the Earned Income Tax Credit and Child Tax Credit • Advance premium tax credits under the Affordable Care Act • Pell grants and student Loans |

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