

## The 2022 Public Charge Regulations

The long-awaited Biden Administration [public charge regulations](#) went into effect on December 23, 2022. While the regulations largely mirror the policies set forth in [the 1999 Field Guidance](#) on public charge, they provide important clarifications about issues such as which immigrants are exempt from the public charge ground of inadmissibility and under which circumstances the receipt of public benefits will or will not be considered in a public charge determination.

This piece focuses on the clarifications and updates provided by the rule. For a broader explanation of public charge, see [Public Charge - What Advocates Need to Know](#).

### Definition

In keeping with the statutory language and forward-looking nature of the public charge inadmissibility assessment, the regulations define “likely at any time to become a public charge.” The definition tracks the 1999 field guidance closely by focusing on the receipt of two specific types of public benefits as demonstrating that a person has become dependent on the government for subsistence:

*Likely at any time to become a public charge* means 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** or **long-term institutionalization** at government expense.<sup>1</sup>

Cash assistance for income maintenance refers to SSI, TANF cash assistance and state and local cash assistance programs that are intended to support the recipient’s daily living expenses. Short-term and special purpose cash grants, including disaster and pandemic assistance, or cash for childcare or housing, are not included.<sup>2</sup>

The regulations refer to institutionalization in a nursing home or mental health facility at public expense as examples of long-term institutionalization. They specify that incarceration, as well as short-term institutionalization for rehabilitation purposes, do not constitute long-term institutionalization. DHS declined to define short- or long-term but clarified in the preamble that Home and Community Based Services are not considered in a public charge determination.<sup>3</sup>

The regulations also offer a significant clarification that a person receives a benefit only when listed as its beneficiary.<sup>4</sup> Under the 1999 Guidance cash assistance received by a household member could be considered if it is the applicant’s sole source of income. By contrast, the new regulations would not consider any assistance received by other members of the household in a public charge determination..

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<sup>1</sup> 8 CFR 212.21(a), *emphasis added*.

<sup>2</sup> <https://www.federalregister.gov/d/2022-18867/p-647>

<sup>3</sup> <https://www.federalregister.gov/d/2022-18867/p-709>

<sup>4</sup> 8 CFR 212.21(d).

## Receipt of Benefits

The regulations incorporate several important clarifications about the circumstances when receipt of the two categories of benefits will be considered in the public charge assessment. They provide that an adjudicator will not consider any benefits the individual received while they were exempt from public charge or were granted a public charge waiver.<sup>5</sup> This disregard will apply even if the individual adjusts status through a family-based visa petition or other pathway where public charge applies. In addition, any benefits an individual receives while they are eligible for resettlement assistance programs and other refugee benefits will not be considered.<sup>6</sup> This provision applies, for example, to Afghan and Ukrainian evacuees paroled into the US, Cuban and Haitian entrants, as well as certain others admitted for humanitarian reasons.

As under the 1999 Guidance, receipt of the relevant benefits does not, alone determine the outcome of the public charge assessment. Adjudicators will consider their use within the totality of the person's circumstances (discussed below), as well as how long ago and for what length of time the individual received the benefits.<sup>7</sup>

## Exemptions and Waivers

Section 212.23(a) of the regulations lists 29 categories of immigrants exempt from the public charge ground of inadmissibility, including additional categories that are not specifically listed. Section 212.23(c) provides for waivers of the public charge grounds of inadmissibility, including for certain persons assisting in the prosecution of crimes.

## The Public Charge Determination

The public charge statute contemplates that an adjudicator will look at a person's current circumstances to determine if they are likely to become a public charge in the future. This **totality of circumstances** analysis requires the adjudicator to consider at minimum the individual's:

- age;
- health;
- family status;
- assets, resources, and financial status; and
- education and skills.

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<sup>5</sup> 8 CFR 212.22(d).

<sup>6</sup> 8 CFR 212.22(e).

<sup>7</sup> 8 CFR 212.22(a)(3)

In addition to these five factors, the adjudicator may also consider an affidavit of support executed by a sponsor.<sup>8</sup> The regulations provide that DHS will favorably consider a legally sufficient affidavit of support if the individual is required to have a sponsor.<sup>9</sup>

If the adjudicator denies the individual's application based on a finding that they are likely to become a public charge, the adjudicator is required to provide a written explanation that specifically articulates the reasons for the denial decision.<sup>10</sup>

The regulations also provide two important protections for individuals with disabilities. Section 212.22(a)(4) makes clear that having a disability is not in itself sufficient to make an individual likely to become a public charge. In addition, if the individual is or has been institutionalized, adjudicators are required to consider evidence that the institutionalization violated the Americans with Disabilities Act or other federal laws.<sup>11</sup>

### **Revisions to Form I-485**

DHS has revised Form I-485, the Application to Register Permanent Residence or Adjust Status and the accompanying instructions.<sup>12</sup> Any I-485 submitted on or after the regulations' effective date must use the revised form, which asks about elements of the totality of circumstances not captured by the previous version, including income and resources and professional credentials. In a significant improvement from the previous version of the Form, the revised version asks only about receipt of the two categories of benefits considered for public charge purposes, and not the receipt of public benefits generally.

### **Policy Guidance**

USCIS has updated its [Policy Manual](#) to guide adjudicators in their application of the regulations. The manual update includes scenarios for the application of the public charge regulations and a non-exhaustive list of public benefits that are not considered in the public charge assessment.

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<sup>8</sup> 8 USC 1182 (a)(4)

<sup>9</sup> 8 CFR 212.22(a). Family-based immigrants are generally required to have sponsors.

<sup>10</sup> 8 CFR 212.22(c).

<sup>11</sup> 8 CFR 212.22(a)(3)

<sup>12</sup> See <https://www.uscis.gov/i-485>.