

Public Charge Determination - for petitions filed by UM

NOTE: On March 9, 2021, the Department of Homeland Security [announced](#) [1] that it has found that the Public Charge rule is "neither in the public interest nor an efficient use of limited government resources. Consistent with that decision, the Department of Justice will no longer pursue appellate review of judicial decisions invalidating or enjoining enforcement of the 2019 Rule." USCIS [confirmed that it will no longer be applying the 2019 rule](#) [2]. "As a consequence, among other changes, USCIS will apply the public charge inadmissibility statute consistent with the 1999 [Interim Field Guidance](#) [3]. In other words, USCIS is not considering an applicant's receipt of Medicaid (except for long-term institutionalization at the government's expense), public housing, or Supplemental Nutrition Assistance Program (SNAP) benefits as part of the public charge inadmissibility determination." See also this [letter](#) [4] from USCIS to its agency partners on the topic.

2019 Public Charge Rule (*until 3/9/2021*):

On January 30, 2020, USCIS announced that it would implement its new [Public Charge regulation](#) [5] with an effective date of February 24, 2020. US immigration law has long required that temporary visitors and new permanent residents are self-sufficient and do not rely on certain public benefit programs once in the US. In other words, the law has long required that people do not become a "public charge." When determining whether or not someone is or would likely become a public charge, USCIS would only consider a small number of benefit programs and USCIS would only ask about receipt of these benefits under relatively limited circumstances.

Effective February 24, 2020, USCIS will consider more public benefits in its "public charge" determination and will ask about receipt of these benefits in more situations, including when filing a petition to *change* or *extend* someone's immigration status. This information is not collected by USCIS when an H-1B petition is filed for a new employee coming from abroad or for an employee who is not seeking an extension of their stay within the United States.

Specifically, USCIS requires that we confirm whether the individual for whom we file a petition has "**received**, since obtaining the nonimmigrant status that [we] seek to extend or that [we] seek to change on behalf of the beneficiary [...] or is the beneficiary currently **certified to receive** [i.e. "approved to receive"], the following public benefits?"

- Any federal, state, local, or tribal cash assistance for income maintenance, such as
 - Supplemental Security Income (SSI);
 - Temporary Assistance for Needy Families (TANF) which may be provided under another [state name](#)

[6];

- Federal, state, or local cash benefit programs for income maintenance (often called “General Assistance” in the state context, but which may exist under other names);
- Supplemental Nutrition Assistance Program (SNAP) – formerly called “Food Stamps”;
- Section 8 Housing Assistance under the Housing Choice Voucher Program;
- Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation);
- Housing under the Housing Act of 1937; and
- Federally-funded Medicaid (with some exceptions); federally funded Medicaid may also be provided under a [state name](#) [7].

There are other cash benefits that may be considered by USCIS, but that information is not requested on the petition the employer will file, i.e. Form I-129. Also, note that “tax-related cash benefits” are not considered by USCIS. Receipt of Medicare, Workers’ Compensation, Unemployment, Disability Insurance and Social Security benefits (among others) are not considered by USCIS as part of its public charge determination.

Medicaid, even if federally funded, is also not considered if the benefit was provided for “an emergency medical condition”; “services or benefits funded by Medicaid but provided under the Individuals with Disabilities Education Act (IDEA)”; “school-based benefits provided to children who are at or below the oldest age of children eligible for secondary education as determined under State law”; “benefits received by an applicant under the age of 21”; and “benefits received by a pregnant applicant, including the period during the pregnancy and 60 days after the end of the pregnancy.” However, USCIS does require that the employer disclose whether the beneficiary has received, has been approved to receive or has applied for any of these Medicaid benefits.

Note that receiving any of the benefits considered/listed above does NOT mean that the recipient is no longer eligible for the immigration benefit for which the petition will be filed. However, if one has received or has been approved to receive these benefits, additional information may need to be provided.

For more information, please refer to the

- [Public Benefits section of the USCIS Policy Manual](#) [8]
- [USCIS Public Charge website, including FAQ](#) [2]

Should you have any questions about the new Public Charge rule, please consult with FSIS.

Source URL: <https://internationalcenter.umich.edu/fsis/public-charge-determination>

Links

[1] <https://www.dhs.gov/news/2021/03/09/dhs-statement-litigation-related-public-charge-ground-inadmissibility>

[2] <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge>

[3] <https://www.federalregister.gov/documents/1999/05/26/99-13202/field-guidance-on-deportability-and-inadmissibility-on-public-charge-grounds>

[4] <https://www.uscis.gov/sites/default/files/document/notices/SOPDD-Letter-to-USCIS-Interagency-Partners-on-Public-Charge.pdf>

[5] <https://www.uscis.gov/news/news-releases/uscis-announces-public-charge-rule-implementation-following-supreme-court-stay-of-nationwide>

[6] <https://aspe.hhs.gov/dataset/tanf-program-names>

[7] <https://aspe.hhs.gov/dataset/medicaid-program-names>

[8] <https://www.uscis.gov/policy-manual/volume-8-part-g-chapter-10>