



Implementation of the New Department of Homeland Security (DHS) Public Charge Rule: FAQs for Anti-Hunger and Nutrition Stakeholders

With implementation of the new Department of Homeland Security (DHS) [Inadmissibility on Public Charge Grounds final rule](#) beginning February 24, 2020, anti-hunger and nutrition stakeholders have important roles to play in providing basic facts about the Supplemental Nutrition Assistance Program (SNAP) and other public benefit programs and in providing referrals to reliable legal resources on public charge questions.

The DHS rule has been in the news and on stakeholders' radars for some time now. Many anti-hunger and nutrition stakeholders were among the more than 260,000 individuals and organizations that submitted public comments overwhelmingly in opposition to the proposed rule in the fall of 2018. Until recently, implementation of the rule was temporarily blocked by federal court injunctions. Unfortunately, a recent, [U.S. Supreme Court decision](#) (January 27, 2020) lifted the injunction that was preventing the new DHS public charge rule from going into effect. This decision cleared a path for the administration to begin implementing the public charge rule within the U.S., effective February 24, 2020. On the same date, the U.S. Department of State's own new public charge rule, which applies to individuals seeking visas from outside the U.S. and aligns with the DHS rule, went into effect.

This Frequently Asked Questions (FAQ) is designed to educate anti-hunger and nutrition stakeholders on the DHS public charge rule and how the rule intersects with the food security of immigrant families. This FAQ does not constitute legal advice or take the place of legal advice from an immigration attorney.

For updates and information on actions for anti-hunger and nutrition stakeholders, visit [FRAC's Hunger Among Immigrants webpage](#).

FRAC serves as the nutrition lead on the steering committee for the [Protecting Immigrant Families Campaign](#) (PIF), which is mobilizing a nationwide effort to protect the health and well-being of immigrant families.

FRAC gratefully acknowledges Beacon IA and the Robert Wood Johnson Foundation for support of work to protect the nutrition and health of immigrant families.

Table of Contents

I. [DHS Public Charge Rule](#)

- What is Public Charge?
- How does the new DHS rule impact immigrant families who need food and nutrition assistance?
- Are all immigrants subject to the new public charge DHS rule?
- What is the status of the DHS public charge rule?
- Does the U.S. Supreme Court public charge decision mean that the legal action is over?

II. [Implications for Hunger and Poverty](#)

- Why should anti-hunger and nutrition stakeholders be concerned about this rule?
- When does SNAP benefit receipt count for public charge purposes?
- In addition to SNAP, are there other public benefits that are now included in the DHS rule?
- Are other federal nutrition programs or food resources included in the new DHS public charge rule?
- I heard that the new definition of public charge talks about using public benefits for 12 months in a 36-month period. What does that mean?
- Is someone automatically a public charge if they use SNAP?
- Is program use by an applicant's child or other family members considered?
- What is the "chilling effect" on SNAP participation among immigrant families?
- What is the broader "chilling effect" of the rule?
- Is the DHS public charge rule the only threat to immigrants that could impact SNAP participation?
- What should immigrant families who want to apply for SNAP know?

III. [Public Charge at Other Agencies](#)

- Agencies That Implement Public Charge

I. DHS Public Charge Rule

What is Public Charge?

Public charge is a long-standing doctrine that can affect an immigrant’s ability to be admitted¹ into the U.S. or obtain permanent legal status. Some people who apply for a green card (lawful permanent residence) or a visa to enter or remain in the U.S. must pass a “public charge” test, which looks at whether the person is likely to use certain government services in the future.

DHS public charge determinations primarily apply when a noncitizen seeks from inside the U.S. to adjust their immigration status to become a lawful permanent resident (green card holder).

In making this determination, immigration officials review all of a person’s circumstances (often called the totality of circumstances), including their age, income, health, education, or skills (including English language skills), and their sponsor’s affidavit of support or contract. They can also consider whether a person has used certain public programs. Until recently, only the use of cash assistance (such as Temporary Assistance for Needy Families, TANF, and Supplemental Security Income) and long-term institutional care that was paid for by the government were counted as factors in a public charge determination. This is no longer the case.

Public charge does not apply to many immigrants — including the vast majority of those eligible for SNAP. Additional information on who isn’t subject to public charge can be found below.

In addition to DHS, the U.S. Department of State and the U.S. Department of Justice make public charge determinations. See section III. Public Charge at Other Agencies for relevant information on the differences in public charge rules at each agency.

For more information about public charge, see PIF’s [resources for advocates page](#).

How does the new DHS rule impact immigrant families who need food and nutrition assistance?

The new rule radically changes how DHS makes public charge determinations for certain types of noncitizens applying from inside the U.S. for a visa or to become a lawful permanent resident (get a green card). Among other changes, the rule treats



¹ In the immigration context, this admissibility includes entering or remaining in the U.S.

having low income or resources as negative factors and looks at indicators, such as low or no credit score or application or receipt of immigration fee waivers.

In effect, the rule counts wealth and income as the primary markers of a person's future contribution, fundamentally changing who can stay in the country.

For the first time ever, it also takes into account the receipt of SNAP by a noncitizen as a factor in a DHS public charge determination inquiry.

The implementation of the rule will likely accelerate the existing fear and confusion among immigrant families and result in a “chilling effect” on immigrants and their family members’ participation in SNAP and other vital nutrition programs for which they are eligible, even though programs like the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and school meals are not part of the public charge determination.

Are all immigrants subject to the new public charge DHS rule?

No. Many immigrants are *not* subject to a DHS public charge determination, including refugees; asylees; survivors of trafficking, domestic violence, or other serious crimes (T or U visa applicants/holders); Violence Against Women Act (VAWA) self-petitioners; special immigrant juveniles; certain people paroled into the U.S.; and other humanitarian immigrants.

Legal permanent residents (green card holders) are *not* subject to a DHS public charge determination when they renew their green card or when they apply for U.S. citizenship. However, a legal permanent resident who leaves the country for more than 180 days may be subject to a public charge determination when they seek to re-enter the country.

U.S. citizens are *not* subject to public charge determinations.

The vast majority of immigrants who are subject to a public charge test are *not even eligible for SNAP*. As such, the major impact of the rule related to nutrition programs will likely be a “chilling effect” on public benefit program use by individuals and families who are *not* subject to DHS public charge considerations.

The [rule](#) specifies that benefits received while in an exempt status will not be counted against applicants if they later seek a status through a nonexempt pathway. For example, if a refugee receives SNAP and later applies for a green card based on marriage, that use of SNAP will not be taken into account.

What is the status of the DHS public charge rule?

A 5-4 [U.S. Supreme Court decision](#) (January 27, 2020) lifted the nationwide injunction that was preventing the new DHS public charge rule from going into effect. This decision cleared a path for the administration to implement the public charge rule within the U.S., except in Illinois, which had a statewide injunction of its own. But that



changed on February 21, 2020, when the Supreme Court [overturned the Illinois injunction](#).

On February 24, 2020, the DHS [US Citizenship and Immigration Services](#) (USCIS) began implementing the [Inadmissibility on Public Charge Grounds final rule](#) across the U.S.

For more, see FRAC's [Update for Anti-Hunger and Nutrition Stakeholders: Unpacking the Three Public Charge Rules](#)

Does the U.S. Supreme Court public charge decision mean that the legal action is over?

No. Litigation on the merits of the rule is ongoing. The issue the Supreme Court ruled on in January 2020 was limited to whether the lower courts correctly granted temporary injunctions halting implementation of the new DHS rule. *The Supreme Court did not issue a decision on the merits of the rule.* Lawsuits focused on the merits (e.g., whether the DHS rule or the manner in which it was adopted are valid) are ongoing in several federal courts. Future decisions could find that the rule is invalid based on the merits.

II. Implications for Hunger and Poverty

Why should anti-hunger and nutrition stakeholders be concerned about this rule?

Close to 25 percent of all children in the U.S. have at least one parent who was born outside the U.S. This rule — mostly because of its “chilling impact” — will [contribute to increased hunger, poverty, and ill health](#) as a result of eligible individuals and families forgoing or disenrolling from public benefit programs that [improve nutrition, health, and well-being](#).

Anti-hunger and nutrition stakeholders have an important role to play in addressing the harms of this rule, particularly the “chilling effect” on the use of SNAP and other federal nutrition programs.

Their role *is not* to become experts on immigration law and give legal advice about public charge implications. Instead, their role *is* to help provide basic facts about public charge, federal nutrition programs and food resources and referrals to legal resources who can answer individualized public charge questions so that immigrant families can make informed decisions.

When does SNAP benefit receipt count for public charge purposes?

[USCIS stated](#) that receipt of SNAP prior to February 24, 2020, will *not* be considered in DHS public charge determinations. The same applies to the other benefits that the rule recently added as factors in public charge determinations.

Remember that the vast majority of immigrants who are subject to DHS public charge are *not even eligible for SNAP*.

In addition to SNAP, are there other public benefits that are now included in the DHS rule?

Yes. The new rule expands public charge considerations to additional public benefits programs in addition to SNAP. The other recently added programs are federally funded Medicaid (with exceptions for services provided during emergencies, to children under 21 years old, to pregnant women, and postpartum services in the first 60 days) and Public Housing or Section 8. Cash assistance for income maintenance (such as TANF) and government-funded long-term institutional care continue to be included.

The addition of these new health and housing programs has ramifications for work to address food insecurity. Lack of access to health care and affordable housing exacerbate economic struggles families face and contribute to increased food insecurity.

Are other federal nutrition programs or food resources included in the new DHS public charge rule?

No. WIC, the child nutrition programs (including the Child and Adult Care Food Program, National School Lunch Program, School Breakfast Program, Afterschool Nutrition Programs, and the Summer Food Service Program), Older Americans Act nutrition programs, The Emergency Food Assistance Program, and the Commodity Supplemental Food Program *cannot* be used in a DHS public charge determination. These programs are not listed in the rule, and only explicitly listed benefit programs can be considered. Despite this, reports indicate that the rule has contributed to a “chilling effect,” particularly on [WIC](#) participation.

I heard that the new definition of public charge talks about using public benefits for 12 months in a 36-month period. What does that mean?

The rule redefines a public charge to be a noncitizen “who receives one or more designated public benefits 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).” This replaces the prior definition of “primarily dependent on the government for subsistence” as demonstrated by receipt of cash assistance for income maintenance or the use of government-funded long-term institutional care.

This new definition is inherently confusing and is likely to sow fear and confusion as to whether participating in the newly added public benefit programs for 12 months (SNAP,

Medicaid, or government housing assistance) will automatically trigger a public charge determination. It is critical to understand that this is *not* the case.

Use of a public benefit program listed in the rule is one factor immigration officials can consider, but a public charge determination cannot be made on this factor alone. (See section I. DHS Public Charge Rule for information on the other components included in the totality of circumstances.)

As one part of the totality of circumstances analysis, officials will consider whether the person has received or been certified to receive an expanded list of public benefit programs, including SNAP, as a negative factor. Receipt for more than 12 months in a 36-month period, beginning no earlier than 36 months prior to the person's immigration application, is counted as a heavily weighted negative factor. Previously, only cash assistance and government-funded long-term institutional care could be considered.

Remember that the vast majority of immigrants who need to worry about the DHS public charge rule as they adjust their status to become lawful permanent residents or renew their visas *are not eligible* for SNAP.

For additional background on the rule, see [PIF's analysis and resources webpage](#) and [FRAC's Hunger Among Immigrants webpage](#).

Is someone automatically a public charge if they use SNAP?

No. When making a DHS public charge determination, an immigration official must consider the totality of the applicant's life circumstances. Use of a public benefit program listed in the rule is one factor the official can consider, but a public charge determination cannot be made on this factor alone.

Remember that many immigrants who would be subject to a DHS public charge determination are not eligible for SNAP.

Is program use by an applicant's child or other family members considered?

No. Use of SNAP — or other programs listed in the rule — by an applicant's child or other family members is *not* considered in a DHS public charge determination. The [rule](#) clearly states that only the applicant's use of benefits can be considered.

Even though a noncitizen parent who is applying only for their SNAP-eligible child is named on the application and is in charge of spending SNAP benefits for the child, that application *does not* constitute receipt of benefits by the parent. Parents who are only applying for their children should mark on their SNAP applications "I do not wish to apply for SNAP benefits for myself."

What is the “chilling effect” on SNAP participation among immigrant families?

The number of people who will not participate in SNAP because they are directly impacted by the DHS rule by its terms (subject to DHS public charge considerations) is limited. The vast majority of noncitizens participating in SNAP are refugees, asylees, and legal permanent residents. These categories of immigrants are not subject to DHS public charge considerations.² Likewise, U.S. citizen children living with a noncitizen are not subject to DHS public charge considerations, and the use of public benefits by a child or other family member of an applicant cannot be considered.

Despite this, there have been reports from around the country that people who are eligible for SNAP and not subject to DHS public charge considerations are nonetheless not participating in the program. This has included immigrant families with U.S. citizen members, such as U.S. citizen children.

What is the broader “chilling effect” of the rule?

The broader impact of the public charge rule is the sowing of fear among millions of low-income immigrants and their families. Manatt Health estimates that approximately 25.9 million people in immigrant households could be impacted by the “chilling effect” of the rule.³ This number represents individuals in households that have at least one noncitizen member and incomes under 250 percent of the federal poverty level. This — and other — estimates as to the “chilling effect” reflect how widespread the fear and confusion spurred by the rule could be, rather than the number of people who will need to disenroll or forgo public benefits because they are subject to public charge considerations.



Is the DHS public charge rule the only threat to immigrants that could impact SNAP participation?

No. This rule is part of a broader attempt, such as the use of administrative actions, divisive rhetoric, and raids by the U.S. Immigration and Customs Enforcement, to create an environment that is hostile to immigrant families and rife with fear and confusion.

² Permanent legal residents seeking to re-enter the U.S. after being abroad for 180 days may be subject to a DHS public charge determination.

³ This analysis was conducted based on the proposed rule.

U.S. Department of Agriculture (USDA) data show that there was a statistically significant decrease in SNAP participation among U.S. citizen children living with a noncitizen from fiscal year 2016 to fiscal year 2017.⁴

These data are for a time period prior to the proposed rule's release in October 2018, but include the time during which a draft public charge executive order was leaked (January 2017) and times when other threats occurred.

What should immigrant families who want to apply for SNAP know?

The information in these documents does not constitute legal advice or take the place of legal advice from an immigrant attorney. If a person is applying to bring a family member to the U.S. from another country or is seeking to adjust their status in the U.S., they should consult with an immigration attorney. Information on immigration lawyers in your area can be found here:

www.immigrationadvocates.org/nonprofit/legaldirectory.

Organizations have created resources to educate immigrant families and frontline service providers on the public charge rule, including

- [Protecting Immigrant Families Campaign](#);
 - [Massachusetts Law Reform Institute's Immigrants and Public Benefits — Public Charge Information webpage](#);
 - [Hunger Free Colorado's Public Charge webpage](#);
 - [Hunger Solutions New York's Public Charge webpage](#);
 - [New York City Mayor's Office of Immigrant Affairs' Public Charge Rule webpage](#);
- and
- [National WIC Association's Public Charge and Immigration Resources](#).

⁴ U.S. Department of Agriculture. (2019). *Trends in Supplemental Nutrition Assistance Program Participation Rates: Fiscal Year 2010 to Fiscal Year 2017 (Summary)*. Available at: <https://fns-prod.azureedge.net/sites/default/files/resource-files/Trends2010-2017-Summary.pdf>. Accessed on September 16, 2019.

III. Public Charge at Other Agencies

In addition to DHS, the U.S. Department of State and the U.S. Department of Justice make public charge determinations. There are key differences in public charge at each agency. It is helpful to know basic information about the various public charge rules.

Agencies That Implement Public Charge

Agency	Type of Adjustment of Status for Public Charge Determination	Intersection With Nutrition Programs
Department of Homeland Security (DHS)	<p>Applies to certain immigrants seeking to adjust their status (e.g., become a permanent legal resident or extend a visa) from inside the U.S. It also applies to legal permanent residents seeking to re-enter the U.S. after being abroad for 180 days.</p> <p>This rule does not apply to many classes of immigrants, e.g., lawful permanent residents (green card holders, with the exception of re-entry after being abroad for 180 days), refugees, asylees, and others. For more, see Section I.</p>	<p>A new rule that allows SNAP to be included in DHS public charge determinations took effect February 24, 2020.</p> <p>Note: As of February 24, 2020, there are still multiple lawsuits challenging this public charge rule that must be decided on the merits.</p>
Department of State via U.S. embassies and consulates (State Department)	Applies to certain immigrants seeking to obtain a visa or a green card from outside the U.S. (at a consular office or embassy).	On October 11, 2019, the State Department issued an interim final rule on public charge to align State Department’s guidance with the new DHS rule, including the expanded list of public benefit programs allowed to be considered. Implementation of the rule was delayed. The interim final rule also went into effect on February 24, 2020.
Department of Justice (DOJ)	<p>Applies to certain immigrants who have used cash assistance or government-funded long-term institutional care within their first five years in the U.S., for reasons that existed prior to entering the U.S.; and have undergone additional required circumstances.</p> <p>Many factors must be present to trigger this proceeding, including the receipt of listed benefits must take place less than five years after entering the U.S. and have resulted from reasons that existed prior to entry into the U.S. Other factors, such as incurring a legal debt to the government for the receipt of a benefit and receiving an unmet demand for repayment within five years of entry, must also take place before the use of such benefits can be considered in a deportability determination.</p>	<p>No federal nutrition programs can be considered in a DOJ public charge determination.</p> <p>DOJ submitted a draft notice of proposed rulemaking to the Office of Management and Budget, in July 2019. Current rules are still in effect and a proposed rule has not been published for public comment.</p>