

Public Charge and Applicants for Change/Extension of Nonimmigrant Status: Impact on F-1 Students

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Beginning February 24, 2020, a new federal regulation will change the way the U.S. Citizenship and Immigration Services (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 United States wants to see that an international student is not likely to need money or public assistance. [Updates](#) to the rule have helped to clarify some of the more confusing or conflicting parts, but questions remain. [NAFSA has a webpage](#) that is updated regularly with advice specifically for international student and scholar advisers.

The rule’s implementation was delayed from its initial start date in October, 2019, and is still blocked by a court in Illinois. [The Supreme Court blocked a nationwide injunction](#) in January 2020. There are [numerous lawsuits now around the country](#) and it is possible that the rule will be blocked in more areas, or even nationwide before it begins. The [business community](#) and some [higher education](#) groups have also spoken out about the effects of the new rule. For now, we present more information about the rule so that applicants for change or extension of nonimmigrant status can be prepared.

Though the new rule has not yet taken effect, it has already had an alarming impact. According to a survey [by the Urban Institute](#), many foreign nationals reported abstaining from any and all ‘safety net’ public benefits programs in 2018 out of fear for how this change may impact their future ability to stay in the US. 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. For more background, see also a [Migration Policy Institute’s analysis](#) on the rule’s potential impact on immigration patterns, and a [CATO report](#) that shows immigrants use “21 percent less welfare and entitlement dollars on average than native-born Americans.”

Among the core community messages of the Protecting Immigrant Families (PIF) Campaign are educational [know your rights](#) efforts. 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.

Note that F-1 students are already screened twice for their ability to support themselves. The foreign student adviser must make sure financial documents are “received, reviewed, and evaluated.”¹ And the student must show at the visa interview abroad that he or she “possesses sufficient funds to cover expenses while in the United States or can satisfy the consular officer that other arrangements have been made to meet those expenses.”²

Here are some highlights of the new rule for international students and their families:

¹ 8 CFR 214.3(k)(2), 8 CFR 214.4(a)(2)(x), and 8 CFR 214.2(f)(1)(i)(B).

² 22 CFR 41.61(b)(1)(ii), 9 FAM 402.5-5(G)(1).

I. What is the new rule?

Effective February 24, 2020, 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.**³

This means USCIS can look back on any three-year period during which you maintained the status you are seeking to extend or change.⁴ **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.** 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 a family member is also applying for change or extension of status.⁵ If your parent, spouse, child, or other relative is not applying with you, USCIS will not review their use of public benefit programs 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”)

³ 8 CFR § 212.21(c).

⁴ 8 CFR § 214.1(a)(3)(iv), (4). The rule limits the look-back period to the status the foreign national seeks to extend or from which the foreign national seeks to change.

⁵ <https://protectingimmigrantfamilies.org/know-your-rights/>.

- 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:⁶

“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 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
- English as a Second Language (ESL) or workforce development programs
- 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:⁷

⁶ 84 Fed. Reg. 41391.

⁷ 8 CFR § 212.21(b).

- 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
- ★ 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.
- ★ When in doubt, seek out professional legal advice from an immigration lawyer or professionals in community-based organizations or government offices.⁸ Those organizations may also have materials focused on public benefits in your particular state, such as this one for Massachusetts - https://www.hcfama.org/sites/default/files/hcfa_public_charge_consumer_handout_after_scotus_decision.pdf. Your university's International Services Office may also be able to provide insights into your options and help you make informed decisions.

Looking forward to permanent residence, F-1 students should maintain health insurance for their entire time in the U.S. Most schools offer student health insurance (and many require it). Using a subsidized health insurance plan from a school, even if it is a public institution, is not considered taking public benefits. After graduation this may mean buying private health insurance (at full price, no affordable care subsidies). The Presidential [Proclamation](#) on health

⁸ See <https://www.immigrationadvocates.org/nonprofit/legaldirectory/> for a directory of nonprofit legal services organizations.

insurance requirements for consular-processed green card applicants highlights the increased focus on health insurance as a major public charge issue.⁹ Moreover, any use of public benefits may be a factor in whether you are deemed likely to become a public charge in the future.

⁹ <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>.