



## THE NEW “PUBLIC CHARGE” IMMIGRATION RULE: HOW IT AFFECTS STUDENTS AND SCHOOLS

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The Public Charge provision has been a part of U.S. immigration policy for some time. It requires people applying to enter the U.S. to demonstrate they are unlikely to become a “public charge,” which means they are unlikely to receive various kinds of public benefits. On August 14, the Department of Homeland Security published a new Public Charge rule that broadens the definition of “public benefits,” making it more difficult for people to demonstrate that they will not become a public charge. The new rule will be the subject of litigation, and a court is likely to prevent the rule from taking effect immediately. In the unlikely event the rule is not blocked by litigation, it will go into effect on October 15, 2019.

The new rule is complex, but here is some basic information for schools and families.

First, the [full rule](https://www.federalregister.gov/documents/2019/08/14/2019-17142/inadmissibility-on-public-charge-grounds) is available <https://www.federalregister.gov/documents/2019/08/14/2019-17142/inadmissibility-on-public-charge-grounds> (the rule itself begins on page 804 of this document).

### **The proposed rule affects people who:**

- 1) are applying for a visa or other legal status to enter the U.S., or who are requesting a change in their visa or immigration status in the U.S.; and
- 2) receive one or more public benefit for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits for one month counts as two months).

### **The new rule defines “public benefits” as follows (see page 805 of the [published rule](#)):**

- Supplemental Security Income (SSI)
- Temporary Aid for Needy Families (TANF)
- General Assistance (in states that offer it)
- Supplemental Nutrition Assistance Program (SNAP)
- Section 8 (both housing choice vouchers and project-based rental assistance)
- Medicaid (except: benefits for an emergency medical condition; services paid by Medicaid but provided under the Individuals with Disabilities Education Act; school-based services or benefits at the high school level or below; and benefits received by a person under age 21 or a pregnant woman, including 60 days following the end of the pregnancy)
- Subsidized public housing

This list is exhaustive and includes all of the benefits that will be considered “public benefits.” That means that the new rule does **not** include the following programs (in other words, receiving the following benefits would **not** count against a person applying for admission or a change of status in the U.S.):

- McKinney-Vento Education for Homeless Children and Youth services
- Services under Title I and other sections of the Elementary and Secondary Education Act
- Services under the Individuals with Disabilities Education Act (IDEA)
- School meals or other school related nutrition programs
- Head Start
- Pell grants and other student aid programs
- Emergency disaster relief assistance programs, including D-SNAP
- Workforce Innovation and Opportunity Act services (WIOA)
- Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
- Earned Income Tax Credit (EITC), Additional Child Tax Credit (ACTC), or other tax credits
- Social Security Disability Insurance (SSDI)
- Healthy Start and The Emergency Food Assistance Program (TEFAP)
- Foster care/adoption payments
- Affordable Care Act subsidies or other health insurance received through the health insurance marketplace
- Children’s Health Insurance Program (CHIP) and Medicaid for children and youth under age 21
- Any private social services

It is important to remember that children and youth living in the United States continue to have the right to attend public schools, regardless of their immigration status.<sup>1</sup> In fact, schools cannot ask about a student’s or family’s immigration status or take other actions that could discourage students from seeking enrollment. Schools cannot require Social Security numbers or immigration or citizenship documentation. They also cannot contact Immigration and Customs Enforcement (ICE) or other law enforcement officials about students or families who may be undocumented.

For more information on immigrant students and homelessness, please see [Immigrant Students: How Schools Can Help](#).

For updates on litigation and other action regarding the Public Charge rule, visit the [National Immigration Law Center](#) and [United We Dream](#).

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<sup>1</sup> [Plyler v. Doe](#), 457 U.S. 202 (1982).