

Table of Summary of Changes – NPRM to Final Public Charge Rule

Section	NPRM	Final Rule
Definitions		
Definition of Public Charge	<ul style="list-style-type: none"> Alien who receives one or more public benefits (as defined in the rule), and with different thresholds for “monetizable” and “non-monetizable” benefits. 	<ul style="list-style-type: none"> Alien who receives one or more public benefits (as defined in the rule) for more than 12 months in the aggregate within any 36-month period. Uniform threshold for all public benefits incorporated into public charge definition.
Definition of Public Benefits	<ul style="list-style-type: none"> Finite list of benefits <i>if</i> received above the designated threshold (see below) including: <ul style="list-style-type: none"> Monetized benefits: Cash assistance for income maintenance (TANF, SSI, and General Assistance); SNAP Non-monetizable benefits: Medicare Part D Low Income Subsidy, Section 8 Housing Vouchers, Section 8 Rental Assistance, Public Housing, Medicaid (with certain exemptions – see Medicaid below); long term institutionalization 	<p>Finite list of benefits and benefits received below the threshold (see below) are considered in the totality of the circumstances:</p> <ul style="list-style-type: none"> Cash assistance for income maintenance (TANF, SSI and General Assistance) SNAP Section 8 Housing Vouchers Section 8 Rental Assistance Public Housing Medicaid (with certain expanded exemptions (see below) No longer contains the threshold as part of the definition
Medicare Part D Low Income Subsidy (LIS)	Considered a public benefit	Not considered a public benefit
Benefits provided for Institutionalization	Listed in the NPRM as a public benefit	Removed from final rule as redundant (institutionalizations are mostly paid through Medicaid)
Exclusion from Public Benefit Definition: No consideration of public benefit receipt by certain aliens	<ul style="list-style-type: none"> All public benefits received by aliens who, at the time of the receipt, filing, or adjudication of the benefit request, is enlisted in the U.S. Armed Forces, is serving in Active Duty or in the Ready Reserve components, or if received by such an individual’s spouses or child 	<ul style="list-style-type: none"> All public benefits received by an alien who at the time of receipt, or at the time of the filing or adjudication of benefit request is enlisted in the U.S. Armed Forces, is serving in Active Duty or in the Ready Reserve component of the U.S. Armed Forces, and spouses and children of such aliens.

		<ul style="list-style-type: none"> • All public benefits received by children acquiring U.S. citizenship upon admission to the U.S. or shortly thereafter. • Public benefits received by aliens while in a status that is exempt from the public charge ground of inadmissibility or for which the alien received a waiver of public charge inadmissibility (8 CFR 212.21(b)).
Threshold	<ul style="list-style-type: none"> • Threshold contained in public benefits definition means that benefits received below the designated threshold are not considered • Monetized benefits – the cumulative value of one or more of the listed benefits exceeds 15 percent of the Federal Poverty Guidelines (FPG) for a household of one within any period of 12 consecutive months, based on the per-month FPG for the months during which the benefits are received. • Non-monetized benefits – if received 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) • 	<ul style="list-style-type: none"> • Receives one or more public benefits for more than 12 months, in the aggregate, within any 36 month period. <ul style="list-style-type: none"> ○ Receipt of 2 benefits in one month counts as 2 months toward the 12-month aggregate. • Threshold contained in public charge definition means that benefits received below the designated threshold are considered in the totality of the circumstances, even if of short duration.
Medicaid Exemptions: receipt of Medicaid for these purposes or by these populations is not considered	<p>Considered</p> <p>Exemption for:</p> <ul style="list-style-type: none"> • Emergency Medicaid • Children acquiring citizenship • Used for IDEA in school setting • School based benefits or services up to the oldest age secondary education is available based on State law (may cover aliens over the age of 18) 	<p>Considered</p> <p>Exemption for:</p> <ul style="list-style-type: none"> • Emergency Medicaid • Aliens under the age of 21 • Pregnant women during pregnancy and during the 60-day period after pregnancy • Used for IDEA in school setting • School based benefits or services up to the oldest age secondary education is available based on

		State law (may cover aliens over the age of 18)
Definition of Receipt of Public Benefits	No definition	Added: <ul style="list-style-type: none"> Defines receipt as occurring when public benefit agency provides a public benefit, whether in the form of cash voucher, services or insurance coverage. Application for or certification for future receipt is not receipt but may suggest likelihood of receipt in the future. Receipt, application, or certification on behalf of another for whom the alien is serving as legal guardian is not considered receipt.
Definition of Likely at Any Time to Become a Public Charge	<ul style="list-style-type: none"> Likely at any time in the future to receive one or more public benefit as defined in the rule, based on the totality of the alien's circumstances. 	Updated by defining as: <ul style="list-style-type: none"> <i>More likely than not</i> at any time in the future to become a public charge, based on the totality of the alien's circumstances.
Primary Caregiver	<ul style="list-style-type: none"> 	Added: <ul style="list-style-type: none"> New definition. Primary caregiver is an alien who is 18 years of age or older and has significant responsibility for actively caring for and managing the well-being of a child or an elderly, ill, or disabled person in the alien's household.
Factors		
Health	<p>Whether 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 and care for him- or herself, to attend school, or to work upon admission or adjustment of status.</p> <ul style="list-style-type: none"> DHS will generally defer to the immigration medical examination report when assessing whether the alien is more likely than not to become a public charge 	<ul style="list-style-type: none"> No changes to factor. Clarified that deference is given to civil surgeon or panel physician report, unless report is incomplete.

<p>Income, Assets and Resources – Income & Assets</p>	<ul style="list-style-type: none"> Household income at or above 125% of the FPG or 5 times the difference in assets Alien has sufficient household assets and resources to cover any reasonably foreseeable medical costs, including costs associated 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 and care for him- or herself, to attend school, or to work upon admission or adjustment of status. Alien has any financial liabilities or past receipt of public benefits <p>Not counted as household income:</p> <ul style="list-style-type: none"> Income from public benefits (as defined in the rule); 	<ul style="list-style-type: none"> Household income at or above 125% of the FPG, or assets in the amount of 3 times difference between household income and 125% of FPG (100% for those in active duty) for the household size if a U.S. citizen spouse or child; assets in the amount of 1 times difference between household income and 125% of FPG (100% for those in active duty) for the household size if an orphan; or, for everyone else, assets in the amount of 5 times the difference between household income and 125% of FPG (100% for those in active duty) for the household size (similar standard as affidavit of support regulations) Alien has sufficient household assets and resources to cover any reasonably foreseeable medical costs (would include consideration of health insurance not considered to be a public benefit in the final rule) Alien has any financial liabilities or whether alien has applied for, been certified to receive, or received public benefits <p>Added:</p> <ul style="list-style-type: none"> Alternative 100% of the FPG for active duty service members in the U.S., Armed Forces Not counted toward alien's household income: <ul style="list-style-type: none"> Income from public benefits (as defined in the rule); Income from illegal activities Evidence: Clarified that most recent tax-year IRS transcript (or other comparable credible and probative evidence) would be considered
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Income, Assets and Resources – Financial Status: Public Benefits and Fee Waivers	<ul style="list-style-type: none"> • Applied for or received any public benefit (above the 15% threshold) on or after the effective date or • Been certified or approved to receive public benefits on or after the effective date • Whether the alien has applied for or has received a fee waiver for an immigration benefit request on or after the effective date 	<p>Added:</p> <ul style="list-style-type: none"> • Consideration of any amount of public benefit receipt in the totality of the circumstances • Consideration of evidence from public benefit granting agencies of ineligibility for the benefit(s) because of for example the annual gross household income or prospective immigration status or length of stay; • Fee waiver request or receipts will not be considered if the fee waiver was applied for or granted as part of application for which a public charge inadmissibility determination was not required • USCIS will consider disenrollment or requested disenrollment from public benefits will be considered in the totality of the circumstances
Education and Skills	<ul style="list-style-type: none"> • Whether the alien has adequate education and skills to either obtain or maintain employment sufficient to avoid becoming a public charge • History of employment; high school degree or higher education, occupational skills, certifications and licenses • Proficient in English or proficient in other languages in addition to English. 	<p>Added</p> <ul style="list-style-type: none"> • Requirement to provide at least three years of federal tax return transcripts or, if unavailable, other credible and probative evidence, including an explanation of the unavailability of such transcripts as evidence of employment history. • Consideration of whether an alien is a primary caregiver of a child, elderly, or disabled person in the alien's household if the alien does not have current or recent employment history. Only one primary caregiver per household.
Affidavit of Support	<p>Sufficient affidavit of support as evidenced by:</p> <ul style="list-style-type: none"> • Sponsor's annual income assets, and resources; • Sponsor's relationship to applicant • Whether submitted other affidavits of support for other individuals 	<p>Update:</p> <ul style="list-style-type: none"> • Sufficient affidavit of support and likelihood that the sponsor would actually provide the statutorily-required amount of financial support to the alien, and any other related considerations, as evidenced the following (including but not limited to): <ul style="list-style-type: none"> • The sponsor's annual income, assets, and resources;

		<ul style="list-style-type: none"> • The sponsor's relationship to the applicant, including but not limited to whether the sponsor lives with the alien; and • Whether the sponsor has submitted an affidavit of support with respect to other individuals.
Heavily Weighted Negative Factor of Receipt of Public Benefits above the Threshold (8 CFR 212.22©(1)(ii))	<ul style="list-style-type: none"> • Ability to work but unemployed and no prospect of employment • Currently receiving public benefits • Received or has been certified benefits for the threshold amount within 36 months of filing an application • Diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization and no ability to fund care including no private health insurance • Previously found inadmissible or deportable on public charge grounds 	<p>Removed:</p> <ul style="list-style-type: none"> • Currently receiving public benefits as already encompassed by the revised language <p>Added:</p> <ul style="list-style-type: none"> • Receipt or certification for future receipt may count if meeting the threshold during the 36-month period before applying for adjustment •
Heavily Weighted Positive Factor: Private Health Insurance		<ul style="list-style-type: none"> - New: Private health insurance appropriate for the intended duration of the alien's stay.
Application of the rule		
Effective Date	<ul style="list-style-type: none"> - 60 days from publication - Rule would apply to applications for admission or adjustment of status unless classification exempt from INA 212(a)(4) - Rule would have applied to pending applications and petitions subject to limited grandfathering rules (see below) 	<ul style="list-style-type: none"> - 60 days from publication - Rule applies to applications for admission or adjustment of status unless classification exempt from INA 212(a)(4) - Rule does not apply to pending applications and petitions, only those postmarked on or after the effective date and see below for limited grandfathering rules
Limited Grandfathering for Past or Current Recipients of Public Benefits	<ul style="list-style-type: none"> - Public benefits not considered under 1999 Interim Field Guidance would not be considered if received before the effective date of the final rule - Public benefits considered under 1999 Interim Field 	<ul style="list-style-type: none"> - Public benefits not considered under 1999 Interim Field Guidance will not be considered if received before the effective date of the final rule - Public benefits considered under 1999 Interim Field Guidance received before the effective date

	<p>Guidance received before the effective date of the final rule would be considered in the totality of the circumstances but no heavily weighted negative factor</p> <ul style="list-style-type: none"> - Public benefits covered by the final rule received on or after the effective date of the final rule considered consistently with final rule. 	<p>of the final rule will be considered in the totality of the circumstances but no heavily weighted negative factor</p> <ul style="list-style-type: none"> - Public benefits covered by the final rule received on or after the effective date of the final rule considered consistently with final rule for applications/petitions postmarked on or after the effective date.
Application of rule to Nonimmigrants Seeking Extension of Stay or Change of Status		
Nonimmigrants seeking extension of stay or change of status	<ul style="list-style-type: none"> - An alien who received, is currently receiving, or <i>likely to receive</i> public benefits (as defined in the rule), since obtaining the nonimmigrant status the alien seeks to change or extend is ineligible for an extension of stay or change of status unless the INA explicitly exempts the classification from public charge. - The bifurcated threshold for public benefits applied in this context by virtue of the definition of public benefit so receipt below threshold not considered. - Benefit receipt before the effective date of the final rule not considered 	<ul style="list-style-type: none"> - An alien who received since obtaining the nonimmigrant status the alien seeks to extend or from which the alien seeks to change, and through the date of adjudication, is ineligible for an extension of stay or change of status unless the INA explicitly exempts the classification from public charge. - Public benefit receipt before the effective date of the final rule not considered; rule applies only to petitions/applications postmarked on or after the effective date. <p>Removed:</p> <ul style="list-style-type: none"> • likely to receive public benefits in the future <p>Added:</p> <ul style="list-style-type: none"> • Threshold – receives one or more public benefits for more than 12 months in the aggregate within any 36-month period. •
Exemptions from public charge inadmissibility under INA 212(a)(4)		
Applicability: T, U, and VAWA Exemptions (8 CFR 212.23)	<p>8 CFR 212.23 lists a long list of classifications exempt from INA 212(a)(4) including but not limited to these classifications. Exempt from public charge when:</p> <ul style="list-style-type: none"> • Applying or Petitioning for T or U nonimmigrant status, or as a VAWA self-petitioner; or • Adjusting status based on U nonimmigrant status or as a VAWA-self-petitioner; • 	<p>8 CFR 212.23 lists a long list of classifications exempt from INA 212(a)(4) including but not limited to these classifications.</p> <p>Added:</p> <p>VAWA 2013 changes, exempting from inadmissibility if:</p> <ul style="list-style-type: none"> • Applying or Petitioning for T or U nonimmigrant status, or as a VAWA self-petitioner; or

		<ul style="list-style-type: none"> Adjusting status based on U nonimmigrant status, T nonimmigrant status, or as a VAWA-self-petitioner; Adjusting under most any other status that is subject to inadmissibility provided that alien is in valid T or U nonimmigrant status at the time of filing and adjudication, or is a VAWA self-petitioner.
Bonds		
Public Charge Bond Conditions	<ul style="list-style-type: none"> Remain in effect until the alien naturalizes or otherwise obtains U.S. citizenship, permanently departs the United States, or dies, the alien requests cancellation after 5 years of being a lawful permanent resident, the alien changes immigration status to one not subject to public charge ground of inadmissibility, and the bond is cancelled 	<p>Added:</p> <ul style="list-style-type: none"> Clarification that an alien is only considered to have voluntarily lost lawful permanent resident status for the purposes of public charge bond cancellation based on a permanent departure when the alien has submitted a record of abandonment of lawful permanent resident status on the form prescribed by DHS and in accordance with the form's instructions, while the alien is outside of the United States Clarification that DHS retains discretion to cancel a public charge bond, notwithstanding an absence of a written request, if DHS determines that an alien otherwise meets the applicable eligibility requirements.
Public Charge Bond– Amount and duration	<ul style="list-style-type: none"> Bond amount at least \$10,000 (annually adjusted for inflation based on CPI-U) Bonds of limited duration and unlimited duration 	<p>Changed:</p> <ul style="list-style-type: none"> Bond amount to at least \$8,100 (annually adjusted for inflation based on CPI-U) <p>Removed:</p> <ul style="list-style-type: none"> Bonds of limited duration
Public Charge Bond Breach	<ul style="list-style-type: none"> Breach if the alien received public benefits beyond the threshold (15% of the FPG for monetized and over 12 months within a 36 month period for non-monetized benefits), a threshold which appears in the public benefits definition Considered for purposes of the breach public benefits 	<p>Updated:</p> <ul style="list-style-type: none"> Threshold – single standard for receipt over 12 months within a 36 month period, a threshold which appears as part of the public charge definition <p>Added:</p> <ul style="list-style-type: none"> Clarification that USCIS will not consider, for purposes of the breach, public benefits received

	received in a status for which public charge inadmissibility waiver was granted	while in a status that was exempt from the public charge ground of inadmissibility or for which public charge inadmissibility waiver was granted
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