IABA RESOURCE:

NEW DHS PUBLIC CHARGE RULE

AUGUST 19, 2026

INTRODUCTION

The Department of Homeland Security (DHS) has issued a new public charge rule,[1] effective September 18, 2026, that rescinds the more defined framework adopted in 2022 and gives immigration officers broader discretion to determine whether an applicant is likely at any time to become a public charge.

The new rule applies to applications for admission made on or after September 18, 2026, and adjustment-of-status applications postmarked or electronically submitted on or after that date. United States Citizenship and Immigration Services (USCIS) issued policy guidance in the USCIS Policy Manual on August 18, 2026, explaining how officers will apply the new framework.[2]

1 Public Charge Ground of Inadmissibility, 91 Fed. Reg. 45,324 (July 20, 2026).

2 U.S. Citizenship & Immigr. Servs., Policy Alert: Public Charge Ground of Inadmissibility (Aug. 18, 2026).

WHAT IS THE PUBLIC CHARGE GROUND OF INADMISSIBILITY?

The “public charge” ground of inadmissibility is a rule that can prevent certain noncitizens from obtaining lawful permanent residence, or from being admitted to the United States, if the government determines, based on their circumstances, that they are likely to become a public charge. The inquiry generally focuses on the individual’s ability to remain self-sufficient, including whether they are likely to rely on public benefits.

Under section 212(a)(4) of the Immigration and Nationality Act (INA), certain noncitizens may be found inadmissible if the government determines they are likely at any time to become a public charge.

The new DHS rule does not change the underlying public charge law. Instead, it changes how immigration officers evaluate whether an applicant is likely to become a public charge.

WHO IS SUBJECT TO PUBLIC CHARGE?

The public charge ground of inadmissibility does not apply to every noncitizen or every type of immigration filing. For purposes of DHS and USCIS, the public charge ground generally applies when an individual:

- Seeks admission to the United States as an immigrant or nonimmigrant; or
- Applies to adjust status to lawful permanent resident.

Most family-sponsored and employment-based applicants for adjustment of status are subject to the public charge ground unless they fall within an exempt category.

Numerous categories are exempt by law, including:

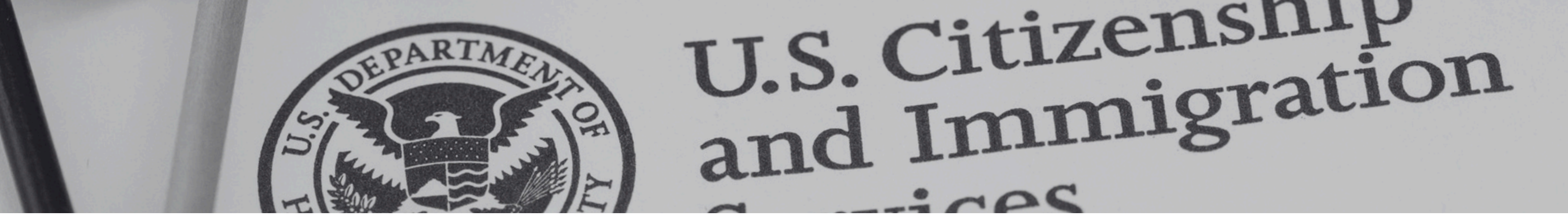
- Refugees and asylees;
- Special Immigrant Juveniles;
- T and U nonimmigrants;
- VAWA self-petitioners and certain other survivors of abuse;

- Applicants for Temporary Protected Status;
- Certain Afghan and Iraqi special immigrants;
- Certain Cuban, Haitian, Nicaraguan and other statutorily protected applicants; and
- Other categories specifically exempted by federal law.

The public charge ground does not apply merely because USCIS is adjudicating an immigrant or nonimmigrant petition. For example, it does not apply to USCIS adjudication of an H-1B petition or to an application to extend or change nonimmigrant status within the United States.

Whether the public charge ground applies ultimately depends on the immigration benefit sought and the applicant's particular immigration category.

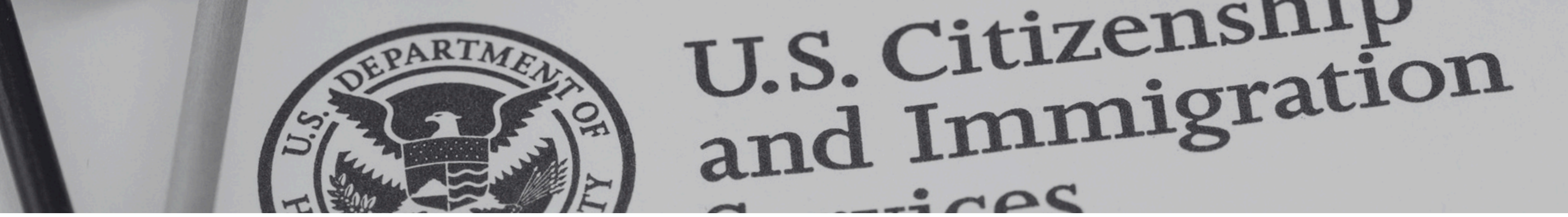
The new DHS rule governs public charge determinations made by DHS, including USCIS and U.S. Customs and Border Protection. It does not govern the Department of State's separate public charge determinations in visa adjudications or the Department of Justice's processes in immigration court.



HOW WILL USCIS EVALUATE PUBLIC CHARGE?

USCIS will make an individualized determination based on the totality of the applicant's circumstances. Officers must consider five factors required by the INA:

- **Age:** including its effect on the applicant's ability to work or support themselves;
- **Health:** including whether a health condition affects the applicant's ability to work, attend school, or care for themselves;
- **Family status:** including household size and financial obligations;
- **Assets, resources, and financial status:** including income, assets, liabilities, financial obligations, and relevant benefit use; and
- **Education and skills:** including education, employment history, occupational skills, licenses, and certifications.



Where required by law, USCIS will also consider an Affidavit of Support (Form I-864).

USCIS may also consider other circumstances relevant to whether the applicant is likely at any time to become a public charge, including:

- The applicant’s receipt of any means-tested public benefits;
- Individualized, case-specific circumstances relevant to the applicant’s ability to remain self-sufficient; and
- Empirical information relevant to the applicant’s self-sufficiency.

No single factor, including receipt of a public benefit, automatically results in a public charge finding. USCIS will consider all relevant circumstances together in determining whether the applicant is likely at any time to become a public charge.

PUBLIC BENEFITS WILL RECEIVE GREATER SCRUTINY

One of the most significant changes involves which public benefits USCIS may consider in making a public charge determination.

Under the 2022 rule, USCIS generally considered only:

- Supplemental Security Income (SSI);
- Temporary Assistance for Needy Families (TANF);
- State, Tribal, territorial, or local cash assistance for income maintenance; and
- Long-term institutionalization at government expense.

The new rule removes that limited regulatory definition. For benefits received on or after September 18, 2026, USCIS may consider an applicant’s receipt of any means-tested public benefit as part of the totality of the circumstances, including:

- Cash assistance for income maintenance;
- Housing assistance;

- Food stamps;
- Means-tested public benefits related to higher education, such as certain forms of financial aid; and
- Other similar means-tested benefits.

Receipt of a benefit does not automatically result in a public charge finding; it is one consideration within the broader analysis.

WHAT ABOUT BENEFITS RECEIVED BEFORE SEPTEMBER 18, 2026?

Adjustment applications properly postmarked or electronically submitted before September 18, 2026 remain subject to the 2022 public charge regulations. DHS states that it will not retroactively apply the expanded benefit considerations to benefits received before September 18, 2026. For benefits received before that date, USCIS will consider only the categories recognized under the 2022 rule:

- Cash assistance for income maintenance; and
- Long-term institutionalization at government expense.

A benefit that was excluded from consideration under the 2022 rule does not become a negative factor retroactively simply because USCIS may consider that type of benefit under the new framework after September 18. However, if an applicant continues to receive a previously excluded means-tested benefit on or after September 18, 2026, USCIS may consider the receipt occurring on or after that date.

BENEFITS RECEIVED BY CHILDREN OR OTHER FAMILY MEMBERS

DHS generally will not consider public benefits received by an applicant's family or household members.

For adjustment-of-status applications, a U.S. citizen child's receipt of benefits generally will not be treated as though the immigrant parent received those benefits. However, the financial circumstances of an applicant's household may still be relevant to other parts of the public charge analysis. USCIS may consider, for example, an applicant's income, resources, household obligations, and the number of people the applicant financially supports when evaluating the applicant's assets, resources, and financial status and family status.

USCIS may consider a family member's benefits where they are tied to the applicant's income and the applicant is legally obligated to support that family member, or where the benefits provide financial support to the applicant.

EMPLOYMENT-BASED IMMIGRATION

The rule does not apply to USCIS adjudication of H-1B petitions. DHS has also recognized that F, J, and H nonimmigrants are generally ineligible for federal means-tested public benefits, and that the temporary nature and purpose of their stay may weigh favorably in the public charge analysis.

For employment-based adjustment applicants, the new guidance makes the broader totality-of-the-circumstances analysis particularly important. Current employment, salary, professional qualifications, education, occupational skills, employment history, and financial resources may all provide favorable evidence regarding an applicant's ability to remain self-sufficient. Employment alone does not exempt an otherwise subject employment-based adjustment applicant from the public charge analysis.

PUBLIC CHARGE BONDS

The USCIS guidance addresses the possibility of securing a public charge bond. If USCIS determines that an applicant is likely to become a public charge but is otherwise admissible, USCIS may, in its discretion and where permitted by law, allow the applicant an opportunity to post a bond rather than deny the adjustment application solely on public charge grounds.

If USCIS determines that a bond may be appropriate, USCIS will notify the applicant and provide instructions regarding the bond process. Applicants should therefore not attempt to submit a public charge bond unless specifically invited to do so by USCIS.

WHAT SHOULD APPLICANTS DO NOW?

Individuals who may be subject to public charge should:

- Review adjustment-of-status filing timelines, particularly if eligible to file before September 18, 2026;
- Maintain documentation of employment, income, assets, education, health insurance, and other evidence of financial stability;
- Identify any means-tested public benefits they personally receive, including when those benefits were received;
- Keep track of which benefits are received by the applicant and which are received independently by U.S. citizen children or other family members; and
- Consult immigration counsel before discontinuing benefits or making immigration decisions based on public charge concerns.

SUPPORT IABA

Support IABA's mission in three impactful ways:

- **Donate.** Make a tax-deductible contribution to fund scholarships, advocacy, and community programs.
- **Join.** Become a member to stay informed, engaged, and connected to opportunities.
- **Follow.** Help amplify our voice by following and sharing our posts on Instagram, LinkedIn, and Facebook.

DISCLAIMER: This guide provides general information that may not be applicable in every situation and does NOT constitute legal advice. If you need legal advice regarding a specific situation, you should consult with a licensed and trusted attorney.