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US IMMIGRATION & NATIONALITY LAW

THE 2026 PUBLIC CHARGE RULE: A NEW TOOL TO RESTRICT LEGAL IMMIGRATION

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Starting September 18, 2026, DHS will significantly change how public charge determinations are made. The final rule rescinds the 2022 Biden-era public charge regulations at 8 C.F.R. §§ 212.20-212.23 and revises the public-charge-bond provisions at 8 C.F.R. § 103.6(c). For adjustment applicants, this means USCIS officers will no longer apply a detailed regulatory framework that defines key terms, limits the benefits inquiry, and directs the analysis through specific regulatory rules. Instead, adjudications will rely more directly on INA § 212(a)(4), future USCIS guidance, and broader officer discretion under the totality-of-the-circumstances standard.

DHS characterized the 2022 framework as overly restrictive and stated that rescinding it would restore officers' ability to consider all relevant facts. In that sense, the 2026 rule differs from both the 2019 and 2022 approaches. Before the 2019 rule, public charge inadmissibility was administered without binding regulatory definitions, with officers relying on the statute, precedent decisions, and individualized adjudication. The 2022 rule, by contrast, defined a person "likely at any time to become a public charge" as someone likely to become primarily dependent on the government for subsistence, demonstrated either by receipt of public cash assistance for income maintenance or long-term institutionalization at government expense. DHS now takes the position that this definition, like aspects of the 2019 framework before it, constrained officers from fully evaluating whether an applicant was likely to be self-sufficient.

DHS has been clear about its policy objective. In the 2025 proposed rule, the agency stated that it was "moving away from a bright-line primary dependence standard" in favor of a more flexible and individualized approach. DHS also argued that the 2022 framework effectively constrained officers by limiting both the public benefits they could consider and the factors they could weigh. According to the agency, the goal is to return to what Congress intended: a case-by-case determination based on all relevant evidence.

For adjustment applicants, the most significant change is not simply which benefits may be considered. It is the extent of the discretion afforded to adjudicating officers. DHS has indicated that officers may consider the mandatory factors listed in INA § 212(a)(4)(B), other case-specific circumstances, and even empirical data relevant to self-sufficiency. This is a far more open-ended framework than the 2022 rule and may result in less predictable and uneven outcomes. Once regulatory definitions are removed, similar fact patterns may be treated differently from one office to another or even from one officer to another. The agency has made clear that new USCIS guidance will shape how this framework operates, but such guidance will not go through public notice-and-comment procedures. That means some of the most important rules in practice may emerge through internal training, policy updates, interview trends, RFEs, and NOIDs rather than through regulations published in the Code of Federal Regulations.

The benefits inquiry is where many applicants will feel this change most sharply. DHS argued that the 2022 rule produced illogical results by requiring officers to disregard entire categories of public benefits, including Medicaid, CHIP, SNAP, and housing assistance, even when those benefits might bear on an applicant’s ability to support themselves. DHS has made it clear that the agency believes officers should not be barred from considering a wider universe of means-tested public benefits when evaluating self-sufficiency. That is a significant shift from the 2022 approach, which tied the inquiry more closely to cash assistance for income maintenance and long-term institutionalization. In the new system, lawful benefit use may still become part of a negative evidentiary narrative, even if no single benefit or application is automatically disqualifying. While focusing on traditional non-cash and cash assistance, the flexible criteria raise concerns that other welfare support such as health, food, and housing programs could be factored against applicants. This could cause a chilling effect as many immigrant families will be afraid to access any public benefits for which a household member is eligible, forgoing supports in times of need to preserve future immigration prospects. This would result in worse health outcomes for individuals, families and communities.

At the same time, this remains a prospective inquiry. Public charge is still supposed to be a forward-looking determination about whether the applicant is likely at any time to become a public charge, not a punishment for having participated in a benefit program at some point in the past. DHS itself frames the inquiry as a totality-of-the-circumstances review rather than a single-trigger rule. In adjustment cases, USCIS will continue to use information from Forms I-485 and I-693, as well as interview questioning, to assess age, health, family status, assets, resources, financial status, education, skills, and the receipt of means-tested public benefits.

The 2026 rule does not appear to revive Form I-944. Instead, USCIS is expected to revise Form I-485 before the rule takes effect. The revised Form I-485 is therefore likely to be used to inquire about public charge. USCIS has announced that it will publish a revised Form I-485 and that older editions postmarked or submitted electronically on or after September 18, 2026, will not be accepted. Applicants should expect the public charge questions on the new form to do more than ask whether they are exempt from INA § 212(a)(4). The form may seek more detailed information about the applicant's household, financial resources, health insurance or ability to pay for medical care, education and skills, employment history, and receipt of means-tested public benefits. Even if USCIS does not revive a separate Form I-944, the expanded I-485 questions may function as a condensed public charge worksheet, requiring applicants to anticipate how their answers could be weighed under the totality of the circumstances.

The affidavit of support may also offer less protection than many family-based applicants previously assumed. Under the 2022 framework, a sufficient Affidavit of Support under INA § 213A was incorporated into a structured analysis. Under the new framework, USCIS will have greater flexibility in determining how much weight to give Form I-864 within the broader totality-of-the-circumstances review. The statutorily mandated affidavit remains important, but applicants may need to present a more comprehensive picture of their financial stability, health coverage, employment history, skills, and overall ability to remain self-sufficient.

Another area of concern is the indirect role of family or household benefits. DHS has indicated that the analysis generally focuses on the applicant rather than benefits received by relatives. However, the final rule also makes clear that family-member benefits may become relevant in certain circumstances. For example, if a family member's means-tested benefits indicate that the applicant's household income falls below a program threshold, that information may be considered as part of the applicant's assets, resources, and financial status under INA § 212(a)(4)(B). Similarly, where a family member's public benefits help support the applicant financially, that fact may be considered in the overall analysis. Although DHS does not treat family-member benefits as an independent negative factor, it leaves room for them to be considered indirectly.

The bond provisions are also moving in a less forgiving direction. DHS has amended 8 C.F.R. § 103.6(c) to provide that receipt of a means-tested public benefit, or other noncompliance with a bond condition, may result in a bond breach. DHS also removed language stating that USCIS may cancel a public charge bond at any time after determining that the noncitizen is not likely to become a public charge. According to the agency, these changes align the bond provisions with the rescission of 8 C.F.R. § 212.21 and clarify that bond cancellation requires the designated form. Under revised 8 C.F.R. § 103.6(c)(1), Form I-356 remains the mechanism for requesting cancellation after the fifth anniversary, provided the bond has not been breached.

The 2026 public charge rule represents a significant shift away from the structured framework of prior regulations and toward a more discretionary, case-by-case assessment under INA § 212(a)(4). By emphasizing the totality of the circumstances and affording officers greater flexibility in weighing statutory factors, benefit use, and other evidence, DHS has created a framework that may produce greater uncertainty. Applicants subject to the public charge ground of inadmissibility should be prepared for a scrutinized review in which benefit use, financial resources, health, education, employment history, and household circumstances may all receive closer attention. In practice, that may translate into more detailed questioning, increased requests for evidence, and a greater need to present a comprehensive record demonstrating the ability to remain self-supporting.

The May 2026 USCIS memorandum on adjustment of status has already armed USCIS officers with greater discretion by emphasizing that adjustment under INA § 245 is a matter of administrative grace and extraordinary relief, not an entitlement. When that discretionary framework is combined with the broadened public charge rule, USCIS will have still more room to deny adjustment applications even where applicants satisfy the threshold statutory requirements. Public charge concerns may become one more discretionary factor in a wider adverse narrative, allowing officers to weigh financial vulnerability, benefit use, household circumstances, health coverage, and employability against the applicant in deciding whether adjustment should be granted. This convergence of policies underscores the need for applicants to treat the I-485 filing not merely as a form-driven eligibility submission, but as an affirmative request for favorable discretion supported by a complete and persuasive record. The public charge rule would provide even more discretion to officers to deny adjustment of status applications in light of the USCIS memo that indicates that adjustment of status requires extraordinary discretion.

The Trump administration has been open about disfavoring immigration to the US, whether legal or illegal. The new public charge rule provides the Trump administration another powerful tool to restrict legal immigration to the US.

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