

Public Charge and Applicants for Change/Extension of Nonimmigrant Status
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Beginning October 15, 2019, a new federal regulation will change the way USCIS looks at “public charge,” which is an evaluation of whether a foreign national is likely to need help from the U.S. or state government while they remain in the United States. In other words, the U.S. wants to see that an international student is not likely to need money or assistance. [Recent updates](#) to the rule have helped clarify some of the more confusing or conflicting parts.¹

Though the new rule is not yet in place, it has already had an alarming effect. According to a recent survey by the Urban Institute, many foreign nationals have reported abstaining from any and all ‘safety net’ public benefits programs in 2018 out of fear for how this may impact their future ability to stay in the US.² The study reveals how confusion around the new rule has already taken its toll, often impacting individuals and families who will not, in fact, be subject to the federal regulation. Citing the news, social media, and second-hand accounts as their primary source of information, many foreign nationals lack a clear understanding of the new rule and how, or even if, it will impact them.

While the public charge rule **does** apply to F-1 students, understanding the regulation can help ensure that F-1 students and their families do not face undue hardship. Among the core community messages of the Protecting Immigrant Families (PIF) Campaign is the call to **know your rights** in the face of the new regulation.³ The rule may be delayed by one of a variety of lawsuits filed, and several prominent [higher education leaders have spoken out against the rule](#) and [joined a brief to the court](#) - but with a clearer understanding of the factors that trigger the new public charge determination, F-1 students can better understand their options and make informed choices.

I. What is the new rule?

[Effective October 15, 2019](#), USCIS may deny requests to change or extend nonimmigrant status for foreign nationals **who received one or more public benefits for a total of one year in a three year period.**⁴

This means USCIS can look back on any three year period during which you maintained the status you are seeking to extend or change.^{5 6} **The look-back period does not cover the period**

¹ The American Immigration Lawyers Association has put together an excellent Practice Advisory on public charge for temporary visas. Practice Pointer: Requests for Change or Extension of Nonimmigrant Status Are Subject to Heightened Scrutiny Under DHS’s Public Charge Final Rule, AILA Doc. No. 19100305 (Oct. 3, 2019). NAFSA also has an excellent webpage that addresses the difference between public charge analysis for temporary status and permanent residence. <https://www.nafsa.org/regulatory-information/dhs-final-rule-public-charge-determinations>.

² <https://www.urban.org/urban-wire/how-uncertainty-surrounding-public-charge-rule-leads-hardship-immigrant-families>.

³ <https://protectingimmigrantfamilies.org/wp-content/uploads/2019/08/Lets-Talk-About-Public-Charge-Updated-August-2019.pdf>.

⁴ 8 CFR § 212.21(c).

of time in a status other than the one to be extended or the one to be changed. For example, if you have maintained F-1 status for two years before filing to extend or change this status, USCIS can only look back two years to determine whether you received public benefits that might trigger the public charge ground of inadmissibility.

This public charge test only applies to the individual applying for a change of status or extension of stay - not their family unless the family member is also applying for change or extension of status.⁷ If your parent, spouse, child, or other relative is not applying with you, then their use of public benefit programs will not be reviewed by USCIS when they conduct the public charge review.

II. What will change with the petition or application process?

The forms to request a change of status or extension of stay (I-129 and I-539) will include new questions aimed at determining whether you have received public benefits since obtaining the nonimmigrant status you are seeking to extend or change.

III. What public benefits will trigger the inadmissibility determination?

Receipt of any of the following public benefits for more than a total of one year will trigger the public charge determination:

- Any federal, state, or local cash assistance for income maintenance
- Supplemental Security Income (SSI)
- Temporary Assistance for Needy Families (TANF)
- 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 and 9 Housing Assistance
- Section 8 Project-Based Rental Assistance
- Federally funded Medicaid (with certain exclusions)

IV. What about student loans and scholarships?

The new regulation makes clear that **Pell grants and other student aid programs do not trigger a public charge determination.** It states:⁸

“Pell grants and student aid programs will not be considered in the public charge inadmissibility determination. As previously discussed, DHS’s list of public benefits included in the regulation is an exhaustive list and only those benefits listed will be

⁵ 8 CFR § 214.1(a)(3)(iv). The rule limits the look-back period to the status the foreign national seeks to extend.

⁶ 8 CFR § 248.1(b)(4). The rule limits the look-back period to the status from which the foreign national seeks to change.

⁷ <https://protectingimmigrantfamilies.org/wp-content/uploads/2019/08/Lets-Talk-About-Public-Charge-Updated-August-2019.pdf>.

⁸ 84 Fed. Reg. 41391.

considered in a public charge inadmissibility determination. The focus of the rule is public benefits programs that provide cash assistance for income maintenance or support food nutrition, housing and healthcare with a relatively high overall expenditure. Pell grants and student aid programs are education-based and DHS is not considering them in the public charge inadmissibility determination.”

V. What public benefits will **NOT** trigger the inadmissibility determination?

The regulation excludes the following from public charge concerns:

- Emergency medical assistance
- Disaster relief
- School lunch programs
- Foster care and adoption
- Student and mortgage loans
- Energy assistance
- Food pantries and homeless shelters; and
- Head Start

The rule also **specifically exempts the following** from being included as part of a public charge determination:⁹

- Public benefits received by noncitizen members of the U.S. armed forces serving in active duty or in any of the Ready Reserve components, and by the service member’s spouse and/or children;
- Medicaid for an emergency medical condition;
- Services or benefits funded by Medicaid but provided under the Individuals with Disabilities Education Act;
- School-based services or benefits provided to individuals who are at or below the oldest age eligible for secondary education as determined under state or local law;
- Medicaid benefits received by a foreign national under 21 years old; or
- Medicaid benefits received by a woman during pregnancy and for 60 days after giving birth.

VI. What are the takeaways?

- ★ When applying the public charge rule, USCIS can only look back three years. The look-back period does not cover the period of time in a status other than the one to be extended or the one to be changed.
- ★ Only those benefits listed in the rule will be considered for public charge purposes.
- ★ Pell grants and other student aid programs are education-based programs, not public benefits programs, meaning these are not considered for public charge purposes.

⁹ 8 CFR § 212.21(b).

- ★ Do not let inaccurate and incomplete reporting in the news and other media mislead you into forgoing public benefits programs that will not trigger a public charge determination.¹⁰

- ★ When in doubt, seek out professional legal advice from an immigration lawyer or professionals in community-based organizations or government offices.¹¹ Your university's International Services Office should be able to provide free insights into your options and help you make informed decisions.

Looking forward to permanent residence, F-1s should consider maintaining health insurance for the entire time in the U.S. Most schools will offer student health insurance, but after graduation this may mean buying private health insurance (full price, no affordable care subsidies). The recent Presidential [Proclamation](#) on health insurance requirements for consular-processed green card applicants highlights the increased focus on health insurance as a major public charge issue.¹² Moreover, any use of public benefits may be a factor in whether you are likely to become a public charge in the future.

¹⁰ <https://www.urban.org/urban-wire/how-uncertainty-surrounding-public-charge-rule-leads-hardship-immigrant-families>.

¹¹ See <https://www.immigrationadvocates.org/nonprofit/legaldirectory/> for a directory of nonprofit legal services organizations.

¹² <https://www.forbes.com/sites/stuartanderson/2019/10/07/trump-bars-immigrants-without-health-insurance-what-it-means/>. See also <https://www.nafsa.org/regulatory-information/dhs-final-rule-public-charge-determinations>.