

## FAQ: What should I know about the new Public Charge rule?

The Department of Homeland Security (DHS) and the Department of State (DOS) have implemented new regulations impacting visa applicants who have or are likely to use financial U.S. government benefits.

Under the new rule, certain foreign nationals are required to confirm that they have not or will not become a Public Charge (meaning accepting or likely to accept U.S. taxpayer funded public benefits such as subsidized housing, food stamps, Medicaid, Aid to Families with Dependent Children and other aid programs funded in whole or in part with government funds).

A public benefits rule has existed for many years, but not to the current extent. The prior rule was mainly applied to applicants for permanent residence (green card).

### **Effective Date**

This new rule relating to *the receipt of public benefits is effective on or after February 24, 2020.*

### **What constitutes a public benefit?**

The rule defines a public benefit as:

1. Any federal, state, local, or tribal cash assistance for income maintenance (other than tax credits) including:
  - o Supplemental Security Income (SSI)
  - o Temporary Assistance for Needy Families (TANF)
  - o Federal, state, or local cash benefits programs for income maintenance (often called "General Assistance" in the State context, but which also exist under other names)
2. Supplemental Nutrition Assistance Program (SNAP) (commonly known as "food stamps");
3. Housing Assistance under Section 8 Project-Based Rental Assistance or Subsidized Public Housing;
4. Medicaid (with certain exceptions, such as benefits received by individuals under the age of 21 and pregnant women (or for a period of 60 days after the last day of pregnancy); and
5. Public housing under section 9 of the U.S. Housing Act of 1937.

Public charge is involved if an individual receives one or more public benefits, as defined in the rule, *for more than 12 months in the aggregate within any 36-month period* (such that, for instance, receipt of two benefits in one month counts as two months).

### **Will I be denied status or not admitted if I use these benefits?**

Use of public benefits alone is not expected to result in a hard denial or inadmissibility. But, use of public benefits or being found to be likely to become a public charge could result in visa applicants being denied visas, change of status, or adjustment to Permanent Residence (Green Card).

\*This material is not intended to substitute as legal advice.

## **What benefit programs ARE NOT included in the public charge rule?**

- Emergency medical assistance; Disaster relief; Energy assistance;
- National school lunch programs; Special Supp Nutrition Program for Women, Infants, and Children;
- The Children's Health Insurance Program;
- Subsidies for foster care and adoption;
- Government-subsidized student and mortgage loans;
- Food pantries and homeless shelters; and Head Start.

## **Immigration Forms Updated and New Forms Created**

Several petitions and applications have been updated to reflect this rule. The updates include questions that foreign nationals need to answer regarding applications for or use of public benefits. The immigration forms updated include:

- I-129 petition (used for most nonimmigrant visas such as H-1B, L-1, O-1, Ps, and other);
- I-539 application for changing or extending visa status;
- I-485 application for legal permanent residence and others.

Most applicants for Adjustment of Status ("green card") will also be required to complete Form I-944, Declaration of Self-Sufficiency. This is a lengthy about 18-page form which will require careful research and analysis.

DOS also released a new form DS-5540, Public Charge Questionnaire to collect relevant information from applicants for immigrant visas and, in certain circumstances, applicants for nonimmigrant visas.

## **Sample Inquiry on immigration forms related to this issue**

Foreign nationals filing form I-129 will be required to answer:

"Has the beneficiary received, since obtaining the nonimmigrant status that you seek to extend or that you seek to change on behalf of the beneficiary, received, or is the beneficiary currently certified to receive, the following public benefits? (Select all that apply)" A list is provided in the form

The beneficiary is also required to answer

- No, the beneficiary has not received any of the above listed public benefits.
- No, the beneficiary is not certified to receive any of the above listed public benefits.

When it comes to answering these questions, please note that we are not in a position to answer these questions for you. Only you know your situation to provide an accurate answer.

## **Totality of Circumstances Test**

To make the public charge assessment, USCIS and DOS will apply a complex totality of circumstances test that weighs the person's age, health, family status, education and skills, and assets, resources, and financial status.

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### **Application of this rule to international students**

This rule also affects foreign students applying for F-1 and J-1 status. However, in general, international students have already been barred from accepting public benefits because doing so jeopardizes their nonimmigrant status and can result in the loss of student status.

### **Be Aware**

Frequently, social service agencies, hospitals, or public housing administrators unknowingly of the consequences encourage international students and/or other foreign nationals to apply for public benefits. Additionally, although U.S. citizen children of foreign nationals may be eligible for public benefits, by accepting those funds the children's parents acknowledge their inability to support their dependents and thus risk being judged to have violated the conditions of their immigration status.

### **Additional Resource**

[USCIS Public Charge Fact Sheet page](#) on how accepting benefits may impact your visa status.

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