

MEMORANDUM

To: Housing Justice Network
From: National Housing Law Project
Re: **U.S. Department of Homeland Security's (DHS) Final Rule on Public Charge & Housing and Homelessness Benefits**
Date: September 25, 2026

On September 18, 2026, the U.S. Department of Homeland Security's (DHS) final rule on "the public charge inadmissibility test" (2026 Final Rule) went into effect.¹ "Public charge" is a ground of inadmissibility – that is, people who are found likely to become a "public charge" may be denied admission to the United States or approval of their application for lawful permanent resident status (*i.e.*, a green card) because they are likely to depend on the government for support. This memorandum highlights what housing and homelessness advocates should know about the 2026 Final Rule, which applies to people whose green card applications are processed in the U.S.²

Most immigrants who receive housing and homelessness assistance will not be subject to the public charge inadmissibility test. The 2026 Final Rule applies only to a subset of immigrants applying for, receiving, or deemed likely to receive means-tested public benefits, including housing and homelessness assistance.

For immigrants who are subject to a public charge test, an immigration officer must consider at least five factors in determining whether a person is likely to become a public charge: the person's age, income/resources, education/skills, health, and family size.³ The immigration officer may also consider other factors, including certain benefits that the applicant (or dependents) are using or have used in the past.

Before the 2026 Final Rule went into effect, the only public benefits that immigration officers could consider were the receipt of public cash assistance or institutionalization for long-term

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

² For a general explanation of the 2026 Final Rule as well as policies for people seeking to enter the U.S. or who need to complete their green card applications abroad, please consult the Protecting Immigrant Families coalition's [Public Charge Regulation Toolkit](#) and the National Immigration Law Center's [Public Charge: Frequently Asked Questions for Immigration Advocates](#).

³ Where applicable, the immigration officer may also consider the contract or "affidavit of support" signed by a sponsor promising to support the applicant.

care at the government’s expense. The 2026 Final Rule removed these limits when it rescinded the prior rule (2022 Rule)⁴ without providing any replacement regulatory text.⁵

The 2026 Final Rule does not specify the benefits that can be considered in determining whether a person is likely to become a public charge. Accompanying guidance from DHS makes a similar omission.⁶ This lack of clarity departs significantly from the 2022 Rule, which reflected longstanding agency practice and policy.

In the absence of regulatory guardrails, the 2026 Final Rule could fundamentally change the way in which the agency conducts the “public charge inadmissibility test,” which is likely to increase the risk of arbitrary and discrimination determinations that will harm immigrant families as well as chill their use of public benefits.

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⁴ Inadmissibility on Public Charge Grounds, 87 Fed. Reg. 55,472 (Sept. 9, 2022) (hereinafter “2022 Rule”).

⁵ The exception is the 2026 Final Rule does include limited language about bonds.

⁶ U.S. Citizenship & Immigration Services, Policy Alert, Public Charge Ground of Inadmissibility (Aug. 18, 2026) (announcing revisions to the entirety of USCIS Policy Manual, Vol. 8, Part G, Admissibility: Public Charge Ground of Inadmissibility), available at <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20260818-PublicChargeFinalRule.pdf>.

What is public charge?

“Public charge” is a ground of inadmissibility. People who are found likely to become a “public charge,” may be denied admission to the United States or lawful permanent resident status (i.e., a green card) because they are likely to depend on the government for support.

The 2022 Rule defined “likely at any time to become a public charge” as “likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance or institutionalization for long-term care at the government’s expense.”⁷

The 2026 Final Rule removes this definition without providing a new definition in its place. On August 18, 2026, the U.S. Citizenship and Immigration Services (USCIS) issued policy guidance that provides additional detail. Regarding the lack of a definition, USCIS stated that it would abandon the longstanding “primary dependence standard or consideration of only a narrow and specific list of public benefits.”⁸

Which immigrants could be subject to the 2026 Final Rule?

The 2026 Final Rule applies to some people who are applying for lawful permanent resident (LPR) status or who are seeking admission into the U.S. The Rule mainly affects individuals who are seeking LPR status through a family-based or employment-based visa petition.

Some immigrants are not subject to a public charge test. These immigrants include refugees, asylees, TPS applicants and re-registrants, T- and U-visa holders, self-petitioners under the Violence Against Women Act, battered qualified immigrants, Special Immigrant Juveniles, certain people who have been paroled into the U.S., several other categories of noncitizens, as well as lawful permanent residents applying for U.S. citizenship.

Advocates should consult the National Immigration Law Center’s [Public Charge Applicability Table for Advocates](#), a resource designed to help advocates quickly identify whether public charge inadmissibility applies to an individual.

What is considered in a public charge test?

An immigration officer must consider at least five factors in determining whether a person is likely to become a public charge: the person’s age, income/resources, education/skills, health, family size, and where applicable, may also consider the contract or “affidavit of support” signed by a sponsor promising to support the applicant. The immigration officer may also consider

⁷ The exception is the 2026 Final Rule does include limited language about bonds.

⁸ USCIS Policy Manual, Vol. 8, Part G, Admissibility: Public Charge Ground of Inadmissibility, ch. 1 (Aug. 18, 2026), *available at* <https://www.uscis.gov/policy-manual/volume-8-part-g-chapter-1>

other factors, including certain benefits that the applicant (or dependents) are using or have used in the past.

Which housing benefits are considered in a public charge test?

The 2026 Final Rule removes the regulatory provision that limits consideration of public benefits to current or past receipt of cash assistance for income maintenance or long-term institutionalization at government expense. Instead of providing a list of public benefits that factor into a public charge determination, the 2026 Final Rule gives immigration officers broad discretion to consider any means-tested public benefit.

Recognizing the absence of a definition of “means-tested public benefits” in the USCIS policy manual, DHS advises immigration officers to consider the following when deciding whether a program is a means-tested public benefit:

- “A benefit is generally considered to be means-tested if eligibility for the benefit is determined based on the applicant’s income or assets falling below a certain threshold;
- A benefit is generally considered a ‘public’ benefit if the payments or assistance are provided by an agency of the government or by appropriated funds of the government.”⁹

The USCIS Policy Manual specifically names “public or assisted housing” as an example of public benefits that could potentially be means-tested public benefits relevant to a public charge inadmissibility determination.¹⁰ This provision is broader than the 2022 Rule, which did not authorize consideration of any housing or homelessness benefits. It is also broader than the public charge rule issued by the first Trump administration, which only enumerated public housing and Section 8 programs.¹¹

The 2026 Final Rule is not retroactive. For the subset of immigrants who are subject to the public charge test, this means that housing and homelessness assistance benefits factor into the public charge determination only if:

- (1) The applicant is an immigrant is subject to the public charge test;
- (2) The applicant submitted their green card application on or after September 18, 2026, *and*
- (3) The housing and/or homelessness assistance benefits are used on or after September 18, 2026.

⁹ USCIS Policy Manual, Vol. 8, Part G, Admissibility: Public Charge Ground of Inadmissibility, ch. 2 (Aug. 18, 2026), *available at* <https://www.uscis.gov/policy-manual/volume-8-part-g-chapter-2>

¹⁰ *Id.* Note also that the preamble of the 2026 Final Rule states: “Regarding the scope of housing assistance considered, DHS considers all government provided, paid, or subsidized housing assistance for which the *alien* is a beneficiary so long as it is means-tested.” Public Charge Ground of Inadmissibility, 91 Fed. Reg. 45,324, 45,390 (July 20, 2026) (emphasis in original).

¹¹ Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292, 41,501 (Aug. 14, 2019).

Remember that most immigrants are not subject to the public charge test and therefore do not have to worry about their use of housing and homelessness assistance.

	Green Card Applications Submitted before 9/18/2026	Green Card Applications Submitted on or after 9/18/2026
Housing and homelessness assistance benefits used before 9/18/2026	Not considered	Not considered
Housing and homelessness assistance benefits used on or after 9/18/2026	Not considered	May be considered as part of totality of the circumstances

Does use of housing assistance automatically make a person likely to become a public charge?

Use of benefits, including housing and homelessness assistance, should not automatically make a person likely to become a public charge.

Federal law currently requires immigration officials to look at multiple factors, including the noncitizen's age, health, income, assets, family status, education, and skills. They may also consider whether an applicant has submitted a sufficient affidavit of support (a contract where the petitioning relative, and in some cases a joint sponsor, promises to support the immigrant at 125% of the federal poverty level). Under this totality of the circumstances analysis, no single factor should be determinative.

Note, however, that the 2026 Final Rule fails to provide any guardrails on the discretion of immigration officials to make a public charge determination.

Will housing and homelessness assistance benefits applied for or received on behalf of family members be considered in a public charge determination?

The 2026 Final Rule removes the regulatory definition of "receipt of public benefits," which explicitly stated that applying for or receiving benefits on behalf of family is not considered "receipt."

According to the DHS guidance, an immigration official may consider a family member's use of benefits if (i) the applicant is legally obligated to support the family member and (ii) the family member applied for, was approved for, or received means-tested public benefits (including housing and homelessness benefits) based on the applicant's income falling below a certain threshold. In the examples offered by the DHS guidance, receipt of benefits by an applicant's child are considered, even if the child is a U.S. citizen. On the other hand, receipt of benefits by an applicant's father-in-law is not considered.

Note, however, that USCIS does not collect information about the receipt of means-tested public benefits by an applicant's household members on Form I-485.

How does the 2026 Final Rule impact families who may use housing and homeless assistance programs but are not subject to the rule?

The 2026 Final Rule will have a chilling effect on immigrant families not subject to the rule. This rule has increased the panic, fear, and confusion already felt by millions of immigrant families across the country due to the Trump Administration's ongoing anti-immigrant rhetoric and policies. This policy change will deter many eligible immigrant families from seeking or keeping much-needed housing and homelessness benefits, regardless of whether they are subject to the new rule. Studies have shown that unstable housing situations can cause individuals to experience increased hospital visits, loss of employment, and mental health problems. Having safe and stable housing is crucial to a person's good health, sustaining employment, and overall self-sufficiency. The rule threatens to undermine the overall well-being of low-income immigrants and their families.

The rule will exacerbate child poverty and homelessness. The rule will have dire effects on health and educational outcomes for the children of immigrants, hampering economic mobility, increasing child and family poverty, and undercutting ongoing efforts to prevent and end homelessness. Programs such as SNAP and the Housing Choice Voucher program help support children and families on their path to self-sufficiency, and open up educational and economic opportunities in the long-term, especially for individuals who received assistance as young children. Such a rule is likely to trap low-income immigrant families in intergenerational poverty, and harm society and the economy in the process.

When did the 2026 Final Rule become effective?

The 2026 Final Rule went into effect for immigration applications postmarked or submitted electronically on or after September 18, 2026. Use of non-cash benefits (other than long-term care) before September 18, 2026 will not be considered in an applicant's public charge determination.

Several lawsuits have been filed to try to block or delay implementation of the 2026 Final Rule. For status updates on these cases, please refer to [the Protecting Immigrant Families's tracker on the 2026 Final Rule](#).

What should I tell clients and others who are worried about this rule?

Although this rule poses a big barrier for some immigrants, it is important to remember that **most immigrants do not have to worry about public charge**.

- Lawful permanent residents (people with a green card) are not subject to a public charge test when they renew their green card, apply for US citizenship, or leave the US for less than 180 days. If they leave the US for more than 180 days and seek to reenter, they could be treated as a new entrant and be subject to a new public charge test.

- Some green card applicants, such as asylees and refugees are exempt from the public charge test. We strongly urge advocates to consult the National Immigration Law Center's [Public Charge Applicability Table for Advocates](#) to identify whether public charge inadmissibility applies to an individual.
- Some immigrants, including many undocumented individuals, do not have a pathway to obtaining a green card, so the public charge test isn't likely to come up.

Because the rules are complicated and everyone's situation is different, immigrants should consult with an immigration attorney to determine the best option for their family. This online directory can help you search for local nonprofits that provide legal help and advice: [ImmigrationLawHelp.org](https://www.immigrationlawhelp.org).

Where can I get more information?

For more information about the 2026 Final Rule, please visit the Protecting Immigrant Families coalition's [Public Charge Regulation Toolkit](#) and the National Immigration Law Center's resource [Public Charge: Frequently Asked Questions for Immigration Advocates](#).

For further assistance, please contact Marie Claire Tran-Leung, mctranleung@nhlp.org.

Appendix: Comparison of Eligibility for Housing Assistance and Public Charge Exemptions

The public housing and Section 8 programs are already subject to immigration status eligibility requirements under Section 214 of the Housing and Community Development Act.¹² Therefore, only certain categories of noncitizens are eligible for these programs. Table 1 examines the categories of immigrants eligible to receive public housing and Section 8 and whether these immigrants would be subject to the public charge inadmissibility test.

Table 1 – Comparison: Eligibility for Housing Assistance and Public Charge Exemptions	
Immigrants Eligible for Public Housing and Section 8 Programs	Subject to the Public Charge Test?
Lawful Permanent Residents. ¹³	No (with limited exceptions). ¹⁴
Immigrants granted lawful permanent residence through registry under section 249 of the Immigration and Nationality Act (8 U.S.C. § 1259). ¹⁵	No (with limited exceptions). ¹⁶
Asylees. ¹⁷	No. ¹⁸
Refugees. ¹⁹	No. ²⁰
Parolees. ²¹	Potentially (if they adjust their status through a pathway subject to the public charge test, <i>e.g.</i> a family-based petition).

¹² 42 U.S.C. § 1436a.

¹³ 42 U.S.C. § 1436a(a)(1).

¹⁴ Lawful permanent residents (people with a green card) are not subject to a public charge test when they renew their green card, apply for US citizenship, or leave the US for less than 180 days. If they leave the US for more than 180 days and seek to reenter, they could be treated as a new entrant and be subject to a new public charge test.

¹⁵ 42 U.S.C. § 1436a(a)(2).

¹⁶ 8 U.S.C. § 1259; see also 8 C.F.R. § 249; *see also* USCIS Policy Manual, Vol. 8, Part G, Admissibility: Public Charge Ground of Inadmissibility, ch. 3 (Aug. 18, 2026), *available at* <https://www.uscis.gov/policy-manual/volume-8-part-g-chapter-3>

¹⁷ 42 U.S.C. § 1436a(a)(3).

¹⁸ 8 U.S.C. § 1158; 8 C.F.R. § 209.2; *see also* USCIS Policy Manual, Vol. 8, Part G, Admissibility: Public Charge Ground of Inadmissibility, ch. 3 (Aug. 18, 2026), *available at* <https://www.uscis.gov/policy-manual/volume-8-part-g-chapter-3>

¹⁹ 42 U.S.C. § 1436a(a)(3).

²⁰ 8 U.S.C. § 1157; 8 C.F.R. § 209.1; *see also* USCIS Policy Manual, Vol. 8, Part G, Admissibility: Public Charge Ground of Inadmissibility, ch. 3 (Aug. 18, 2026), *available at* <https://www.uscis.gov/policy-manual/volume-8-part-g-chapter-3>

²¹ 42 U.S.C. § 1436a(a)(4).

Granted Withholding of Removal. ²²	Potentially (if they adjust their status through a pathway subject to the public charge test, <i>e.g.</i> a family-based petition)
Immigrants admitted for permanent residence under section 245A of the Immigration and Nationality Act [8 USCS § 1255a]. ²³	No (with limited exceptions). ²⁴
Immigrants admitted for temporary residence under section 245A of the Immigration and Nationality Act [8 USCS § 1255a]. ²⁵	No (with limited exceptions). ²⁶
Immigrants lawfully admitted pursuant to section 141 of the Compacts of Free Association with the Marshall Islands, the Federated States of Micronesia, and Palau (COFA) (48 U.S.C. 1931 note). ²⁷	Potentially (if a COFA noncitizen leaves the country, they can be subject to a public charge determination upon re-entry, or if they adjust their status through a pathway subject to the public charge test, <i>e.g.</i> a family-based petition). ²⁸
Violence Against Women Act (VAWA) Self-Petitioners. ²⁹	No. ³⁰
Immigrants who have a prima facie case determination or have been granted T nonimmigrant status as a Survivor of Trafficking. ³¹	No. ³²

²² 42 U.S.C. § 1436a(a)(5).

²³ 42 U.S.C. § 1436a(a)(6).

²⁴ This category of immigrant is from the Immigration Reform and Control Act of 1986. LPRs, including those who secured status under this law, are generally not subject to a public charge determination. Limited exceptions may apply to individuals that leave the U.S. for more than 180 days and then seek admission upon reentry.

²⁵ 42 U.S.C. § 1436a(a)(6).

²⁶ While there aren't many people left in this category - it's possible if a person is still appealing a very old case, they could be subject to specific public charge rules when they apply for adjustment of status unless the applicant is or was an aged, blind, or disabled individual; see 8 U.S.C. § 1255a(d)(2)(B)(ii)(IV).

²⁷ 42 U.S.C. § 1436a(a)(7).

²⁸ COFA migrants are not exempted under the 2026 Final Rule and may be subject to public charge determinations if they seek reentry into the US.

²⁹ Memorandum from Tonya Robinson, HUD Acting General Counsel, to Julian Castro, HUD Secretary re: Eligibility of Battered Noncitizen Self-Petitioners for Financial Assistance Under Section 214 of the Housing and Community Development Act of 1980 (Dec. 15, 2016).

³⁰ 8 U.S.C. § 1182(a)(4)(E).

³¹ 22 U.S.C. § 7105(b)(1)(A).

³² 8 U.S.C. § 1182(a)(4)(E).