



# GMS Flash Alert

## Immigration Edition

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# United States – New Public Charge Rule

On September 9, 2022, the U.S. Department of Homeland Security (DHS) published a public charge rule to the *Federal Register* that will take effect on December 23, 2022.<sup>1</sup> The rule codifies guidance related to the “public charge” ground for a foreign national’s inadmissibility because of a likelihood of becoming dependent on the U.S. government, a rule that was in effect from 1999 until the Trump Administration published a regulation in 2019 expanding “public charge” analysis to include certain non-cash benefits. The 2019 regulation was the subject of multiple legal challenges and was ultimately vacated by the U.S. Supreme Court.<sup>2</sup> The Biden Administration opted not to enforce the regulation and withdrew all pending appeals.

According to a U.S. Citizenship and Immigration Services (USCIS) press release, the newly published rule restores the historical understanding of “public charge,” which excluded supplemental public health benefits such as Medicaid and nutritional assistance from the public charge inadmissibility determination.<sup>3</sup>

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## WHY THIS MATTERS

DHS will implement an amended version of Form I-485, *Application to Register Permanent Residence or Adjust Status*, before the new public charge rule takes effect on December 23, 2022. It is expected that the revised Form I-485 will require applicants to provide information related to their assets, liabilities, resources, and receipt of public benefits, but they should not be required to provide credit history information.

DHS has committed to conduct public outreach before this date to help minimize confusion about the rule and its impact. In addition, DHS will issue guidance to officers tasked with adjudicating Forms I-485 under the new rule.

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## Background

An intending immigrant to the United States who is deemed likely to become a public charge is ineligible to be granted U.S. permanent resident status. Per the DHS rule, foreign nationals will be inadmissible if they are deemed likely to become primarily dependent on the government by either: (1) the receipt of public cash assistance for income maintenance, or (2) by long-term institutionalization at government expense. Commentary to the rule states that “primary

dependence” on the government means significant reliance on the government for support, not merely transient or supplementary dependence.<sup>4</sup>

Under the new rule, a determination of a foreign national’s likelihood of becoming a public charge will be assessed based on the totality of the circumstances, taking into consideration the factors set forth in the Immigration and Nationality Act, including a foreign national’s age, health, family status, assets, resources, financial status, education, skills, and, if required, a Form I-864 affidavit of support.

Any past and current receipt of Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF) cash assistance for income maintenance, and other state and local cash assistance for income maintenance may be considered in determining an applicant’s likely dependence on the government. DHS may also consider long-term institutionalization as government assistance, which may include long-term assistance applied to nursing homes. Assistance outside of these categories will not be considered public benefits under the new rule. Moreover, the rule exempts benefits received on behalf of another from a public charge determination.

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## KPMG NOTE

Given the controversy surrounding the public charge ground of inadmissibility, it is quite possible that the new rule will face legal challenges before its implementation. KPMG Law LLP in Canada is carefully monitoring developments and will provide further updates as they become available.

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## FOOTNOTES:

- 1 See *Federal Register* (online), “[Public Charge Ground of Inadmissibility](#).”
- 2 For prior coverage of the public charge rule, read the following issues of *GMS Flash Alert*: [2021-087](#) (March 17, 2021), [2020-411](#) (September 28, 2020), [2020-355](#) (August 14, 2020), and [2020-340](#) (August 6, 2020).
- 3 See DHS press release dated September 8, 2022: “[DHS Publishes Fair and Humane Public Charge Rule](#).”
- 4 Section A of the Executive Summary and in Section A “Comments on ‘Primarily Dependent’” of the published rule.

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## Contact us

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