




An Update on the Public Charge Inadmissibility Rule: Litigation and Implementation

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Agenda

- **Refresher on the public charge inadmissibility rule**
 - Who does it apply to?
 - What are the changes to the public charge test?
- **Review latest developments in public charge litigation**
 - National
 - Illinois
- **Overview of USCIS implementation of the public charge rule**
- **Messaging and resources for community**
- **Q&A**

The Invisible Wall

PUBLIC CHARGE Grounds for inadmissibility (DOS & DHS)	PUBLIC CHARGE Grounds for deportation (Anticipated DOJ rule)	SPONSOR DEEMING SPONSOR LIABILITY Potential application to more programs (White House, CMS, FNS, & ACF memos)	NOTICE TO APPEAR Grounds for Deportation Proceedings (USCIS Guidance)	HEALTH CARE PROCLAMATION Low Income immigrants denied entry if they can't afford certain health coverage (WH Proclamation)	FEE WAIVER Removing receipt of means-tested benefits from eligibility list. (DHS Rule)
CITIZENSHIP QUESTION IN CENSUS 2020 Chills civic participation and will limit funding for basic needs programs that depend on accurate count (SCOTUS decision)	ACCESS TO PUBLIC HOUSING Closes door to mixed status families (HUD & USDA Proposed Rules)			ROLLBACK OF SECTION 1557 Reversing civil rights protections in health care. (DHHS Proposed Rule)	DEFERRED ACTION FOR MEDICAL EMERGENCIES Attempts to end protections for people seeking life saving treatment. (DHHS Proposed Rule)

The Invisible Wall Graphic (Updated October 2019)

Public Charge Test

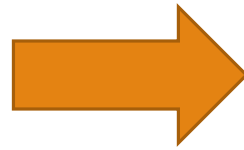
An assessment given to individuals seeking admission into the U.S or seeking to adjust status to Legal Permanent Resident.

A number of factors are considered in this test (called the Totality of Circumstances) to determine whether a person is **likely** to become a public charge in the future.

Changes to the public charge definition

Previous 1999 Definition

An immigrant “likely to become **primarily dependent** on the government for survival”.



New Definition

A person who “receives one or more 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).”



Immigrants applying to enter the U.S., extending, or changing of status of certain non-immigrant visas



Applicants seeking to become a Lawful Permanent Resident (LPR)



LPR who re-enters the U.S after more than 180 consecutive days (6 months) abroad

**Who is
subject to
the public
charge test?**

The public charge test does NOT apply to all immigrant statuses

- Lawful Permanent Residents (“green card holders”) applying for citizenship
- Refugees and Asylees
- VAWA Self-petitioners
- Survivors of Domestic Violence, Trafficking, or Other Serious Crimes (U or T visa applicants/holders)
- Special Immigrant Juveniles
- Humanitarian Visas

The public charge test mostly affects

- Those *seeking* lawful permanent resident (LPR) status based on a **family relationship**, these include:
 - Spouses, children, and unmarried adult sons and daughters of a U.S. citizen or LPR
 - Parents, siblings, and married sons and daughters of a U.S. citizen

What are the public benefits included in the new definition?

- Federal government cash assistance:
 - Supplemental Security Income (SSI)
 - Temporary Assistance for Needy Families (TANF)
- Institutionalization for long-term healthcare at the federal government's expense
- **Nutritional Assistance:** Supplemental Nutrition and Assistance Program (SNAP)
- **Healthcare:** Certain Non-Emergency Medicaid
- **Public Housing Assistance:** Section 8 Housing Choice Voucher Program, Section 8 Project-Based Rental Assistance, Section 8 Rehabilitation program, other Federal Public Housing
- **State, Local, and Tribal Cash assistance**
- **Non-cash TANF**

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- Benefits received by applicants in active duty/ ready reserve of U.S armed forces or their spouses/children will **NOT** be considered
 - Benefits received by international adoptees or children of U.S citizens will **NOT** be considered

What does the new definition **NOT** include?

Healthcare

- Medicaid for children under 21 and expecting mothers (includes All Kids, CHIP, Early and Periodic Screening, Diagnostic, and Treatment (EPSDT), Moms and Babies)
- State Medical VTTC program
- Direct Access Programs
- State and local funded HIV/AIDS care and prevention programs
- Vaccines for Children Program & vaccines provided by local and state health departments
- Illinois Breast and Cervical Cancer Program

Housing

- Homeless and transitional housing
- USDA home loan and grant programs
- HUD local continuum of care
- LIHEAP (Energy bill assistance)

Nutrition

- WIC
- School lunch or breakfast programs including the National School Lunch Act program
- VTTC state-funded SNAP
- Emergency Food Assistance Program

Public Charge Test

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A number of factors are considered in this test (called the Totality of Circumstances) to determine whether a person is **likely** to become a public charge in the future.

Changes to the public charge TOC test

Totality of Circumstances Test

➤ Income and Financial Status

- Assets; Liabilities/Debt; Credit Report & Score; Bankruptcy; **Use of specified public benefits**

➤ Age

- Whether age will inhibit ability to work : under 18 or over 61

➤ Education and skills

- Education history; occupational skills/certifications; English proficiency

➤ Health

- Health conditions; health insurance

➤ Family Status (that live in your household)

- Immigration status; financial status; household size

➤ Affidavit of Support (before was weighed more heavily)

- Whether they have a close relationship/family ; live together; has previously sponsored others

Applicant will need to submit most of this information in the new I-944 form: [Declaration of Self-Sufficiency](#)

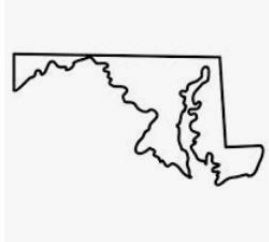
Public Charge Litigation

- Effective date was set to be October 15, 2019
- There were 9 lawsuits across 5 states (Oct. 2019)
- Five temporary injunctions (legal blocks) were put in place:



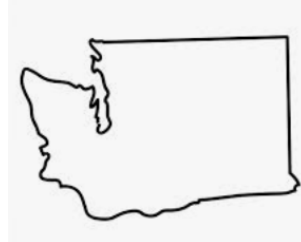
IL

statewide



MD

nationwide



WA

nationwide



CA

regionwide



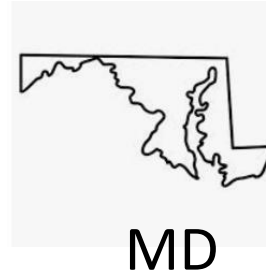
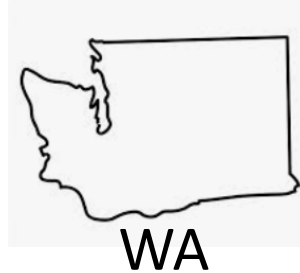
NY

nationwide

- The injunctions postponed the October 15, 2019 effective date **indefinitely**

Public Charge Litigation: National

- In December 2019: Circuit Court for California and Washington, and Circuit Court for Maryland ruled to lift their temporary injunctions to allow the rule to go into effect nationally during litigation. **Leaving only the NY nationwide injunction.**



- On January 8, 2020 the Circuit Court for New York ruled **NOT** to lift the nationwide injunction.



Public Charge Litigation: National



- On January 13, 2020, the current administration filed an emergency appeal application the U.S Supreme Court to lift the nationwide injunction that remained in place by the New York Circuit Court.



- On January 27, 2020, in a 5-4 ruling, the U.S Supreme Court lifted the last nationwide injunction, allowing the current administration to temporarily proceed with the DHS public charge rule while litigation continues. **SCOTUS specifically stated this decision DID NOT affect the Illinois statewide injunction.**



- USCIS set the implementation as **February 24, 2020**, EXCEPT in Illinois.



- On February 5, 2020 USCIS published new forms for those applying on or after February 24, 2020 including the **I-944: Declaration of Self-Sufficiency**. **Except for Illinois residents.**

Public Charge Litigation: Illinois

Illinois Coalition for Immigrant and Refugee Rights (ICIRR) and Cook County filed lawsuit & won preliminary statewide injunction for Illinois.

October 2019

Current administration appealed the preliminary statewide injunction soon after.

November 2019

Seventh Circuit Court of Appeals ruled to **NOT** lift the statewide injunction.

December 2019

Following SCOTUS decision, current administration renewed its request in Illinois to lift the statewide injunction.

January 2020

As of today, the Illinois statewide injunction **remains** in place, BUT that could change in the near future.

Overview of USCIS Implementation

- **U.S. Citizenship and Immigration Services will begin implementation on February 24, 2020**
 - Will only apply to applications and petitions postmarked or submitted on or after Feb. 24
 - Has published 12 revised forms consistent with the final public charge inadmissibility rule.
 - Applicants for adjustment of status subject to the public charge inadmissibility rule have to also submit I-944: Declaration of Self-Sufficiency
- **USCIS is prohibited from implementing the final rule in Illinois**
 - Decide Illinois residents' applications under the 1999 Field Guidance on Deportability and Inadmissibility on Public Charge Grounds
 - Will use current physical address on adjustment of status application
 - Do **NOT** need to submit the new I-944: Declaration of Self-Sufficiency; will reject applications that submit an I-944.
 - Do **NOT** use revised forms, continue to use old forms

Not Applicable in Public Charge Inadmissibility Rule

- 1) Noncash benefits received before February 24, 2020
- 2) Medicaid benefits received by an expecting mother or child under 21
- 3) Cash or noncash benefits received as a member of the military or spouse/child of one
- 4) Benefits received/to be received by certain children of U.S. citizens acquiring citizenship

Messaging

Most individuals subject to the public charge test **ARE NOT ELIGIBLE** for the specified public benefits.

Use of public benefits **WILL NOT AUTOMATICALLY** make you a public charge.

Use of public benefits by non-applicant children or family members **WILL NOT COUNT AGAINST** the individual's application for adjustment of status!

The public charge rule is **PROHIBITED FROM GOING INTO EFFECT** in Illinois as of **February 10, 2020**.

The public charge inadmissibility rule **WILL NOT APPLY RETROACTIVELY** for use of benefits before February 24 2020.

IT ISN'T OVER YET! Litigation is still pending, so the rule could be reversed at some point in the future.

Resources

Protecting Immigrant Families-IL Website with Illinois-specific public charge information:

www.protectingimmigrantfamiliesillinois.org

Sign-up to the Protecting Immigrant Families Illinois Coalition list-serv to get regular emails and information regarding public charge:

pifillinois@povertylaw.org

The Immigrant Family Resource Program works with immigrant families on public benefit applications. IFRP partners are continuously trained on issues such as public charge:

www.icirr.org/ifrp

Request a Training!

scartagena@latinopolicyforum.org

pifillinois@povertylaw.org



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