



Public Charge Update for Anti-Hunger and Nutrition Stakeholders

Recent efforts by the Trump administration to radically alter the U.S. immigration system have contributed to individuals and families in the U.S. to forgo critical nutrition assistance for which they are eligible. This “chilling effect” on program participation has, predictably, continued even as court action has stayed some administration changes.

Anti-hunger and nutrition stakeholders have important roles to play in providing basic facts about public benefit programs and providing referrals to reliable legal resources on public charge questions.

This document seeks to provide anti-hunger and nutrition stakeholders with key updates on the status of public charge rules from three federal agencies — Department of Homeland Security, Department of State, and Department of Justice — that intersect with federal nutrition programs, particularly the Supplemental Nutrition Assistance Program (SNAP), and actions that stakeholders can take to assist immigrants. This document does not provide a complete overview of public charge. For background information on public charge, see [the Protecting Immigrant Families Campaign](#). This document does not constitute legal advice.

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

U.S. Department of Homeland Security (DHS) Final Public Charge Rule

*DHS public charge determinations primarily apply when a non-citizen seeks **from inside the US** to adjust their immigration status to become a lawful permanent resident (green card holder).*

The new DHS public charge rule issued August 14, 2019, and intended to go into effect on October 15, 2019, is not in effect. As of January 2020, legal action has blocked the rule from taking effect on October 15. Whether or when that rule would ever be implemented is pending further review by the courts.

If implemented, the rule would dramatically change the public charge test in economic terms by adding a new income threshold and specific factors to consider. It also would — for the first time ever — count the use of SNAP, Medicaid (with some exceptions), and housing assistance as potential negative factors in DHS public charge determinations. In effect, the rule would count wealth and income as the primary markers of a person’s future contribution, fundamentally changing who can stay in the country.

Public comments during the rulemaking process have helped push back. DHS received more than 266,000 comments on the proposed rule; the overwhelming majority in opposition. Arguments made in public comments were referenced in federal court injunctions temporarily halting implementation of the final rule.

DHS policy guidance from 1999 remains in effect. Under the 1999 guidance, SNAP — and health care and housing programs — **cannot** be considered in a public charge determination. The only benefits that can be considered, as part of the totality of circumstances, for a public charge determination, are cash assistance programs — such as Temporary Assistance for Needy Families and Supplemental Security Income — and government-funded long-term institutional care.

At this time, an individual’s use of SNAP cannot be considered in a public charge determination, even if use occurs after October 15, 2019. It was made clear in the injunction order from the Southern District of New York court that the rule will not take effect unless and until after the injunction is overturned. DHS recently issued a statement clarifying that the agency **cannot** implement or enforce the new rule until there is final resolution in the court cases.

The use of benefits by family members does not count in a DHS public charge determination. Both the 1999 guidance currently in effect and the not-yet implemented new final DHS rule clarify that use of public benefits by family members — including U.S. citizen children — **cannot** be considered in a DHS public charge determination. Even though a non-citizen 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.”

For additional information on the DHS rule, including resources for talking with clients, see [PIF's Know Your Rights webpage](#).

U.S. Department of State (State Department) Interim Final Public Charge Rule

*State Department public charge determinations primarily apply when a non-citizen seeks to enter the U.S. or get a green **card from outside the U.S.** (via a U.S. consulate or embassy). Among other things, the State Department's Foreign Affairs Manual addresses how affidavits of support are evaluated by those consulates and embassies.*

The State Department issued its own new public charge rule, with a comment period that closed on November 12, 2019. On October 11, 2019, the State Department issued an [interim final rule](#) on public charge that attempts to align State Department public charge guidance with the new DHS rule. The interim final rule will not go into effect until after the State Department finalizes a new immigration form (DS-5540) and updates the Foreign Affairs Manual (FAM, which is used by officials at consulates and embassies). Until then, the FAM as updated in January 2018 is in effect. The updates made to the FAM in January 2018 were not made through the rulemaking process.

The January 2018 FAM includes changes to how affidavits of support are evaluated. It also allows consular officers to review past or current use of a wide range of public benefit programs — including SNAP, The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), school meals, Low-Income Home Energy Assistance Program (LIHEAP), Medicaid, Children's Health Insurance Program (CHIP), and education assistance, and even in-kind emergency community services, such as soup kitchens and crisis counseling — by the applicant, the applicant's dependents, the applicant's sponsor, or members of the sponsor's household. Although reports indicate that public charge determinations have changed at some consular offices — for example, applicants being scrutinized more carefully, and an increase in the number of denials and requests for additional information related to public charge — reports indicate changes are **primarily related to affidavits of support**, not related to public benefits. Nonetheless, it is recommended that families with members dealing with consulates seek specific legal advice about their individual situations.

For more information, see the National Immigration Law Center's (NILC) [Changes to "Public Charge" Instructions in the U.S. State Department's Manual](#).

U.S. Department of Justice (DOJ) Proposed Public Charge Rule

DOJ makes public charge deportability determinations.

DOJ has drafted but not yet published a proposed public charge deportability rule. In July 2019, DOJ submitted a draft notice of proposed rulemaking to the Office of Management and Budget. The DOJ rule, which reportedly would seek to establish criteria similar to the DHS rule, has not yet been published for public comment. FRAC will continue to monitor the process and alert stakeholders for opportunities to comment on the proposed rule if it is issued.

Current DOJ public charge rules are still in effect. Before a new rule could take effect, DOJ must follow proper administrative procedure, including issuing the rule for public comment. FRAC will continue to monitor the process and alert stakeholders about opportunities to comment on the rule.

Public charge deportability determinations have been made infrequently and, under current law, there are very narrow circumstances under which they can take place. There is a lengthy multi-step process that the federal government must undertake before a public charge deportation determination could even be made. Currently, only cash assistance and long-term institutional care programs can be considered, in a public charge deportation case and a person **cannot** be deported merely for using benefits for which they are eligible. For more information, see PIF's [Public Charge & Deportation FAQ](#).

Chilling Effects on Nutrition Program Participation

Fear is still rampant, even though the DHS public charge rule has not changed and the injunction has stopped the rule from taking effect as scheduled. The DHS rule has contributed to eligible people forgoing nutrition assistance for which they are eligible. This “chilling effect” on program use has extended beyond SNAP to programs that, even under the new rule, could not be used for a public charge determination.

The DHS public charge rule is just one factor contributing to an environment of fear that is driving eligible people to forgo participation in vital nutrition programs. Anti-hunger and nutrition stakeholders should ensure accurate information is available so that families can make informed decisions appropriate for their situation.

The chilling effect on SNAP participation is mostly affecting immigrants who would not be subject to DHS public charge determinations even if the new DHS rule took effect. The number of people who will not participate in SNAP because they would be directly impacted by the DHS rule by its terms (subject to DHS public charge considerations) is limited. The vast majority of non-citizens participating in SNAP are refugees, asylees, and legal permanent residents. These categories of

immigrants are not subject to DHS public charge determinations.¹ Likewise, U.S. citizen children living with a non-citizen are not subject to DHS public charge determinations, and the use of public benefits by a child or other family member of an applicant **cannot** be considered against the applicant.

The chilling effect extends beyond SNAP. WIC and the other child nutrition programs — including the Child and Adult Care Food Program, National School Lunch Program, School Breakfast Program, Afterschool Meal Program, and Summer Food Service Program — older adult nutrition programs (congregate meals and home-delivered meals programs), The Emergency Food Assistance Program, and the Commodity Supplemental Food Program **cannot** be used in a DHS public charge determination even if the new rule were in effect. These programs are not explicitly listed in the DHS rule (which is not in effect due to a nationwide injunction), and only benefit programs explicitly listed can be considered. Despite this, reports indicate that the rule has contributed to a chilling effect, particularly on [WIC participation](#).

Take Action

There are many actions anti-hunger and nutrition stakeholders can take to help protect the nutrition, health, and well-being of members of immigrant families, their community, and the country:

- Disseminate information from this brief and PIF's materials regarding the basic facts about public benefits and public charge rules.
- Work with immigration and public benefit attorneys in your area to identify appropriate outlets to make referrals for families seeking specific legal advice and to confirm that those families who are referred for legal advice will be served.
- Watch out for a DOJ public comment period. Check [FRAC's immigration page](#) for updates.
- Document and share stories on the chilling effect. See PIF's [Documenting the Harm Memo](#).
- Work to counter the chilling effect in your area. See PIF's [community resources page](#), and NILC's [privacy protections](#) and [eligibility for federal programs](#).
- Work with your state and local agencies to protect public benefit program access. See PIF's [Toolkit for State and Local Government Officials](#) and [Key Actions that States, Localities and Service Providers Can Take to Support Immigrant Access to Health, Nutrition, and Housing Programs](#).
- Stay up to date on developments with [FRAC](#) and [PIF](#).

¹ 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.