

# Key Provisions of Public Charge Policy Changes Compared

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PENDING CHANGES to the interpretation of the public charge doctrine have created fear and confusion in immigrant communities. The consequences of being considered “likely to become a public charge” are severe and could result in exclusion from the United States or an inability to establish lawful permanent residence. In some cases, being deemed a public charge could result in deportation. The confusion is compounded by the differences between three separate agency interpretations: (1) the

U.S. Department of State’s Foreign Affairs Manual, governing public charge determinations at consular offices outside the U.S., (2) the U.S. Department of Homeland Security’s regulations on the public charge grounds of inadmissibility, and (3) the U.S. Department of Justice’s forthcoming proposed rule on inadmissibility and deportability.

This table compares key provisions of the three agencies’ policy proposals.

	Department of State (DOS)	Department of Homeland Security (DHS)	Department of Justice (DOJ)
<b>Status of rule and date of change/ proposed change</b>	Revisions to Foreign Affairs Manual published and effective Jan. 1, 2018. Policy changes remain in effect but are likely to change to conform with DHS rules. The current policy has been challenged in court.	Proposed rule published Oct. 10, 2018; final rule published August 14, 2019, with an effective date of October 15, 2019.	1999 policy is in place. Proposed rule not yet published; rule is currently at OMB.
<b>How is public charge defined</b>	Primarily dependent on the government for subsistence, as shown by receipt of cash assistance for income maintenance or institutionalization for long-term care at government expense.	A person who receives one or more of the public benefits identified in the rule for at least 12 months out of a 3-year period. Receipt of two benefits in one month is counted as having received two months of benefits.	Likely to conform with DHS’s definition.
<b>Inadmissibility or deportability</b>	Inadmissibility	Inadmissibility	Inadmissibility and deportability
<b>When test applies</b>	When applying for a nonimmigrant or an immigrant visa (including applications for lawful permanent resident, or LPR, status) at an embassy or consular office outside the U.S. Some individuals currently in the U.S. must go through consular processing outside the U.S. in order to secure lawful permanent residence.	When adjusting to LPR status in the U.S., through a family-based, employment-based, or a diversity visa petition; receipt of benefits is considered in extension of nonimmigrant visa/change of nonimmigrant visa category.	When a person who has been inspected and admitted to the U.S. (including an LPR) has become a public charge within 5 years after entering the U.S. based on circumstances that predate entry.

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	Department of State (DOS)	Department of Homeland Security (DHS)	Department of Justice (DOJ)
<b>Who is exempt</b>	Refugees, asylees, T and U visa applicants/holders, VAWA self-petitioners, many other humanitarian immigrants.	Refugees, asylees, T and U visa applicants/holders, VAWA self-petitioners, many other humanitarian immigrants.	No statutory exemptions.
<b>Key elements of test</b>	Statutory test: age, health, family status, income and resources, skills and education; sufficiency of affidavit of support if required. FAM adds standards to each element, including use of public benefits by applicant or family member and by sponsor and family member.	Statutory test: age, health, family status, income and resources, skills and education; sufficiency of affidavit of support if required. Proposed regulation adds standards and evidence to statutory factors, including use of expanded list of benefits by immigrant, and creates heavily weighted factors.	Statutory test: Has the person become a public charge within the first 5 years after entering the U.S. based on circumstances that predated the person’s entry. Current test also requires that the use of the relevant benefits creates a legal debt, which after receiving a request, the immigrant or sponsor refuses to repay, and the benefit agency files a lawsuit and wins a judgment in court.
<b>Public benefits included</b>	Use of “public assistance” as a factor in evaluating the totality of a person’s circumstances. (This could include benefits in addition to cash assistance for income maintenance or long-term care at the government’s expense.)	<ul style="list-style-type: none"> <li>• Federal, state, local, or tribal cash assistance for income maintenance, such as Temporary Assistance for Needy Families (TANF) or Supplemental Security Income (SSI)</li> <li>• Medicaid, except for emergency Medicaid and health benefits received by people under age 21 and pregnant women (including 60 days after the end of the pregnancy)</li> <li>• Supplemental Nutrition Assistance Program (SNAP, “EBT,” or “food stamps”)</li> <li>• Some federal housing programs (Section 8 and public housing)</li> </ul>	Expected to be the same as DHS rule.
<b>Whose use of benefits is included in the test</b>	Immigrant and, potentially, family members; sponsor and sponsor’s family members	Immigrant	Immigrant

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<b>Directly affected groups</b>	People applying outside the U.S. for visas or LPR status, who are not exempt from the public charge ground of inadmissibility.	Immigrants adjusting to LPR status in the U.S. who are not exempt from the public charge ground of inadmissibility; individuals applying to extend or change their nonimmigrant status in the U.S.	Immigrants eligible for public benefits within their first five years in the U.S., including veterans and their immediate family members, and potentially humanitarian immigrants. This could include persons receiving housing subsidies, children receiving SNAP, children and pregnant women receiving Medicaid in many states, and individuals receiving state and local cash assistance or government-funded long-term care in some states.
<b>Groups harmed (chilled)</b>	All low- and moderate-income households with an immigrant family member.	All low- and moderate-income households with an immigrant family member.	All low- and moderate-income households with an immigrant family member.