



U.S. Citizenship  
and Immigration  
Services

# **PUBLIC CHARGE INADMISSIBILITY**

## **USCIS National Engagement**



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**NEW FINAL RULE**

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**Sept. 29, 2022**

# Today's Agenda and Speakers



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- Opening Remarks

- **Carrie Selby**, Associate Director, External Affairs Directorate

## Public Charge Overview

- **Overview and History - Doug Rand**, Senior Advisor to the Director
- **New Rule - Additional Considerations and Resources - Andrew Parker**, Office of Policy and Strategy

# Reminders



1. All lines are muted.
2. You can submit written questions through the Q&A box on the right side of your screen.
3. Today's presentation is not intended for media attribution.
4. Today's presentation will not be recorded.
5. If you are a member of the media, please reach out to USCIS Office of Public Affairs with any inquiries at [media@uscis.dhs.gov](mailto:media@uscis.dhs.gov).
6. Any congressional staffers may contact the USCIS Office of Legislative Affairs.



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# OPENING REMARKS

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**Carrie Selby**, Associate Director, External  
Affairs Directorate



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# PUBLIC CHARGE OVERVIEW & HISTORY

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**Doug Rand**, Senior Advisor to the Director

# WHAT IS THE PUBLIC CHARGE GROUND OF INADMISSIBILITY?



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The Immigration and Nationality Act (INA) states that any noncitizen who, at the time of application for a visa, admission, or adjustment of status, is likely at any time to become a public charge is inadmissible.

INA Section 212(a)(4)

# RECENT HISTORY OF PUBLIC CHARGE



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Aug. 2019 Public Charge Rule by previous Administration.

Feb. 2020 Rule implemented.

March 9, 2021. Rule vacated by a federal court. DHS stopped applying 2019 rule.

March 9, 2021. Reverted to the 1999 Interim Field Guidance.

# RECENT HISTORY OF PUBLIC CHARGE



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August 23, 2021. DHS published Advance Notice of Proposed Rulemaking.

February 24, 2022. DHS published new Notice of Proposed Rulemaking.

September 9, 2022. DHS published new Final Rule, *Public Charge Ground of Inadmissibility*.

DHS is applying the public charge ground of inadmissibility consistent with the 1999 Interim Field Guidance until the new Final Rule takes effect on December 23, 2022.



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# PUBLIC CHARGE NEW FINAL RULE

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**Andrew Parker**, Office of Policy and Strategy

# HOW IS A PUBLIC CHARGE INADMISSIBILITY DETERMINATION MADE UNDER THE NEW FINAL RULE?



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DHS must determine if a noncitizen is likely at any time to become primarily dependent on the government for subsistence, as demonstrated by:

- Receipt of public cash assistance for income maintenance; or
- Long-term institutionalization at government expense.

# MINIMUM STATUTORY FACTORS DHS WILL CONSIDER



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1. Age
2. Health
3. Family status
4. Assets, resources and financial status
5. Education and skills

# ADDITIONAL FACTORS DHS WILL CONSIDER



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Prior or current receipt of the following public benefits:

- Supplemental Security Income (SSI);
- Cash assistance for income maintenance under Temporary Assistance for Needy Families (TANF);
- State, Tribal, territorial, or local cash benefit programs for income maintenance ( General Assistance); or
- Long-term institutionalization at government expense.

A sufficient Affidavit of Support Under Section 213A of the INA (if applicable)

# BENEFITS EXCLUDED FROM PUBLIC CHARGE INADMISSIBILITY DETERMINATION UNDER NEW FINAL RULE



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- Supplemental Nutrition Assistance Program (SNAP)
- Children's Health Insurance Program (CHIP)
- Medicaid (other than for long-term institutionalization)
- Housing benefits
- Immunizations
- Testing for communicable diseases
- COVID-19 vaccines, testing and treatment
- Others not specifically enumerated in the rule

# OTHER EXAMPLES OF BENEFITS NOT CONSIDERED



- Other supplemental or special-purpose benefits (such as transportation vouchers)
- Stafford Act disaster assistance
- Disaster assistance
- Pandemic-related cash assistance programs
- Aid for survivors of trafficking or crime
- Earned cash benefits
- Tax credit or deduction

# RECEIPT OF PUBLIC BENEFITS EXPLAINED



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- Only benefits received by the applicant for admission or adjustment of status will be considered.
- Use of public benefits by an applicant's family members are not considered in a public charge inadmissibility determination.

# CATEGORIES EXEMPTED FROM THE PUBLIC CHARGE GROUND OF INADMISSIBILITY UNDER NEW FINAL RULE



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Certain categories are **exempt** from the public charge ground of inadmissibility based on statute, for example:

- Temporary Protected Status
- Refugees and Asylees
- T and U nonimmigrants
- VAWA self-petitioners

# TOTALITY OF THE CIRCUMSTANCES



- A public charge inadmissibility determination is made based on the **totality of the applicant's circumstances.**
- DHS will consider applicant's age; health; family status; assets, resources, and financial status; education and skills; sufficient Form I-864; and current and/or past receipt of public benefits.
- But, current and/or past receipt of such cash benefits is not by itself sufficient to lead to a finding that an applicant is inadmissible.



# SPECIAL CIRCUMSTANCES

DHS will not consider:

- Public benefits received while present in U.S. in a category that is exempt from the public charge ground of inadmissibility or for which a waiver of the ground was obtained.
- Public benefits received because noncitizen was eligible for resettlement assistance, entitlement programs, and other benefits available to refugees.

# RESOURCES



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USCIS Public Charge Homepage: [uscis.gov/public-charge](https://uscis.gov/public-charge)

Public Charge Resources Page: [uscis.gov/green-card/green-card-processes-and-procedures/public-charge/public-charge-resources](https://uscis.gov/green-card/green-card-processes-and-procedures/public-charge/public-charge-resources)

USCIS Policy Manual: [uscis.gov/policy-manual](https://uscis.gov/policy-manual)

USCIS Form I-864 Webpage: [uscis.gov/i-864](https://uscis.gov/i-864)

# Public Charge Rule Stakeholder Meeting



September 29, 2022

U.S. Department of Health and Human Services



# HHS PROGRAMS- MEDICAID, CHIP and CASH ASSISTANCE

## **Cash assistance for income maintenance:**

- Includes Temporary Assistance for Needy Families (TANF)
- Considered in the totality of the circumstances

## **Medicaid and CHIP:**

- Medicaid benefits are NOT considered in a public charge determination, other than long-term institutionalization at government expense
- Medicaid funded Home and Community Based Services are NOT considered
- CHIP benefits are NOT considered in a public charge determination
- DHS will NOT consider in public charge determinations benefits received by family members other than the applicant.

## **Long-term institutionalization:**

- Does NOT include short-term rehabilitation stays
- Evidence of unjustified institutionalization in violation of federal law considered
- Considered in the totality of the circumstances



# DISABILITY AND AGE

## Disability:

- Disability alone is not sufficient for a determination that an individual is likely to become a public charge

## Age:

- Considered in the totality of the circumstances



# RESOURCES

- Important Information for Immigrant Families to Know About Medicaid and CHIP  
<https://www.insurekidsnow.gov/sites/default/files/2021-10/12127.pdf>
- ACL's blog on the public charge rule <https://acl.gov/news-and-events/acl-blog/departments-homeland-security-finalizes-public-charge-immigration-rule>
- Information on filing a complaint with the HHS Office for Civil Rights  
<https://www.hhs.gov/ocr/complaints/index.html>



# USCIS Public Charge National Stakeholder Engagement

Alberto A. Gonzalez, Jr.  
Senior Advisor, External Engagement  
USDA's Food and Nutrition Service (FNS)  
Thursday, September 29, 2022

# FNS's Nutrition Assistance Programs

- 15 federal nutrition assistance programs, incl.\*
  - Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
  - Summer Food Service Program (SFSP)
  - National School Lunch Program (NSLP)
  - School Breakfast Program (SBP)
  - Supplemental Nutrition Assistance Program (SNAP)
- Aim to provide low-income children and families equitable access to nutritious food and promote nutrition education.
  - Serve 1 in 4 individuals each year.
  - Reach 41 million via SNAP.
  - Serve more than 30 million children via NSLP/SBP.
  - Nearly ½ of all infants via WIC.

\*This is not an exhaustive list. A complete list of FNS's 15 federal nutrition programs can be found at [fns.usda.gov/programs](https://fns.usda.gov/programs).



# Final Public Charge Rule and FNS Programs

- Codifies into regulation DHS's longstanding guidance.
- Noncitizen's application for or receipt of federal nutrition assistance benefits administered by FNS are not considered when making public charge determinations.
- Applying for or receiving SNAP or another FNS program will not affect your ability to remain in the U.S., get or keep a Green Card/Permanent Legal Resident Status, or become a U.S. citizen.
- You can also apply for SNAP or another FNS program on behalf of the eligible immigrants or U.S. citizens in your family, even if you do not want to apply for benefits for yourself, without affecting your or their immigration status.



# Engagement Efforts

- **Goal:**

- Eliminate confusion or misinformation about the public charge final rule

- **What FNS is doing:**

- Letter to SNAP Commissioners.
- Guidance for State Agencies.
- Social media promotion.
- Blog post and fact sheet.
- Joint webinar w/ Food Research & Action Center (FRAC) on **Thursday, October 20, 2022 at 3PM ET**

- **What you can do:**

- Help us spread the word about FNS programs.
- Let us know how we can work with you/your partners to ensure all those eligible for FNS programs are able to receive food assistance.



# Resources

- [Public Charge](#) Ground of Inadmissibility (September 2022)
- FNS 2022 [Commissioners Letter](#) on New DHS Public Charge Final Rule (September 2022)
- [Statement](#) from USDA Secretary Tom Vilsack on the 2022 Public Charge Final Rule (September 2022)
- FNS-USCIS [Joint Letter](#) to SNAP Commissioners and Community Partners (January 2022) (w/ content available in Spanish).
- “[Tri-Agency Letter](#)” to State Health, Human Services, Food Policy Officials (incl. [Q/A](#)) (2011).
  
- For general information about SNAP, please call 202-720-2791 (English and Spanish) to be connected to your state's SNAP hotline.
- For more information about FNS Programs, visit [FNS.USDA.GOV](https://www.fns.usda.gov).



## Contact Information:

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# U.S. Department of Housing and Urban Development

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**Elly Kugler**, Senior Counsel, Office of General Counsel



# **USCIS Public Charge Stakeholder Meeting**

# Supplemental Security Insurance

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- The Supplemental Security Income program, also called SSI, provides monthly payments to adults who are aged, blind, or have a disability and have limited income and resources. This program is funded by general tax revenues and not Social Security taxes. SSI helps people meet basic needs including food, clothing, and shelter.
- Benefits that are considered “public cash assistance for income maintenance” include Supplemental Security Insurance.
- Note: Under the Department of Homeland Security (DHS) guidance, Social Security benefits (i.e., Retirement Benefits, Social Security Disability Insurance) are **not** considered to be “public cash assistance for income maintenance”. Thus, the receipt of Social Security and other earned benefits cannot affect an individual's immigration status.

# Supplemental Security Insurance

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- The DHS public charge guidance does **not** affect eligibility for benefits under SSI.
- Noncitizens who are currently receiving SSI and whose health and financial conditions cause them to rely on SSI in the future, may be assured that the public charge policy has not changed the social safety net provided by the SSI program for low-income aged, blind, and individuals with disabilities.

# Supplemental Security Insurance

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- However, SSI is one factor the DHS would consider in making its determination of and individual becoming a public charge.
- The law requires that DHS and Department of State officials consider several additional issues as well.
- Each determination will be made on a case-by-case basis. The Social Security Administration is **not** involved with public charge determinations.
- Contact DHS for more information about the implications of the public charge policy on their immigration status.

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**Questions?**



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