NATIONAL IMMIGRATION LAW CENTER

Public Charge: What Advocates Need to Know About the November 2025 Proposed Rule

Nov 18, 2025 This resource provides an FAQ for advocates about the new public charge rule proposed in November 2025.

ECONOMIC JUSTICE

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On November 17, 2025, the Department of Homeland Security (DHS), U.S. Citizenship & Immigration Services (USCIS) posted for public inspection a Notice of Proposed Rulemaking (NPRM) proposing to rescind the 2022 Biden Administration Public Charge rule that went into effect on December 23, 2022 ("the 2022 Rule").

The NPRM proposes to rescind nearly the entirety of the 2022 rule (other than one provision relating to submitting bonds, and minor technical clarifications) and proposes to revise existing provisions related to bonds at 8 CFR 103.6. It does not appear to propose a formal replacement for the rule. It does, however, include an extensive explanation of how the agency intends to reinterpret "public charge" to include the consideration of any past or future benefit use for any length or duration of time, including the use of "means-tested public benefits," which have historically never been included in the public charge test. The NPRM also signals that USCIS may introduce new policy in the future, possibly through agency guidance without seeking notice and comment beforehand.

This means that adjudicators applying the "public charge" test to adjustment of status determinations for green cards would rely on sub-regulatory guidance, or direction issued by a federal agency through policy directive or memorandum. Adjudicators might look back to longstanding sub-regulatory guidance from 1999, which the 2022 Rule largely codified. The 1999 guidance was based on more than 100 years of policy and sought to clarify what "public charge" means for immigration purposes and which benefits were relevant for a public charge determination, as distinct from recent welfare reforms at the time, including the 1996 Personal Responsibility and Work Opportunity Act (PRWORA). However, this NPRM explicitly seeks to rescind the 2022 Rule, and does not address how applicants who detrimentally relied on the 1999 Guidance and 2022 Public Charge Rule can avoid a denial of adjustment of status in the future based on past use of any benefits not previously included in the longstanding definition of "public charge." Although the NPRM also proposes to remove the definition of "receipt of public benefits," (which only includes benefits received by the individual applying for adjustment), it does not explicitly address whether use of benefits by family members would be considered in a public charge determination in the future.

What is public charge?

As the 1999 guidance states, "public charge" refers to an individual who is likely to become "primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense." Since the "public charge" inadmissibility provision first became part of federal immigration law in 1882, courts and administrative agencies

have consistently interpreted the term "public charge" to refer to noncitizens who rely primarily on the government for subsistence. Congress has repeatedly considered and rejected efforts to expand the definition of public charge, including the efforts of the first Trump administration.

Under current regulations that are consistent with long-term policy, public charge refers to people who cannot support themselves and who depend on benefits that provide cash (such as Supplemental Security Income (SSI) or Temporary Assistance for Needy Families (TANF)) for their income or who are institutionalized with long term care paid for by the government. For purposes of USCIS' determination, an individual who is likely at any time to become a public charge is inadmissible to the United States and may be ineligible to become a lawful permanent resident (LPR, or green card holder). The public charge test is not a part of naturalization applications.

If an individual is found inadmissible based on the public charge ground but is otherwise admissible to the United States, they may be admitted (at USCIS' discretion) after posting a bond. The purpose of the bond is to ensure that the immigrant will not become a public charge in the future. If an individual posts a bond in the amount USCIS specifies, and they comply with all other requirements, USCIS accepts the bond and will grant the immigrant a green card despite their inadmissibility.

The public charge test does not apply to everyone, and not all benefits count for purposes of public charge. Statutorily, the test does not apply to individuals seeking green cards based on an approved petition for Special Immigrant Juvenile (SIJ) classification; an approved T or U visa; asylee or refugee status; or the Violence Against Women Act (VAWA). The public charge test is future-facing and is a totality of the circumstances test, so prior use even of relevant benefits by an individual should not be dispositive. There are other factors that the statute requires to be considered as part of this test: health; age; family status; assets, resources, financial status; education and skills. Public charge is not a public benefits policy; it is an immigration policy. This policy is separate from both historical actions under the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA) and other recent actions by Congress and the federal government to limit immigrant eligibility for health care and food aid.

How is this related to the recent guidance from Department of State?

What changes right now?

What can you do?

What will this mean if the rescission and rule become final?

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