

The following FAQ was shared with reporters on Sept. 22, 2018

Q. When will the rule publish in the *Federal Register*?

A. The proposed rule will officially publish in the *Federal Register* in the coming weeks. Once the proposed rule is officially published, the public will be able to submit comments for 60 days, beginning on the day the rule publishes in the *Federal Register*. Instructions for submitting comments will be included in the rule published in the *Federal Register*. DHS will carefully consider the public comments received during the 60-day comment period.

Q. When does this rule go into effect?

A. Today, DHS is announcing a *proposed* rule, not a final rule. After DHS carefully considers public comments received on the proposed rule, DHS plans to issue a final public charge rule that will include an effective date. In the interim, and until a final rule is in effect, USCIS will continue to apply the current public charge policy (*i.e.*, the 1999 INS Interim Field Guidance).

Q. What is a public charge and when does it apply?

A. The proposed rule would change the standard that DHS uses when determining whether an alien is likely to become a “public charge,” at any time in the future and is therefore inadmissible and ineligible for adjustment of status or admission into the United States. The rule would also make nonimmigrant aliens who receive or are likely to receive designated public benefits above the designated threshold generally ineligible for change of status and extension of stay.

Q. Who is subject to the public charge inadmissibility ground?

A. Individuals seeking immigrant or nonimmigrant visas abroad; individuals seeking admission to the United States on immigrant or nonimmigrant visas; and individuals seeking to adjust their status from within the United States. The proposed rule also would consider certain receipt of public benefits by individuals within the United States in a nonimmigrant (*i.e.*, temporary) status who are seeking to either extend their stay or change their status.

While some lawful permanent residents can be subject to the public charge ground of inadmissibility because specific circumstances dictate that they be considered applicants for admission, most lawful permanent residents are not subject to inadmissibility determinations, including public charge inadmissibility. Therefore, lawful permanent residents who subsequently apply for naturalization would *not* be subject to inadmissibility determinations, including a public charge inadmissibility determination.

Q. Who is exempt from this rule?

A. Congress has exempted certain classes of aliens from the public charge ground of inadmissibility. For instance, refugees, asylees, and Afghans and Iraqis with special immigrant visas are exempt from public charge.

In addition, DHS is proposing not to consider in the context of a public charge determination, receipt of public benefits by alien members of the U.S. armed forces, serving in active duty or in any of the Ready Reserve components, or received by the alien spouse or children of such service members. Similarly, DHS would not consider Medicaid benefits received by foreign-born children, as defined in section 101(c) of the INA, who either have U.S. citizen parents, have been adopted by U.S. citizen parents, or who are coming to the United States to be adopted by U.S. citizens, and where such children will automatically acquire citizenship pursuant to section 320 or 322 of the INA upon or soon after their admission to the United States.

Q. Does this rule make it more difficult for individuals to obtain a green card or other lawful status?

A. Under the current policy, USCIS would only apply the public charge ground of inadmissibility where the alien is likely to be primarily dependent on cash benefits. This proposed rule would also allow USCIS to consider receipt of certain non-cash benefits, and would lower the overall threshold. A nonimmigrant who has received or is likely to receive public benefits above the designated threshold would similarly be ineligible to extend his or her stay or change his or her status. Yes, this rule would make it more difficult for certain individuals to obtain a green card or admission to the United States by broadening the framework to require consideration of a greater range of public benefits above applicable thresholds.”

Q. Which benefits are included in public charge inadmissibility determinations?

A. Public charge adjudications would only account for receipt of designated public benefits, including cash assistance for income maintenance, Medicaid (with limited exceptions for Medicaid benefits paid for an "emergency medical condition," and for certain disability services related to education), Medicare Part D Low Income Subsidy, the Supplemental Nutrition Assistance Program (SNAP, or food stamps), any benefit provided for institutionalization for long-term care at government expense, Section 8 Housing Choice Voucher Program, Section 8 Project-Based Rental Assistance, and Public Housing.

The covered benefits generally represent the largest Federal programs for low-income people by total expenditure that address basic living needs such as income, housing, food, and medical care.

Under the proposed rule, receipt of public benefits that are not covered by the 1999 Interim Field Guidance (*i.e.*, Medicaid, the Medicare Part D Low Income Subsidy, SNAP, and the designated housing benefits) would not be considered for public charge purposes unless the receipt occurred *after* a final rule becomes effective.

Q. What amount of public assistance matters?

A. The proposed rule contains three different types of thresholds, as follows:

- The proposed threshold for those benefits that can be monetized easily (cash benefits, SNAP or food stamps, and section 8 vouchers and rental assistance) is 15 percent of the Federal Poverty Guidelines for a household of one within any period of 12 consecutive months, based on the per-month average FPG for the months during which the benefits are received. For 2018, the equivalent FPG dollar value is \$1,821. As a result, under the proposed rule, if DHS determines that within any period of 12 consecutive months, an individual is likely to receive these “monetizable” benefits in a cumulative amount above the threshold, DHS would consider the alien inadmissible and ineligible for adjustment of status on public charge grounds.
- The proposed threshold for those benefits that cannot be monetized easily (Medicaid, the Medicare Part D Low Income Subsidy, and Public Housing) is receipt of such benefits for more than 12 months in the aggregate within a 36 month period (such that, for instance, receipt of two non-monetizable benefits in one month counts as two months). As a result, under the proposed rule, if DHS determines that in any 36-month period in the future, an individual is likely to receive these “non-monetizable” benefits for a cumulative duration above the threshold, DHS would consider the alien inadmissible and ineligible for adjustment of status on public charge grounds.
- The proposed rule also contains a third standard, under which a person would be considered likely to become a public charge if he or she is likely to receive a monetizable benefit below the threshold, plus one or more non-monetizable benefits for longer than 9 months.

Q. What period of benefits receipt is considered?

A. By law, the public charge inadmissibility determination is a prospective determination based on the totality of the circumstances. In making this determination, DHS would consider any current and past receipt of designated public benefits above the designated thresholds as a factor in the totality of the circumstances to the extent probative in the determination; e.g., receipt of a small amount of public benefits for a short period of time many years ago would be less probative than more recent receipt of a greater amount and longer duration. The proposed rule also contains a “heavily weighted negative factor” for current receipt of public benefits or past receipt above the designated threshold within the past 36 months, *i.e.*, within the past 36 months preceding the time of submission of an application or petition.

Q. Whose benefits receipt is considered?

A. Under the proposed rule, DHS would only consider the direct receipt of benefits by the individual alien applicant. Receipt of benefits by dependents (e.g. U.S. citizen children) and other household members would not be considered, in determining whether the alien applicant is likely to become a public charge. Similarly, any income derived from such benefits received by other household members could not be considered as part of the alien applicant's household income.

Q. How many benefit seekers would this affect? What are the impacts of this regulation?

A. Although there are data available on alien use of public benefits, there is not specific data consistently available on usage of public benefits by the population that is subject to this rule. The economic analysis, included in the rule, describes the impacts of the regulation.

DHS estimates that about 382,264 aliens seeking adjustment of status annually would undergo review annually to determine whether they are ineligible on public charge grounds.

Q. Would this rule have a chilling effect on immigrants seeking public benefits?

A. The proposed rule may result in some individuals choosing to disenroll from or forego enrollment in public benefits programs. However, this proposed rule is intended to implement the law, clarify the meaning of public charge, and promote immigrant self-sufficiency.

Q. How is it determined whether someone is likely to become a public charge for admission or adjustment purposes?

A. Inadmissibility based on the public charge ground is determined by looking at the mandatory factors set forth in INA section 212(a)(4) and making a determination of the applicant's likelihood of becoming a public charge at any time in the future based on the totality of the circumstances. This means that the adjudicating officer must weigh both the positive and negative factors when determining whether someone is likely at any time in the future to become a public charge. At a minimum, a U.S. Citizenship and Immigration Services (USCIS) officer must consider the following factors when making a public charge inadmissibility determination:

- Age
- Health
- Family status
- Assets, Resources, and Financial status
- Education and skills

DHS is also proposing to consider the alien's prospective immigration status, expected period of admission, and affidavit of support, when an affidavit of support is required under section 212(a)(4)(C) or (D) of the Act.

Q. What factors weigh heavily in favor of a determination that alien is likely to become a public charge?

A. The following factors would generally weigh heavily in favor of a finding that an alien is likely to become a public charge:

- The alien is not a full-time student and is authorized to work, but is unable to demonstrate current employment, and has no employment history or no reasonable prospect of future employment;
- The alien is currently receiving or is currently certified or approved to receive one or more of the designated public benefits above the threshold;
- The alien has received one or more of the designated public benefits above the threshold within the 36 months immediately preceding the alien's application for a visa, admission, or adjustment of status;
- The alien has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide for him- or herself, attend school, or work; and the alien is uninsured and has no prospect of obtaining private health insurance;
- The alien had previously been found inadmissible or deportable based on public charge.

Q. What factors would weigh heavily against a determination that an alien is likely to become a public charge?

A. The following factors would weigh heavily against a finding that an alien is likely to become a public charge:

- The alien has financial assets, resources, and support of at least 250 percent of the Federal Poverty Guidelines for a household of the alien's household size;
- The alien is authorized to work and is currently employed with an annual income of at least 250 percent of the Federal Poverty Guidelines for a household of the alien's household size.

Q. How many aliens currently receive public benefits considered in the proposed rule ?

A. Monthly estimates from the 2014 Panel of the U.S. Census Bureau's Survey of Income and Program Participation showed that on average in 2013 about 4.6 million noncitizens (23% of all noncitizens) received at least one of Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), General Assistance (GA), Medicaid, SNAP, government housing vouchers, or government rent subsidies. These estimates are based on responses to questions about enrollment in the programs.

Note that the rule affects admission to the United States; aliens outside the United States who have not yet been admitted are generally not eligible for the benefits covered by this rule.

Q. Will USCIS go back and review cases of aliens currently receiving benefits and strip them of benefits?

A. USCIS does not provide or terminate an individual's enrollment in public benefits. Public-benefit granting agencies at the Federal, state, and local level are in charge of administering and managing the public benefits. The proposed rule would not eliminate access to any public benefits for which an alien may be eligible. It would create negative immigration consequences for an alien whom DHS determines is likely, in the totality of the circumstances, to receive certain benefits above a designated threshold.

Q. If an alien is found to be inadmissible on account of public charge, is there relief or a waiver available to overcome the finding and the ineligibility?

A. In limited circumstances, and in USCIS's discretion, an alien seeking adjustment of status may be permitted to post a bond and obtain adjustment of status despite being determined inadmissible on public charge grounds. The proposed rule sets the minimum bond amount at \$10,000; the actual bond amount would be dependent on the alien's circumstances. In addition, in certain circumstances, a nonimmigrant may obtain a waiver of the inadmissibility.

Q. What are public charge bonds and how will the bonds work?

A. The purpose of the public charge bond is to allow DHS to admit an alien who is inadmissible as likely to become a public charge, but who warrants a favorable exercise of discretion. A bond is a contract between the United States (the obligee) and an individual or a company (obligor) who pledges a sum of money to guarantee a set of conditions set by the government concerning an alien. The rule proposes to initially allow only surety bonds. Surety bonds are bonds in which the surety company and its agents serve as co-obligors on the bond. The Treasury Department has a process in place to certify companies that may underwrite Federal bonds, which DHS would use. A public charge bond is issued on the condition that the alien does not become a public charge. If the government permits the alien to submit a public charge bond, the government admits the alien despite having found the alien inadmissible as likely to become a public charge. If an alien who is admitted after submitting a public charge bond becomes a public charge, the bond is breached. The bond would remain in effect until the alien naturalizes, permanently departs, or dies or the bond is otherwise cancelled, as outlined in the proposed rule.

Q. What benefits will aliens no longer have access to? Does this include healthcare?

A. With respect to aliens outside the United States who would be affected by this rule, such aliens are generally not eligible for the benefits covered by this rule. With respect to aliens

within the United States who would be affected by the rule, the rule would not directly eliminate their access to any of the designated public benefits, but would create negative immigration consequences for receipt of certain benefits above a designated threshold.

The designated benefits would be any federal, state, local, or tribal cash assistance for income maintenance, Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Medicaid (with limited exceptions for Medicaid benefits paid for an "emergency medical condition," and for certain disability services related to education), Medicare Part D Low Income Subsidy, the Supplemental Nutrition Assistance Program (SNAP, or food stamps), any benefit for institutionalization for long-term care at government expense, Section 8 Housing Choice Voucher Program, Section 8 Project-Based Rental Assistance, and Subsidized Housing.

The first three benefits listed above are cash benefits that are covered under 1999 Interim Field Guidance currently in effect. Current policy also covers institutionalization for long-term care at government expense. DHS is proposing to add the remaining benefits listed above.

Q. Will states still be able to offer benefits to aliens?

A. Yes, but receipt of some designated benefits would give rise to public charge consequences. See response above.

Q. What new criteria exist for how public charge applies to removals?

A. The DHS proposed rule interprets the public charge ground of inadmissibility under INA section 212(a)(4), 8 U.S.C. 1182(a)(4). It does not interpret the public charge ground of deportability under INA section 237(a)(5), 8 U.S.C. 1227(a)(5). The Department of Justice precedent decisions will continue to govern the standard for deportability determinations. The Department of Justice intends to conduct a parallel rulemaking on public charge deportability, and will ensure that the standards are consistent to the extent appropriate.

Q. Which benefits are not considered?

A. Many benefits are not considered as part of the proposed rule. In fact, the rule does not include consideration of emergency medical assistance, disaster relief, national school lunch programs, foster care and adoption, and Head Start. While the Department will take public comments on what benefits should be included or excluded, it is important to note that the proposed rule only includes certain public benefit programs mentioned above.