



**February 24, 2020:** *The new Department of Homeland Security (DHS) [public charge rule](#) took effect nationwide on Monday, February 24, 2020. Two decisions by the U.S. Supreme Court—a January 2020 [decision that lifted the nationwide injunction](#) and a February 2020 [decision that lifted the Illinois injunction](#)—cleared the way for DHS’ U.S. Citizenship and Immigration Services [to start applying the final rule’s provisions](#). FRAC criticized the January 2020 Supreme Court decision to allow implementation of the rule change—which, among other harms, chills immigrant families’ access to SNAP and other public benefits—to go forward while legal challenges to the rule are heard on the merits.*

## **Update for Anti-Hunger and Nutrition Stakeholders: Unpacking the Three Public Charge Rules**

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.

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) or seek a visa.*

**The new DHS [public charge rule](#) took effect February 24, 2020.** On January 27, 2020, the U.S. Supreme Court lifted the temporary nationwide injunction that had prevented the DHS rule from taking effect as originally scheduled and, on February 21, 2020, lifted the Illinois statewide preliminary injunction. These decision allowed DHS to move forward with implementing the rule everywhere in the U.S. while litigation on the merits of the rule continues. On January 30, 2020, [DHS' U.S. Citizenship and Immigration Services \(USCIS\) announced](#) February 24, 2020 as the start of implementation.

Implementation of the rule will dramatically change the public charge test in economic terms by adding a new income threshold and specific factors to consider. It also will — 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 will count wealth and income as the primary markers of a person's future contribution, fundamentally changing who can stay in the country.

**Litigation on the merits of the rule is ongoing.** The issue the Supreme Court ruled on in early 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 (whether the DHS rule or the manner in which it was adopted are valid) are ongoing in several federal courts. The rule could be found invalid on the merits.

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

**The use of benefits by family members does not count in a DHS public charge determination.** The new DHS rule states 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.”

**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, and likely will be referenced in rulings on the merits.

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 a parallel public charge rule, which also took effect February 24, 2020.** On October 11, 2019, the State Department issued an [interim final rule](#) on public charge to align State Department public charge guidance with the new DHS rule. On Friday, February 21, 2020, a New York District Court denied a motion that would have prevented the State Department rule from going into effect on February 24, 2020. Consequently, the State Department issued the final forms and manual changes required to implement the new rule as of February 24, 2020.

For more information, see [PIF's research and analysis page](#).

## **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**

**Even before implementation of the new DHS public charge rule fear was rampant.** The rule has contributed to immigrant families 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 mostly affects immigrants who are not subject to DHS public charge determinations.** 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.<sup>1</sup> 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 under the new rule. These programs are not explicitly listed in the DHS rule, and only benefit programs explicitly listed can be considered. Despite this, reports indicate that even before the rule was finalized it 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

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<sup>1</sup> 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.

- 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](#).
  - Stay up to date on developments with [FRAC](#) and [PIF](#).