

November 10, 2022

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

EXECUTIVE SUMMARY

ALL COUNTY WELFARE DIRECTORS LETTER

The purpose of this All County Welfare Directors Letter is to inform all County Welfare Departments of the final rule "Public Charge Ground of Inadmissibility", published by the U.S. Department of Homeland Security on September 9, 2022 and effective December 23, 2022.



KIM JOHNSON
DIRECTOR

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DEPARTMENT OF SOCIAL SERVICES
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GAVIN NEWSOM
GOVERNOR

November 10, 2022

ALL COUNTY WELFARE DIRECTORS LETTER

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: U.S. DEPARTMENT OF HOMELAND SECURITY FINAL RULE:
PUBLIC CHARGE GROUND OF INADMISSIBILITY, PUBLISHED ON
SEPTEMBER 9, 2022

REFERENCES: [SECTION 212\(A\)\(4\) OF THE IMMIGRATION AND NATIONALITY ACT; FINAL RULE: PUBLIC CHARGE GROUND OF INADMISSIBILITY \(SEPTEMBER 2022\); 1999 INTERIM FIELD GUIDANCE ON PUBLIC CHARGE; CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY- PUBLIC CHARGE GUIDE UPDATED SEPTEMBER 2022](#)

This letter informs counties of the final rule entitled "[Public Charge Ground of Inadmissibility](#)" (2022 Final Rule), published by the U.S. Department of Homeland Security (DHS) on September 9, 2022. The 2022 Final Rule is effective December 23, 2022, and will apply to applications for visas, admission, and adjustment of status postmarked on or after the effective date.

Background & Current Public Charge Policy

Per [Section 212\(a\)\(4\) of the Immigration and Nationality Act \(INA\)](#), a non-citizen applying for a visa to enter the United States or for adjustment of status to lawful permanent resident (also known as a green card holder) may be found inadmissible (have their application denied and/or be denied entry) if they are found likely at any time to become a public charge. Under the INA, immigration officers must, at a minimum, consider a non-citizen applicant's age, health, family status, education and skills, financial status, assets, resources, and, when applicable, a supporting document from a sponsor (affidavit of support) when determining whether the non-citizen is likely to become a public charge. It is longstanding federal policy that immigration officers will also consider the non-citizen's receipt of cash assistance for income maintenance and long-term institutionalized care at government expense.

On August 14, 2019, the DHS published the Inadmissibility on Public Charge Grounds Final Rule, 84 Fed. Reg. 41,292 (2019 Public Charge Rule). This rule sought to make substantial changes to longstanding public charge policy and increase the number of public benefits considered in a public charge determination. Following nationwide litigation, DHS chose to stop applying the 2019 Public Charge Rule and reverted to its prior [1999 Interim Field Guidance](#). The 1999 Interim Field Guidance remains in effect until the 2022 Final Rule takes effect. Under the 1999 Interim Field Guidance, immigration officers may consider cash assistance for income maintenance and long-term institutionalized care at government expense, but no other public benefits may be considered. Please visit the [US Citizenship & Immigration Services \(USCIS\) website](#) for updated information.

2022 Final Rule

Set to take effect on December 23, 2022, the 2022 Final Rule primarily aligns with the 1999 Interim Field Guidance, with a few notable changes. The 2022 Final Rule will allow non-citizens to continue receiving many public benefits without fear of immigration consequences.

Public Benefits Considered under Public Charge

Under both the 1999 Interim Field Guidance and the 2022 Final Rule, the federal government may consider prior or current receipt of the following public benefits and no others:

1. Supplemental Security Income (SSI);
2. Cash assistance for income maintenance under Temporary Assistance for Needy Families (TANF) and California Work Opportunity and Responsibility to Kids (CalWORKs);
3. State, Tribal, territorial, or local cash benefit programs for income maintenance (General Assistance or General Relief);
4. Long-term institutionalized care at government expense, such as in a skilled nursing home.

In accordance with longstanding policy, cash benefits provided for specific purposes or provided without consideration of the recipient's income or resources are not "for income maintenance" and will not be considered under the 1999 Interim Field Guidance or the 2022 Final Rule. CDSS anticipates more detailed guidance on DHS' interpretation of "local cash benefit programs for income maintenance" to be released in the coming months.

Public Benefits NOT considered under Public Charge

Under both the 1999 Interim Field Guidance and the 2022 Final Rule, the use of most public benefits is NOT considered. These benefits include, but are not limited to:

- CalFresh or Supplemental Nutrition Assistance Program
- School Meals

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- Medi-Cal or Medicaid (except in the case of skilled nursing home care)
- Covered California subsidies
- Medicare
- Immunizations or testing/treatment for communicable diseases such as COVID-19
- In-Home Supportive Services Program
- Federal Public Housing and Section 8 Assistance
- Woman, Infant & Children's Program (WIC)
- Disaster assistance, pandemic assistance, utility assistance, childcare assistance
- Child Tax Credit (CTC) or Earned Income Tax Credit (EITC)

Exempt Immigrants Groups

Under both the 1999 Interim Field Guidance and the 2022 Final Rule, immigrant groups who are exempt from Public Charge include, but are not limited to:

- Refugees
- Asylees
- Special Immigrant Visa Holders
- Applicants or registrants for Temporary Protected Status
- Special Immigrant juveniles
- T and U nonimmigrant visa holders (victims of human trafficking and other serious crimes)
- Self-petitioners under Violence Against Women Act (VAWA)
- Cuban and Haitian entrants

Change from the 1999 Interim Field Guidance: Under the 2022 Final Rule, certain individuals eligible for "refugee benefits" (resettlement assistance, entitlement programs, and other benefits available to refugees) to the same extent as refugees, are exempt from public charge. **Groups impacted by this exemption may include certain humanitarian parolees, including those from Afghanistan and Ukraine, as well as certain unaccompanied undocumented minors.**

Benefits Received by Family or Household Members

Under both the 1999 Interim Field Guidance and the 2022 Final Rule, immigration officers consider public benefits received by the person applying for the adjustment of status, either as a direct applicant or listed beneficiary of the benefit. This means that generally family members accessing public programs will not be considered as part of an individual's public charge determination. For example, the federal government would not consider cash assistance received by a U.S. citizen child, if the parent is seeking a green card through a family-based petition.

Change from the 1999 Interim Field Guidance: Under the 1999 Interim Field Guidance, cash assistance received by a family member or dependent but not received directly by the non-citizen applicant may be considered by the immigration officer if it is the family/household's only source of income. This exception is not part of the 2022 Final Rule. Under the 2022 Final Rule, benefits received solely by someone other than the non-citizen applicant will not be considered under any circumstances. Please remember that applications dated before the 2022 Final Rule takes effect will have the 1999 Interim Field Guidance applied to them.

CDSS Public Benefit Programs

Temporary Assistance for Needy Families (TANF) & California Work Opportunity and Responsibility to Kids (CalWORKs)

As stated in the 1999 Interim Field Guidance and the 2022 Final Rule, except for exempt immigrant groups previously mentioned above, receipt of TANF and/or CalWORKs cash assistance is one of the public benefits that the federal government is allowed to take into consideration in a public charge determination review. Therefore, past or current receipt of TANF/CalWORKs could be factor in a public charge determination. The 2022 Final Rule does not impact current CalWORKs policies pertaining to eligibility determinations for eligible noncitizens.

Per the [Manual of Policies and Procedures \(MPP\) Section 42-431.2](#) a noncitizen applicant is eligible for CalWORKs if they meet one of the CalWORKs eligible noncitizen categories and all other eligibility criteria are met. Additionally, CWDs are reminded that Good Cause may be granted in situations where the families are experiencing hardship in providing verifications in accordance with [MPP Section 40-209](#). It is also important to note that current or past receipt of TANF and/or CalWORKs will be evaluated, as mentioned above, under the totality of the family's circumstances. This determination includes several additional factors that will be considered in addition to the receipt of public assistance, such as income, age, health, family status, education and skills, financial status, assets, and when applicable a supporting document from a sponsor.

Supplemental Security Income (SSI) & State Supplementary Payments (SSP)

As stated in the 1999 Interim Field Guidance and the 2022 Final Rule, the federal government will consider a noncitizen's past and current receipt of Supplemental Security Income (SSI) in a public charge determination. Additionally, as a state cash assistance program that provides income maintenance, the federal government will likely consider past and current receipt of State Supplementary Payment (SSP) benefits in a public charge determination.

Cash Assistance Program for Immigrants (CAPI)

Cash Assistance Program for Immigrants (CAPI) is a state-funded program that provides monthly cash benefits to aged, blind, and disabled non-citizens who are ineligible for Supplemental Security Income/State Supplementary Payment (SSI/SSP) solely due to their immigration status. Per the 2022 Final Rule referenced in this ACWDL, the federal government will consider prior or current receipt of state cash benefit programs for income maintenance in public charge determinations. Therefore, as a state program that is means-tested and provides regular cash payments for a non-specified purpose, receipt of CAPI benefits will likely be considered in a public charge determination. However, many CAPI recipients may not be subject to a public charge determination due to their immigration status. Please reference the above list of these exempt immigrant groups.

Refugee Cash Assistance & Entrant Cash Assistance

Refugee Cash Assistance (RCA) and Entrant Cash Assistance (ECA) are cash assistance programs for refugees who are not otherwise eligible for any other cash aid. Refugees and most other populations served by Office of Refugee Resettlement programs are exempt under the 1999 Interim Field Guidance and the 2022 Final Rule. Additionally, as noted above, under the 2022 Final Rule, even groups of immigrants who are not specifically exempt from public charge will not have the benefits they receive while eligible for refugee resettlement benefits counted in a public charge determination. This means RCA and ECA are unlikely at any time to count in a non-citizen's public charge determination. Please reference the above list for exempt immigrant groups.

Trafficking and Crime Victims Assistance Program (TCVAP)

TCVAP is a cash assistance program for non-citizen victims of crime who need immediate services, are in the process of obtaining a legal humanitarian status and are assisting in the prosecution of a crime. This includes victims of human trafficking who have not yet been certified by the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Trafficking in Persons, and victims of domestic violence and other serious crimes.

The receipt of TCVAP cash benefits will not be considered in most cases due to the exempt statuses of most eligible recipients. However, in certain cases a recipient of TCVAP may not be exempt at the time they apply for adjustment of status. Concerned recipients should seek the advice of qualified legal professionals.

CalFresh & Other Nutrition Programs

Receipt of non-cash, nutrition benefits including CalFresh (known federally as the Supplemental Nutrition Assistance Program), the California Food Assistance Program (CFAP), Disaster CalFresh, and various federal, state, and local food distribution programs are not considered under the 1999 Interim Field Guidance or the 2022 Final Rule.

Housing & Homelessness Programs

As stated in the 1999 Interim Field Guidance and the 2022 Final Rule, non-cash benefits including housing benefits will not be considered in DHS' public charge determinations.

Benefits received through temporary and permanent CalWORKs Homeless Assistance (HA) and CalWORKs Housing Support Program (HSP) will not be considered in public charge determinations under the current 1999 Interim Field Guidance nor under the 2022 Final Rule. Even when HA and HSP provide recipients with cash benefits, those benefits are for the specific purpose of covering housing costs and are not meant for "income maintenance".

Resources

The California Health and Human Services Agency released a [Public Charge Guide](#) that county staff can share with new applicants or continuing clients. County staff are not to provide legal advice regarding consequences to receiving benefits.

For more information, visit the [US Citizenship & Immigration Services \(USCIS\)](#) website and for a list of nonprofit immigrant services organizations, visit the [Public Charge Contact List \(ca.gov\)](#) on the [California Department of Social Services Website \(CDSS\)](#).

If you have any questions or need additional guidance regarding the information in this letter, contact the Refugee Program Bureau at (916) 654-4356 or at RefugeePolicy@dss.ca.gov.

Sincerely,

Original Document Signed By

ELIANA KAIMOWITZ, Branch Chief
Immigrant Integration Branch
Division of the Office of Equity