

# Key Takeaways on the Final Immigration Public Charge Rule

FEBRUARY 2020

On February 24, 2020, DHS began implementing the final public charge rule nationwide. The U.S. Supreme Court removed [nationwide](#) and [Illinois statewide](#) injunctions, allowing the rule to go into effect while [litigation is pending](#). However, circuit courts may block it again temporarily or permanently as they rule on the appeals and the underlying claims that the final rule violates the Constitution and several other laws.

## What the Final Public Charge Rule Says

The “public charge” test has been part of federal immigration law for decades and is designed to identify people who are “primarily dependent” on certain government benefits, namely Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF) and comparable state and local cash assistance programs, and government-funded institutional long-term care (including through Medicaid). The government can deny admission to the U.S. or refuse an application for lawful permanent residency (green card) to an applicant whom it determines is likely to become a public charge. This determination looks at the “totality of circumstances,” including the applicant’s age, health, family status, income and resources, education and skills.

In August 2019, the Department of Homeland Security [published a new final public charge rule](#). The final rule changes the definition of public charge to “an alien who receives one or more public benefits,” expands the public benefits the test may count, and establishes a minimum income threshold of 125% of the federal poverty level. It also identifies positive and negative factors in the totality of the circumstances test and assigns greater weight to some. For example, being age 62 or older, having limited English proficiency, being uninsured, or having a serious health condition or disability are negative factors.

In addition to SSI, TANF, other cash assistance, and institutional long-term care, the final rule targets key programs that help older adults meet basic needs:

- » Medicaid, including Medicare Savings Programs and home & community based services (exceptions only for emergency services, coverage of children under age 21 and pregnant women, and coverage that is entirely state-funded, e.g., California provides full scope Medi-Cal for young adults under age 26 regardless of immigration status),

- » Supplemental Nutrition Assistance Program (SNAP), and
- » Public Housing, Section 8 housing vouchers, and Project-Based Section 8

Under the rule, receiving any of these benefits for 12 months in a 36 month period will be a heavily weighed negative factor. Receiving two of these benefits, such as SNAP and Medicaid, in the same month, will count as two months.

Note that DHS will not consider benefits not listed in the final rule in making public charge determinations. The final rule does not include the Medicare Part D Low-Income Subsidy (Extra Help) as a public benefit, or any Older Americans Act programs. In addition, the final rule considers as a positive factor being a “primary caregiver” who is 18 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.”

## Important Reminders

1. Not all immigrants are subject to public charge, and the public charge test does not apply when a lawful permanent resident applies to become a citizen. However, the public charge test does apply when a lawful permanent resident is re-entering the U.S. after being abroad for six months (180 days) or more.
2. Enrolling in or using public benefits does not automatically make someone a public charge. Each situation is different, and the applicant’s “totality of the circumstances” should be evaluated. We recommend [consulting with an immigration attorney](#) before making any decisions about applying for or disenrolling from any benefits programs.
3. Benefits (other than SSI, TANF, or institutional long-term care) received before February 24, 2020, will not be considered. Benefits other than those listed in the final rule will not be considered. DHS is [applying](#) February 24, 2020, to all references to the original October 15th effective date in the public charge forms and instructions. According the rule, DHS will not apply these new standards to applications postmarked or transmitted electronically prior to February 24, 2020.
4. The final rule only considers benefits the individual applicant receives. Benefits that their family members receive are not considered.

## Additional Resources

- » [Changes to Public Charge: Analysis and Frequently Asked Questions](#)
- » [Public Charge: Know Your Rights](#) (Resources available in Spanish, Vietnamese, Korean, Hindi, Arabic, French, Chinese, Haitian Creole, Burmese, and Amharic)
- » [Specialized Resources for Advocates and Service Providers](#)

More resources about the Final Rule and litigation are available from [Justice in Aging](#) and the [Protecting Immigrant Families Campaign](#).