Explainer: 2026 Final Rule on Public Charge

Introduction

On July 20, 2026, the Department of Homeland Security (DHS) published a final rule entitled "Public Charge Ground of Inadmissibility," which outlines major changes to how immigration officials assess whether certain immigrants are likely to become a "public charge."

Under U.S. immigration law, *public charge* is a legal term that refers to immigrants expected to rely primarily on government assistance for subsistence. This concept, which has existed under U.S. immigration law since the 19th Century, is a ground of inadmissibility that makes noncitizens ineligible for admission or adjustment of status. In recent decades, this term has generally been defined to be limited to someone who would become "primarily dependent" on government cash assistance for income maintenance or on long-term institutional care at government expense.

Rulemaking during the first Trump administration sought to expand the scope of public charge to create negative immigration consequences for more people, but that rulemaking was blocked by the courts and ultimately reversed by the Biden administration. In 2022, DHS issued a final rule that largely aligned with previous Clinton administration guidance from 1999 and provided concrete definitions and limits on which benefits and circumstances count toward a public charge determination.

The 2026 final rule rescinded the 2022 rulemaking, including its definition of "public charge." DHS argues that the Immigration and Nationality Act (INA) does not define "public charge," leaving immigration officers the ability to assess inadmissibility using statutory factors and the totality of the circumstances. The final rule highlights that past definitions in the 2019 and 2022 rules were too narrow and therefore inconsistent with Congress's goals. Therefore, DHS eliminated the 2022 definition to allow a more flexible assessment of whether an individual is likely to depend on public resources. Under this approach, determinations would depend on a case-by-case analysis recognizing that "healthy . . . working-age" individuals with "no significant disabilities" impacting their ability to be "self-sufficient" are generally unlikely to become public charges, especially when they have a robust family support network.

This rule represents a significant shift in how the public charge ground of inadmissibility is applied. It expands the range of benefits considered public charges, increases uncertainty and inconsistency in how cases are evaluated, and may discourage immigrants and families from using essential public programs for which they are legally eligible. While DHS frames the rule as restoring alignment with the statute and

providing adjudicators with more discretion, the final rule raises substantial concerns about predictability, fairness, and the practical consequences for millions of families.

Notably, in September 2026, a coalition of 22 states and the District of Columbia, six local governments, and four immigrant advocacy organizations filed separate lawsuits challenging the rule and its implementation. The plaintiffs argue that DHS exceeded its statutory authority under the Immigration and Nationality Act and violated the Administrative Procedure Act by expanding the public-charge standard beyond its longstanding interpretation. They also raise concerns that the rule could lead to inconsistent immigration decisions and discourage eligible immigrants and their families from accessing essential public benefits. The lawsuits remain pending, and the rule remains in effect.

Key Provisions of the Final Rule

Elimination of Existing Public-Charge Regulations

In rescinding the 2022 public charge regulation, the new rule eliminated almost all substantive public-charge regulations currently in place, including 8 CFR 212.21, which contains definitions codified by the 2022 final rule. In other words, DHS proposed revoking the sections of the Code of Federal Regulations that define terms like "public charge," "receipt of public benefits," "public cash assistance for income maintenance," and "long-term institutionalization." Because the 2022 rule sought to formalize Clinton administration guidance on public charge from 1999, these definitions have largely anchored adjudications for more than two decades while helping provide transparency and uniformity in the application of public-charge law.

Broader Scope of Factors and Benefits That May Be Considered

By repealing these definitions, DHS would no longer categorically limit the types of public benefits relevant to public-charge determinations. Under current rules, only certain cash benefits and long-term institutional care can be considered. Under the final rule, immigration officers now have broad discretion to consider, on a case-by-case basis, a wide range of factors such as health, wealth, and the use of various public benefits, such as Medicaid, WIC, and SNAP. Such broad discretion created differentiated standards that vary depending on the immigration officer making the determination.

Reliance on Sub-Regulatory Guidance

Another notable component of the rule is DHS's plan to rely on guidance that was issued outside the formal notice and comment process. While DHS argues this will give the agency flexibility to respond to changing circumstances, it also means the criteria for public-charge determinations could shift unpredictably and without public input.

On August 18, 2026, USCIS issued the new guidance explaining how immigration officers will determine whether applicants for lawful permanent residence are likely to become a public charge.

Expanded Officer Discretion

Overall, the final rule significantly expanded officer discretion. DHS states that adjudicators should consider "all relevant factors," including age, health, family status, financial resources, education, skills, and the sufficiency of any required affidavit of support. However, without regulatory definitions guiding what constitutes "relevant factors," the scope of permissible considerations could grow considerably.

Potential Problems and Areas of Concern

Impact on Individuals Who Relied on the 1999 Guidance and the 2022 Rule

The final rule also creates complications for individuals who previously relied on the 1999 guidance and the 2022 rule. For more than two decades, many immigrants made decisions — including whether to enroll family members in public programs for which they were eligible — based on the 1999 guidance limiting public charge determinations to the receipt of cash benefits, which was further formalized by the 2022 regulation. If this guidance is rescinded and replaced by a more expansive definition of "public charge," immigrants who used benefits lawfully and responsibly could find themselves vulnerable to negative immigration consequences. DHS does not clearly address how public charge determinations would apply to individuals whose circumstances were shaped by earlier guidance, or whether they will be retroactively considered public charges based on lawful participation in programs providing non-cash benefits.

Loss of Predictability for Applicants

The final rule expanded the flexibility of case-by-case adjudications by DHS at the expense of the predictability for applicants. The 2022 rule's definitions provided applicants with clear expectations about what counted in a public-charge determination. By eliminating these definitions, the rule makes it difficult for applicants to understand how their circumstances will be evaluated. Even routine decisions, like whether an eligible family should apply for nutrition assistance for a U.S.-citizen child, may become fraught, as people worry that any associated benefit use could be weighed against them in future immigration filings.

Greater Risk of Inconsistent Adjudications

This unpredictability could also contribute to inconsistent adjudications. Two applicants with nearly identical profiles could receive different outcomes depending on which officer evaluates their case, how that officer interprets the "totality of the circumstances," or what sub-regulatory guidance happens to be in effect at the time.

Such inconsistency not only undermines fairness but can erode trust in the immigration system.

Uncertainty and Heightened Chilling Effects on Public Benefit Use

Another significant concern is the potential expansion of benefits that might be weighed against applicants, creating additional uncertainty and chilling people from enrolling in programs for which they qualify. Historically, whenever public-charge policy is changed or the definition of the term is broadened – or even when such changes are merely proposed – immigrant families tend to withdraw from programs like Medicaid, WIC, SNAP, and housing assistance, even when new guidance does not explicitly disadvantage participants in these programs.

In contrast to the clarity provided by the 1999 guidance and the 2022 rule, the final rule does not explicitly identify which benefits are relevant, leaving open the possibility that non-cash benefits, such as Medicaid, SNAP, or housing support, may once again have negative immigration consequences. Even if DHS does not formally expand the list of benefits considered, the final rule's broad language and reliance on officer discretion could result in inconsistent outcomes and reduced trust in the immigration system, while causing people to avoid enrolling in programs for which they are eligible.

This chilling effect will lead to higher uninsured rates, increased food insecurity, and poorer health outcomes for families and children. The final rule's broad language about considering "any past or future benefit use" could intensify these fears, even among populations to whom public-charge determinations do not apply.

Increased Administrative Burdens and Delays

Another practical concern is the likely administrative burden. With broader discretion and fewer bright-line rules, adjudicators may issue more Requests for Evidence, ask for additional financial documents, or require more extensive health or household information. This could slow down adjudications, increase costs for applicants, and intensify backlogs across multiple immigration categories. Employers who sponsor workers for permanent residence may face new uncertainties, complicating workforce planning and talent retention.

Conclusion

The final rule rescinded the 2022 rulemaking that formalized longstanding guidance clarifying that "public charge" individuals are only those noncitizens "primarily dependent" on governmental cash benefits or government-financed long-term institutional care. This marks a significant departure from the clarity established by the 2022 public charge rule, replacing defined standards with a largely discretionary framework. While DHS maintains that this approach would yield more accurate, individualized assessments, the shift raises important concerns about predictability,

fairness, and the potential for broader interpretations that could chill participation in essential public programs for which they are legally eligible.