

Global Immigration alert

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United States

DHS proposes to rescind the 2022 public charge ground of inadmissibility regulations

Executive summary

On 19 November 2025, the Department of Homeland Security (DHS) published a proposed rule to rescind the 2022 public charge regulations. Specifically, DHS notes that the current rules are too restrictive, limit officer discretion, and do not align with congressional intent. The proposed changes would remove narrow definitions and frameworks, allowing officers to consider a broader range of public benefits and a greater scope of information when determining if an applicant is likely to become a public charge.

DHS is also seeking to amend public charge bond provisions. The proposed amendment clarifies that an immigrant who has posted a public charge bond and receives any means-tested public benefit, not just limited to cash assistance or long-term institutionalization, will be considered to have breached the bond. Additionally, DHS aims to streamline the process for determining when a bond is breached and provide clearer guidance for cancellation and appeals.

Background and analysis

The *Immigration and Nationality Act* (INA) provides that an applicant for a visa, admission to the United States, or adjustment of status (a “green card”) is admissible and may be denied the benefit they are requesting if they are likely to become a “public charge” at any time. The proposed rescission by DHS aims to remove the narrower definitions and frameworks established by the 2022 public charge regulations. DHS asserts that these prior rules were inconsistent with congressional intent, unduly limited officer discretion, and prevented a comprehensive, individualized

assessment of whether an applicant is likely to become a public charge. Major changes outlined in the proposal include, but are not limited to, the following:

Elimination of more defined regulations

- Currently, officers are limited to considering only specific types of public benefits, such as public cash assistance for income maintenance and long-term institutionalization at government expense.
- The present rule defines “likely at any time to become a public charge” as primarily dependent on the government for subsistence, demonstrated by receipt of these benefits.
- Under the proposed rule, officers will focus on applicants’ self-sufficiency and reliance “on their own capabilities and the resources of their families, their sponsors, and private organizations” rather than limiting the analysis to past and current receipt of public cash assistance and long-term institutionalization at government expense.

Expanded criteria for public charge bond breaches

- Currently, a public charge bond is breached only if the bonded immigrant receives public cash assistance for income maintenance or is institutionalized at government expense. Additionally, a bond cancellation could be based on a determination that the immigrant is “not likely at any time to become a public charge.”
- Under the proposed rule, a public charge bond may be breached if the bonded immigrant receives any means-tested public benefit—not just cash assistance or long-

term institutionalization—or fails to comply with any bond condition.

Increased officer discretion

- Currently, officers are required to use a “bright line” or checklist method, considering the seven factors and specific benefits outlined in the regulation.
- Under the proposed rule, officers may consider all relevant facts and circumstances, including any means-tested public benefit and case-specific details, using a totality-of-the-circumstances analysis.

Removal of favorable consideration for affidavits of support

- Currently, officers may view a sufficient Affidavit of Support (Form I-864) favorably when making public charge determinations.
- Under the proposed rule, officers will have greater discretion to determine how much weight to give the affidavit in the context of the totality of the applicant’s circumstances.

Elimination of regulatory lists of exemptions and waivers

- Currently, the regulation includes lists of exemptions and waivers for the public charge ground of inadmissibility.
- Under the proposed rule, any regulatory lists of exemptions and waivers would be removed. Instead, officers would rely on statutory exemptions and guidance published outside the regulations such as the Policy Manual published by U.S. Citizenship and Immigration Services, the agency that adjudicates adjustment of status applications.

Expanded list of affected individuals

- Currently, only foreign nationals applying for adjustment of status who have received public cash assistance for income maintenance or have been institutionalized at government expense for the long term are considered relevant for public charge determinations.
- Under the proposed rule, foreign nationals who apply for adjustment of status will be subject to a determination of inadmissibility based on public charge grounds as long as his or her visa classification is not exempt from such a determination.
- Congress has expressly exempted refugees, asylees, certain Amerasian immigrants, Afghan and Iraqi interpreters, Cuban and Haitian entrants, Lautenberg parolees, special immigrant juveniles, applicants for Temporary Protected Status (TPS), Violence Against Women Act (VAWA) self-petitioners, and others as specified by statute or regulation.

What this means

DHS estimates that rescinding the 2022 public charge regulations and restoring broader officer discretion will have significant financial and policy impacts. By removing narrow definitions and frameworks, DHS asserts the rule will allow officers to consider a wider range of public benefits and case-specific information when determining whether a foreign national applicant is likely to become a public charge. This change is expected to result in more rigorous assessments of self-sufficiency, potentially leading to a reduction in the number of immigrants who qualify for admission or adjustment of status if they are deemed likely to rely on public resources.

Overall, DHS asserts that these changes in the proposed rule are intended to reinforce the principle that immigrants should be self-sufficient and not rely on public resources to meet their needs. If enacted, foreign nationals applying for a visa at a consular post abroad and those filing for adjustment of status in the United States should prepare for broader officer discretion in making inadmissibility determinations. Applicants who have previously accessed public benefits such as Medicaid or SNAP, or who have limited financial resources, will be subject to increased scrutiny and should seek guidance of an immigration professional.

DHS will accept comments on the proposed rule until 19 December 2025. Comments on the information collection requirements in relation to the proposed rule must be submitted by 20 January 2026.

We will continue to monitor and share future developments. For additional information, or if you wish to discuss this further, please contact your EY Law LLP professional or Mehlman Jacobs LLP professional.

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