

# Public Charge

It's Impact on Survivors of Domestic Violence &  
Sexual Assault



ASIAN PACIFIC INSTITUTE  
ON GENDER-BASED VIOLENCE

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# Roadmap



- **Context**
- **What is public charge?**
- **Where does public charge come up?**
- **How should we talk with survivors and their families about public charge?**
- **What happened with the DHS public charge rule?**

# What's Happening w/Public Charge?

## Prior Administration

Issued 2019 rule that greatly expanded definition of public charge, changed the benefits that'd be considered in determination, & changed how to weigh various factors in considering totality of circumstances

## Litigation

Nine legal challenges filed against 2019 rule. In one of the cases, the district court found that the 2019 rule violated that Administrative Procedure Act. The decision was appealed to the 7<sup>th</sup> Circuit. In March 21, the Administration asked that the appeals be dismissed, meaning 1999 policy was back in place

## Rulemaking

This Administration has finalized a regulation, published on September 9, 2022. Currently they are working on updating internal guidance

# How Does Public Charge Assessed?

## Totality of Circumstances

- Age
- Health
- Family status
- Financial status
- Education and skills
- Affidavit of support

**The public charge assessment is forward-looking**



**Is the person likely to rely on cash or long-term care in the future?**

- No one factor (including past use of cash benefits) can alone determine whether or not someone is a “public charge”
- Positive factors can be weighed against negative factors

# When the public charge test applies

## APPLIES

At green card determination or when seeking to enter the U.S. with a visa.\*

\*Special note re: those seeking to extend, change non-immigrant status

## DOES NOT APPLY

Not a consideration when lawful permanent resident (green card holders) apply for U.S. citizenship.

Does not apply to family members not seeking residency

To exempt categories

# ANALYSIS OF DHS' FINAL RULE



# Definition of Likely at Any Time to Become a Public Charge \*

Likely at any time to become primarily dependent on the government for subsistence as demonstrated by either:

- the receipt of public cash assistance for income maintenance
- long term *institutionalization* at government expense

# Public Cash Assistance for Income Maintenance:

Ongoing funds intended to pay basic living expenses

## Includes

- Supplemental Security Income (SSI)
- Temporary Assistance for Needy Families (TANF)
- State and local government cash assistance for income maintenance (i.e, General Assistance)

## Does Not Include

- Special purpose cash, e.g. child care assistance or energy assistance
- Disaster cash, e.g. Stafford Act or pandemic assistance
- Earned income, e.g. unemployment benefits or tax credits

# Long Term Institutionalization at Government Expense

## Includes

- Medicaid-funded long term institutionalization
- State or locally funded long term institutionalization

## Does Not Include

- Home and Community Based Services
- Short-term Rehabilitative Care
- Any other Medicaid Benefits
- Incarceration

# Receipt of Public Benefits

## Counts as Receipt When

Individual is listed  
as a beneficiary

Current and Past  
Receipt

## Does Not Count as Receipt When

*Applying* for a benefit on one's own behalf or on behalf of another

*Approval for future* receipt on one's own behalf or behalf of another

*Solely on behalf of another*, even if assists with application (e.g. parent applicant for child only TANF and child receives)

# ***Totality of Circumstances Test***

## **DHS will consider at a minimum all the factors:**

- age; health; family status; assets, resources, and financial status; education and skills; and affidavit of support
- Will favorably consider the affidavit of support

## **Determination must be based on all the factors:**

- No one factor can determine whether an individual is likely at any time to become a public charge
- Current and/or past receipt of benefits on its own is insufficient
- Finding of disability under Section 504 of the Rehabilitation Act is insufficient

# Totality of Circumstances Test (cont)

## Guidance

DHS may issue guidance to adjudicators to inform the Totality Of Circumstances assessment.

## Written Denial

Every written denial decision will reflect consideration of each factor and articulate the reason for the determination.

# Exempt Groups

**Refugees, asylees, and Amerasian** immigrants, at admission and adjustment to LPR

Petitioners for **U visas**, people granted U visas provided they have valid U visa at time of request and adjudication to either adjust status or to receive an immigration benefit

**VAWA** self petitioners

**Special Immigrant Juveniles**

Certain people who have been **battered or subject to extreme cruelty** by a USC or LPR spouse or parent

Petitioners for **T visas**, people with certain pending T visa applications or who have a valid T visa when filing to adjust status and at adjudication

# Exempt Groups (cont.)

<p>People applying for <b>Temporary Protected Status (TPS)</b></p>	<p><b>Afghan</b> and <b>Iraqi</b> interpreters or nationals employed by US government</p>
<p>Certain <b>foreign government</b> nonimmigrant visa holders</p>	<p><b>Cuban</b> and <b>Haitian</b> entrants applying to adjust status under IRCA, the Cuban Adjustment Act or Haitian Refugee and Immigration Fairness Act of 1998</p>
<p>People who entered the US prior to Jan 1, 1972 and meet conditions to be granted LPR status under <b>registry</b></p>	<p><b>Nicaraguans</b> and other <b>Central Americans</b> applying to adjust under NACARA</p>

# Exempt Groups (cont.)

Applicants adjusting status who qualify for a benefit under section **1703 of the National Defense Authorization Act of 2004** (surviving spouses, children, parents of US military)

Certain nationals of **Vietnam, Cambodia and Laos** applying for adjustment of Status

Certain **American Indians** born in Canada

**Certain Polish and Hungarian** Parolees paroled into the US

Texas Band of **Kickapoo** Indians

Certain **Syrian** nationals adjusting status

**Liberian** applicants adjusting status who qualify for a benefit under LRIFA

Any **other categories** of noncitizens exempt under any other law, under section 212(a)(4) of the Immigration and Nationality Act.

***What do we tell  
immigrant  
survivors and  
their families?***



# How the Rule works

I was just granted asylum status a few months ago. Can I get COVID tests and vaccines, or will it stop me from getting my green card.

I'm pregnant and need help. I'm currently enrolled in Medicaid but I'm afraid it will be used against me.

I lost my job because my employer went out of business during the COVID closures. Can I accept cash grants that the city is providing for immigrants? If I apply for unemployment, will it hurt my green card application?



The domestic violence program has an opening in their transitional housing. I'm worried if I use it, I might hurt my immigration status.

I am on a student visa and was raped after a University event. I am worried if I go to the hospital that using healthcare might impact my visa.

I don't have status but I receive cash benefits for my kids. Should I disenroll them so it doesn't hurt my chances for a green card?

# How the Rule works



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I lost my job because my employer went out of business during the COVID closures. Can I accept cash grants the city is giving to immigrants? If I apply for unemployment, will it hurt my green card application?

The public charge test does not apply to asylees. In addition, USCIS has said COVID related benefits will not impact your green card application.

The public charge test will not consider Medicaid. We encourage you to get the health care that you and your baby need.

The public charge test will not apply to benefits that are not cash assistance for income maintenance. The preamble of the proposed regulation says "special purpose" public health emergency assistance, and earned cash benefits would not be assistance for income determination.

# How the Rule works



The domestic violence program has an opening in their transitional housing. I'm worried if I use it, I might hurt my immigration status.

I am on a student visa and was raped after a University event. I am worried if I go to the hospital that using healthcare might impact my visa.

I have a pending U-visa and I have received state cash assistance for me and my US citizen kids, who are citizens. Should I disenroll so it doesn't hurt my chances for a green card?

Housing and victim services are not cash assistance for income maintenance, and should not be considered in a public charge maintenance.

Use of medical services and free counseling will not be considered in a public charge assessment.

The public charge test does not apply to US citizens. In addition, the public charge test doesn't apply to U visa applicants or U visa holders. In cases where the parent is not in an exempt status, DHS will need to consider, looking forward, whether the applicant is likely to become primarily dependent on the government. So even if someone has used cash assistance for income maintenance, USCIS will look at totality of circumstances

# DHS Rulemaking Process

## ✓ ANPRM Issued

60 day Comment Period + Agency Review

## ✓ NPRM Issued

Comments + Agency Review

## 3 Final Rule Issued

**DHS chose to follow a three step process to get to a final DHS public charge rule:**

- 1) DHS Issued ANPRM (comments + agency review) - This was an optional step and not a standard part of the rulemaking process. PIF submitted sign-on comment in December, 2021
- 2) DHS issues NPRM (comments + agency review) - Comments Due on **Monday, April 25.**
- 3) DHS issues a final rule.

# Resources

- U.S. Citizenship & Immigration Service (USCIS) Resource Page:
  - <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge/public-charge-resources>
- Final Public Charge Rule (Federal Register)
  - <https://www.govinfo.gov/content/pkg/FR-2022-09-09/pdf/2022-18867.pdf>
- Protect Immigrant Families:
  - <https://pifcoalition.org>
- Alliance for Immigrant Survivors:
  - <https://www.immigrantsurvivors.org/resources-1>
- Public Charge Advisory on Impact on Survivors:
  - <https://www.api-gbv.org/resources/advisory-public-charge/>

# *Questions & Answers*



Please type your questions and comments into the chat box

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***Thank you.***