

# How Will the Public Charge Rule Impact Families Seeking and Using Federal Housing Assistance?



On August 14, 2019, the U.S. Department of Homeland Security (DHS) published a final rule that seeks to change the way in which DHS determines whether an immigrant is likely to become a “public charge.” The rule, **effective October 15, 2019**, would penalize low and moderate-income immigrant families based on a prediction that they may use certain federal benefits in the future. **The rule could also affect immigrant families that use or qualify for federal housing assistance.**



## What is a public charge?

Currently, many noncitizens are subject to a “public charge” test as part of their immigration process. The test looks at whether an individual is likely to be “**primarily dependent** on the government for subsistence, as shown by either the receipt of **public cash assistance** or institutionalization for long-term care at the government’s expense” (emphasis added). **The current test does not consider federal housing assistance.** If a person is determined to be a public charge, they can be denied admission into the U.S or denied a green card.



## How does the new rule change the public charge test?

The rule would change the public charge test to examine whether individuals seeking admission into the U.S. or lawful permanent resident status have applied for, been approved for, use or receive, or are likely to use or receive one or more public benefits, **including non-cash benefits, such as certain federal housing assistance.** The rule will require some immigrants and their families to choose between receiving critical benefits and risking their ability to enter or stay in the United States.

Importantly, this rule will penalize low and moderate-income families based on a prediction that **they may use a public benefit in the future, even if they have never received federal benefits.** This prediction is based on certain factors including income, age, health, and education level.

Additionally, the rule will require nonimmigrants seeking to extend their stay or change their immigration status to demonstrate that they have not, since receiving their nonimmigrant status, used public benefits over a specified threshold.



## What affordable housing programs are covered by the rule?

The rule explicitly includes three federal housing programs: Section 8 Housing Choice Voucher Program, Project-Based Section 8 Rental Assistance (including Section 8 Moderate Rehabilitation), and Public Housing.



## Who would be directly affected by the rule?

The rule will apply to noncitizens who are applying for lawful permanent resident (LPR) status (a green card), individuals seeking an extension of or changes to their non-immigrant status, and immigrants seeking admission into the U.S. The rule will mostly affect individuals that are seeking LPR status through a family-based visa petition.

Some immigrants will not be subject to the public charge test. These include refugees, asylees, survivors of trafficking and other serious crimes, self-petitioners under the Violence Against Women Act, special immigrant juveniles, certain people who have been paroled into the U.S., as well as lawful permanent residents applying for U.S. citizenship.

However, certain immigrants who currently receive or are eligible to receive public housing and Section 8 subsidies (such as parolees) would be subject to the public charge test, if they apply for a green card through a family-based petition.

## **Will an applicant's children's use of housing benefits count against the applicant?**

The rule **will not consider whether an applicant's children, including both immigrant and U.S. citizen children, have ever sought, received, or used public benefits.** The test only looks at the applicant's personal use of these benefits—**children's use of these benefits will not be counted against their parents.** However, if a child is applying for status themselves, any subsidy they receive would be weighed against them in a public charge test.

## **How else will this rule impact immigrant families?**

The chilling effect of the rule cannot be underestimated. Because the rule changes long-standing federal policy and has created confusion over the extent of its reach, we are already hearing about immigrants and their families foregoing critical assistance. This means family budgets will be tightened, directly impacting the amount of money a family has for housing. The rule could place millions of immigrants at risk of homelessness.

## **I am worried the rule applies to me. Should I give up my benefits?**

Every situation is different, and many people are exempted under the rule. Individuals should consult with an immigration attorney to determine what the best option is for their family. This online directory can help you search for local nonprofits that provide legal help and advice: [ImmigrationLawHelp.org](http://ImmigrationLawHelp.org).

## **When will the rule be in effect?**

The rule will be in effect beginning October 15, 2019. However, several lawsuits have been filed to block implementation of the final rule, so there is a possibility that the effective date will be pushed back further or that the rule will be rescinded entirely.

Use of non-cash benefits before **October 15, 2019 will not be considered** in an applicant's public charge determination.

## **Where can I get more information?**

The Protecting Immigrant Families Campaign's [website](#) has up-to-date resources on the public charge rule and related policies. This [fact sheet](#) from the Protecting Immigrant Families Campaign has more details regarding the public charge rule. For a deep dive into the housing implications of the rule, see our ["Technical" Public Charge Fact Sheet](#).

**For further assistance, please contact Karlo Ng at [kng@nhlp.org](mailto:kng@nhlp.org), or Arianna Cook-Thajudeen at [acooktha@nhlp.org](mailto:acooktha@nhlp.org).**