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Public Charge Definition	<ul style="list-style-type: none"> <li>- An alien who receives one or more public benefits, as defined in the proposed rule.<sup>1</sup></li> </ul>	<ul style="list-style-type: none"> <li>- An alien who receives one or more public benefits, as defined in the final rule, for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months).<sup>2</sup></li> </ul>
Public Benefit Definition <sup>i</sup>	<ul style="list-style-type: none"> <li>- (1) Any of the following monetizable benefits, where the cumulative value of one or more of the listed benefits exceeds 15 percent of the Federal Poverty Guidelines (FPG) for a household of one within any period of 12 consecutive months, based on the per-month FPG for the months during which the benefits are received. <ul style="list-style-type: none"> <li>o Any Federal, State, local, or tribal cash assistance for income maintenance, including: <ul style="list-style-type: none"> <li>▪ (A) Supplemental Security Income (SSI)</li> <li>▪ (B) Temporary Assistance for Needy Families (TANF), or</li> <li>▪ (C) 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); and</li> </ul> </li> <li>o The following Non-cash benefits: <ul style="list-style-type: none"> <li>▪ (A) Supplemental Nutrition Assistance Program (SNAP, formerly called “Food Stamps”)</li> <li>▪ (B) Section 8 Housing Assistance under the Housing Choice Voucher Program, as administered by HUD</li> </ul> </li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Any Federal, State, local or tribal cash assistance for income maintenance (other than tax credits), including: <ul style="list-style-type: none"> <li>o Supplemental Security Income (SSI),</li> <li>o Temporary Assistance for Needy Families (TANF), or</li> <li>o Federal, State or local cash benefit programs for income maintenance (often called “General Assistance” in the State context, but which also exist under other names).</li> </ul> </li> <li>- Supplemental Nutrition Assistance Program (SNAP)</li> <li>- Section 8 Housing Assistance under the Housing Choice Voucher Program, as administered by HUD</li> <li>- Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation)</li> <li>- Medicaid, EXCEPT FOR <ul style="list-style-type: none"> <li>o (i) Benefits received for an emergency medical condition as described in 42 U.S.C. 1396b(v)(2)-(3), 42 CFR 440.255(c);</li> <li>o (ii) Services or benefits funded by Medicaid but provided under the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. 1400 et seq.;</li> <li>o (iii) 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;</li> </ul> </li> </ul>

<sup>1</sup> 83 Fed. Reg. at 51,157.

<sup>2</sup> 84 Fed. Reg. 41,292, 41,501. (Note that this 36-month lookback period as the basis for the determination is contradicted by other parts of the rule that appear to permit immigration officials to consider *any* receipt of prohibited public benefits for *any* length of time and *outside the lookback period* as part of their determination of whether an individual is more likely than not to become a public charge. See 84 Fed. Reg. 41,297 and 41,358.)

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	<ul style="list-style-type: none"> <li>▪ (C) Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation) and</li> <li>- (2) Any of one or more of the following non-monetizable benefits if received for more than 12 months in the aggregate within a 36 month period (such that, for instance, receipt of two non-monetizable benefits in one month counts as two months): <ul style="list-style-type: none"> <li>○ Medicaid, EXCEPT FOR <ul style="list-style-type: none"> <li>▪ (A) Benefits paid for an emergency medical condition as described in section 1903(v) of Title XIX of the Social Security Act, 42 U.S.C. 1396b(v), 42 CFR 440.255(c);</li> <li>▪ (B) Services or benefits funded by Medicaid but provided under the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. 1400 et seq.;</li> <li>▪ (C) School-based benefits provided to children who are at or below the oldest age of children eligible for secondary education as determined under State law;</li> <li>▪ (D) Medicaid benefits received by children of U.S. citizens whose lawful admission for permanent residence and subsequent residence in the legal and physical custody of their U.S. citizen parent will result automatically in the child's acquisition of citizenship or whose lawful admission for permanent residence will result automatically in the child's acquisition of citizenship upon finalization of adoption in the United States by the U.S. citizen parent(s) or, once meeting</li> </ul> </li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>○ (iv) Benefits received by an alien under 21 years of age, or a woman during pregnancy (and during the 60-day period beginning on the last day of the pregnancy).</li> <li>- Public Housing under section 9 of the U.S. Housing Act of 1937.<sup>4</sup></li> </ul>

<sup>4</sup> 84 Fed. Reg. at 41,501.

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	<p>other eligibility criteria as required by the Child Citizenship Act of 2000, Public Law 106–395 (section 320(a)–(b) of the Act, 8 U.S.C. 1431(a)–(b)), in accordance with 8 CFR part 320;</p> <ul style="list-style-type: none"> <li>▪ (E) Medicaid benefits received by the children of U.S. citizens who are entering the United States for the primary purpose of attending an interview under the Child Citizenship Act of 2000, Public Law 106–395 (section 322 of the Act, 8 U.S.C. 1433), in accordance with 8 CFR part 322.</li> <li>○ Any benefit provided for institutionalization for long-term care at government expense;</li> <li>○ Premium and Cost Sharing Subsidies for Medicare Part D, 42 U.S.C. 1395w–114;</li> <li>○ Subsidized Housing under the Housing Act of 1937, 42 U.S.C. 1437 et seq.</li> </ul> <p>- (3) The receipt of a combination of monetizable benefits under paragraph (b)(1) of this section where the cumulative value of such benefits is equal to or less than 15 percent of the Federal Poverty Guidelines for a household size of one within any period of 12 consecutive [sic] based on the per month FPG for the months during which the benefits are received, together with one or more non-monetizable benefits under paragraph (b)(2) of this section if such non-monetizable benefits are received for more than 9 months in the aggregate within a 36 month period (such that, for instance, receipt of two non-monetizable benefits in one month counts as two months)<sup>3</sup></p>	

<sup>3</sup> 83 Fed. Reg. at 51,289-51,290.

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Categorical Exceptions	<ul style="list-style-type: none"> <li>- DHS will not consider any benefits, as defined in paragraphs (b)(1) through (b)(3) of this section, received by an alien who, at the time of receipt, filing, or adjudication, is enlisted in the U.S. armed forces under the authority of 10 U.S.C. 504(b)(1)(B) or 10 U.S.C. 504(b)(2), serving in active duty or in the Ready Reserve component of the U.S. Armed Forces, or if received by such an individual’s spouse or child as defined in section 101(b) of the Act, in the public charge inadmissibility determination.</li> <li>- (1) Refugees at the time of admission under section 207 of the Act and at the time of adjustment of status to lawful permanent resident under section 209 of the Act;</li> <li>- (2) Asylees at the time of grant under section 208 of the Act and at the time of adjustment of status to lawful permanent resident under section 209 of the Act;</li> <li>- (3) Amerasian immigrants at the time of application for admission as described in sections 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, Public Law 100–202, 101 Stat. 1329–183, section 101(e) (Dec. 22, 1987), as amended, 8 U.S.C. 1101 note;</li> <li>- (4) Afghan and Iraqi Interpreter, or Afghan or Iraqi national employed by or on behalf of the U.S. Government as described in section 1059(a)(2) of the National Defense Authorization Act for Fiscal Year 2006 Public Law 109–163 (Jan. 6, 2006), as amended, and section 602(b) of the Afghan Allies Protection Act of 2009, Public Law 111–8, title VI (Mar. 11, 2009), as amended, 8 U.S.C. 1101 note, and section 1244(g) of the National Defense Authorization Act for Fiscal Year 2008, as amended Public Law 110–181 (Jan. 28, 2008);</li> </ul>	<ul style="list-style-type: none"> <li>- Public benefits, as defined in the Final Rule, do not include any public benefits received by an alien who at the time of receipt of the public benefit, or at the time of filing or adjudication for admission or adjustment of status, or application or request for extension of stay of change of status is <ul style="list-style-type: none"> <li>o (i) Enlisted in the U.S. Armed Forces under the authority of 10 U.S.C. 504(b)(1)(B) or 10 U.S.C. 504(b)(2), or</li> <li>o (ii) Serving in active duty or in the Ready Reserve component of the U.S. Armed Forces, or</li> <li>o (iii) Is the spouse or child, as defined in section 101(b) of the Act, of an alien described in paragraphs (i) or (ii).<sup>6</sup></li> </ul> </li> <li>- Public benefits, as defined in the Final Rule, do not include any public benefits that were or will be received by: <ul style="list-style-type: none"> <li>o (i) Children of U.S. citizens whose lawful admission for permanent residence and subsequent residence in the legal and physical custody of their U.S. citizen parent will result automatically in the child's acquisition of citizenship, upon meeting the eligibility criteria of section 320(a)-(b) of the Act, in accordance with 8 CFR part 320; or</li> <li>o (ii) Children of U.S. citizens whose lawful admission for permanent residence will result automatically in the child's acquisition of citizenship upon finalization of adoption (if the child satisfies the requirements applicable to adopted children under INA 101(b)(1)), in the United States by the U.S. citizen parent(s), upon meeting the eligibility criteria of section 320(a)-(b) of the Act, in accordance with 8 CFR part 320; or</li> <li>o (iii) Children of U.S. citizens who are entering the United States for the purpose of attending an interview under section 322 of the Act in accordance with 8 CFR part 322.<sup>7</sup></li> </ul> </li> </ul>

<sup>6</sup> 84 Fed. Reg. at 41,501.

<sup>7</sup> 84 Fed. Reg. at 41,501.

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	<ul style="list-style-type: none"> <li>- (5) Cuban and Haitian entrants applying for adjustment of status under in section 202 of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99–603, 100 Stat. 3359 (Nov. 6, 1986), as amended, 8 U.S.C. 1255a note;</li> <li>- (6) Aliens applying for adjustment of status under the Cuban Adjustment Act, Public Law 89–732 (Nov. 2, 1966), as amended, 8 U.S.C. 1255 note;</li> <li>- (7) Nicaraguans and other Central Americans applying for adjustment of status under sections 202(a) and section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), Public Law 105–100, 111 Stat. 2193 (Nov. 19, 1997), as amended, 8 U.S.C. 1255 note;</li> <li>- (8) Haitians applying for adjustment of status under section 902 of the Haitian Refugee Immigration Fairness Act of 1998, Public Law 105–277, 112 Stat. 2681 (Oct. 21, 1998), as amended, 8 U.S.C. 1255 note;</li> <li>- (9) Lautenberg parolees as described in section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Public Law 101–167, 103 Stat. 1195, title V (Nov. 21, 1989), as amended, 8 U.S.C. 1255 note;</li> <li>- (10) Special immigrant juveniles as described in section 245(h) of the Act;</li> <li>- (11) Aliens who entered the United States prior to January 1, 1972 and who meet the other conditions for being granted lawful permanent residence under section 249 of the Act and 8 CFR part 249 (Registry);</li> <li>- (12) Aliens applying for or reregistering for Temporary Protected Status as described in section 244 of the Act under section 244(c)(2)(A)(ii) of the Act and 8 CFR 244.3(a);</li> <li>- (13) A nonimmigrant described in section 101(a)(15)(A)(i) and (A)(ii) of the Act (Ambassador, Public Minister, Career Diplomat or Consular Officer, or Immediate Family or Other Foreign Government Official or Employee, or</li> </ul>	<ul style="list-style-type: none"> <li>- (1) Refugees at the time of admission under section 207 of the Act and at the time of adjustment of status to lawful permanent resident under section 209 of the Act;</li> <li>- (2) Asylees at the time of grant under section 208 of the Act and at the time of adjustment of status to lawful permanent resident under section 209 of the Act;</li> <li>- (3) Amerasian immigrants at the time of application for admission as described in sections 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, Public Law 100–202, 101 Stat. 1329–183, section 101(e) (Dec. 22, 1987), as amended, 8 U.S.C. 1101 note;</li> <li>- (4) Afghan and Iraqi Interpreter, or Afghan or Iraqi national employed by or on behalf of the U.S. Government as described in section 1059(a)(2) of the National Defense Authorization Act for Fiscal Year 2006 Public Law 109–163 (Jan. 6, 2006), as amended, and section 602(b) of the Afghan Allies Protection Act of 2009, Public Law 111–8, title VI (Mar. 11, 2009), as amended, 8 U.S.C. 1101 note, and section 1244(g) of the National Defense Authorization Act for Fiscal Year 2008, as amended Public Law 110-181 (Jan. 28, 2008);</li> <li>- (5) Cuban and Haitian entrants applying for adjustment of status under section 202 of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603, 100 Stat. 3359 (Nov. 6, 1986), as amended, 8 U.S.C. 1255a note;</li> <li>- (6) Aliens applying for adjustment of status under the Cuban Adjustment Act, Public Law 89-732 (Nov. 2, 1966), as amended, 8 U.S.C. 1255 note;</li> <li>- (7) Nicaraguans and other Central Americans applying for adjustment of status under sections 202(a) and section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), Public Law 105-100, 111 Stat. 2193 (Nov. 19, 1997), as amended, 8 U.S.C. 1255 note;</li> <li>- (8) Haitians applying for adjustment of status under section 902 of the Haitian Refugee Immigration Fairness Act of 1998, Public</li> </ul>

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	<p>Immediate Family), pursuant to section 102 of the Act, and 22 CFR 41.21(d);</p> <ul style="list-style-type: none"> <li>- (14) A nonimmigrant classifiable as C-2 (alien in transit to U.N. Headquarters) or C-3 (foreign government official), 22 CFR 41.21(d);</li> <li>- (15) A nonimmigrant described in section 101(a)(15)(G)(i), (G)(ii), (G)(iii), and (G)(iv), of the Act (Principal Resident Representative of Recognized Foreign Government to International Organization, and related categories), pursuant to section 102 of the Act pursuant to 22 CFR 41.21(d);</li> <li>- (16) A nonimmigrant classifiable as NATO-1, NATO-2, NATO-3, NATO-4 (NATO representatives), and NATO-6 pursuant to 22 CFR 41.21(d);</li> <li>- (17) A nonimmigrant classified under section 101(a)(15)(T) of the Act, in accordance with section 212(d)(13)(A) of the Act;</li> <li>- (18) An applicant for, or individual who is granted, nonimmigrant status under section 101(a)(15)(U) of the Act in accordance with section 212(a)(4)(E)(ii) of the Act;</li> <li>- (19) Nonimmigrants classified under section 101(a)(15)(U) of the Act applying for adjustment of status under section 245(m) of the Act and 8 CFR 245.24;</li> <li>- (20) An alien who is a VAWA self petitioner under section 212(a)(4)(E)(i) of the Act;</li> <li>- (21) A qualified alien described in section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. 1641(c), under section 212(a)(4)(E)(iii) of the Act;</li> <li>- (22) Applicants adjusting status who qualify for a benefit under section 1703 of the National Defense Authorization Act, Public Law 108-136, 117 Stat. 1392 (Nov. 24, 2003), 8 U.S.C. 1151 note (posthumous benefits to surviving spouses, children, and parents);</li> <li>- (23) American Indians born in Canada determined to fall under section 289 of the Act;</li> </ul>	<p>Law 105-277, 112 Stat. 2681 (Oct. 21, 1998), as amended, 8 U.S.C. 1255 note;</p> <ul style="list-style-type: none"> <li>- (9) Lautenberg parolees as described in section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Public Law 101-167, 103 Stat. 1195, title V (Nov. 21, 1989), as amended, 8 U.S.C. 1255 note;</li> <li>- (10) Special immigrant juveniles as described in section 245(h) of the Act;</li> <li>- (11) Aliens who entered the United States prior to January 1, 1972, and who meet the other conditions for being granted lawful permanent residence under section 249 of the Act and 8 CFR part 249 (Registry);</li> <li>- (12) Aliens applying for or re-registering for Temporary Protected Status as described in section 244 of the Act in accordance with section 244(c)(2)(A)(ii) of the Act and 8 CFR 244.3(a);</li> <li>- (13) A nonimmigrant described in section 101(a)(15)(A)(i) and (A)(ii) of the Act (Ambassador, Public Minister, Career Diplomat or Consular Officer, or Immediate Family or Other Foreign Government Official or Employee, or Immediate Family), in accordance with section 102 of the Act and 22 CFR 41.21(d);</li> <li>- (14) A nonimmigrant classifiable as C-2 (alien in transit to U.N. Headquarters) or C-3 (foreign government official), 22 CFR 41.21(d);</li> <li>- (15) A nonimmigrant described in section 101(a)(15)(G)(i), (G)(ii), (G)(iii), and (G)(iv), of the Act (Principal Resident Representative of Recognized Foreign Government to International Organization, and related categories), in accordance with section 102 of the Act and 22 CFR 41.21(d);</li> <li>- (16) A nonimmigrant classifiable as NATO-1, NATO-2, NATO-3, NATO-4 (NATO representatives), and NATO-6 in accordance with 22 CFR 41.21(d);</li> <li>- (17) An applicant for nonimmigrant status under section 101(a)(15)(T) of the Act, in accordance with 8 CFR 212.16(b);</li> <li>- (18) Except as provided in section 212.23(b), an individual who is seeking an immigration benefit for which admissibility is</li> </ul>

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	<ul style="list-style-type: none"> <li>- (24) Texas Band of Kickapoo Indians of the Kickapoo Tribe of Oklahoma, Public Law 97–429 (Jan. 8, 1983);</li> <li>- (25) Nationals of Vietnam, Cambodia, and Laos applying for adjustment of status under section 586 of Public Law 106–429 under 8 CFR 245.21;</li> <li>- (26) Polish and Hungarian Parolees who were paroled into the United States from November 1, 1989 to December 31, 1991 under section 646(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, Div. C, Title VI, Subtitle D (Sept. 30, 1996), 8 U.S.C. 1255 note; and</li> <li>- (27) Any other categories of aliens exempt under any other law from the public charge ground of inadmissibility provisions under section 212(a)(4) of the Act.<sup>5</sup></li> </ul>	<p>required, including but not limited to adjustment of status under section 245(a) of the Act and section 245(l) of the Act and who:</p> <ul style="list-style-type: none"> <li>o (i) Has a pending application that sets forth a prima facie case for eligibility for nonimmigrant status under section 101(a)(15)(T) of the Act, or</li> <li>o (ii) Has been granted nonimmigrant status under section 101(a)(15)(T) of the Act, provided that the individual is in valid T nonimmigrant status at the time the benefit request is properly filed with USCIS and at the time the benefit request is adjudicated;</li> </ul> <ul style="list-style-type: none"> <li>- (19) Except as provided in § 212.23(b), <ul style="list-style-type: none"> <li>o (i) A petitioner for nonimmigrant status under section 101(a)(15)(U) of the Act, in accordance with section 212(a)(4)(E)(ii) of the Act; or</li> <li>o (ii) An individual who is granted nonimmigrant status under section 101(a)(15)(U) of the Act in accordance with section 212(a)(4)(E)(ii) of the Act, who is seeking an immigration benefit for which admissibility is required, including, but not limited to, adjustment of status under section 245(a) of the Act, provided that the individual is in valid U nonimmigrant status at the time the benefit request is properly filed with USCIS and at the time the benefit request is adjudicated.</li> </ul> </li> <li>- (20) Except as provided in section 212.23(b), any alien who is a VAWA self-petitioner under section 212(a)(4)(E)(i) of the Act;</li> <li>- (21) Except as provided in section 212.23(b), a qualified alien described in section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. 1641(c), under section 212(a)(4)(E)(iii) of the Act;</li> <li>- (22) Applicants adjusting status who qualify for a benefit under section 1703 of the National Defense Authorization Act, Public Law 108-136, 117 Stat. 1392 (Nov. 24, 2003), 8 U.S.C. 1151 note (posthumous benefits to surviving spouses, children, and parents);</li> </ul>

<sup>5</sup> 83 Fed. Reg. at 51,292-51,293.

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		<ul style="list-style-type: none"> <li>- (23) American Indians born in Canada determined to fall under section 289 of the Act;</li> <li>- (24) Texas Band of Kickapoo Indians of the Kickapoo Tribe of Oklahoma, Pub. L. 97-429 (Jan. 8, 1983);</li> <li>- (25) Nationals of Vietnam, Cambodia, and Laos applying for adjustment of status under section 586 of Public Law 106-429 under 8 CFR 245.21;</li> <li>- (26) Polish and Hungarian Parolees who were paroled into the United States from November 1, 1989 to December 31, 1991 under section 646(b) of the IIRIRA, Public Law 104-208, Div. C, Title VI, Subtitle D (Sept. 30, 1996), 8 U.S.C. 1255 note; and</li> <li>- (27) Any other categories of aliens exempt under any other law from the public charge ground of inadmissibility provisions under section 212(a)(4) of the Act.<sup>8</sup></li> </ul>
<p>“Likely at any time to become ...”<sup>ii</sup></p>	<ul style="list-style-type: none"> <li>- Likely at any time in the future to receive one or more public benefit as defined in the proposed rule based on the totality of the circumstances.<sup>9</sup></li> </ul>	<ul style="list-style-type: none"> <li>- More likely than not at any time in the future to become a public charge, as defined in the Final Rule, based on the totality of the circumstances.<sup>10</sup></li> </ul>
<p>Totality of the Circumstances Test</p>	<ul style="list-style-type: none"> <li>- Prospective Determination</li> <li>- Minimum factors to consider: <ul style="list-style-type: none"> <li>o Age <ul style="list-style-type: none"> <li>▪ When considering an alien’s age, DHS will consider whether the alien is between the age of 18 and the minimum “early retirement age” for Social Security set forth in 42 U.S.C. 416(l)(2), and whether the alien’s age otherwise makes the alien more or less likely to become a public</li> </ul> </li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Prospective Determination</li> <li>- Minimum Factors to Consider: <ul style="list-style-type: none"> <li>o Age <ul style="list-style-type: none"> <li>▪ When considering an alien’s age, DHS will consider whether the alien’s age makes the alien more likely than not to become a public charge at any time in the future, such as by impacting the alien’s ability to work, including whether the alien is between the age of 18 and the minimum “early retirement age” for Social Security set forth in 42 U.S.C. 416(l)(2).</li> </ul> </li> </ul> </li> </ul>

<sup>8</sup> 84 Fed. Reg. at 41,504-41,505.

<sup>9</sup> 83 Fed. Reg. at 51,290.

<sup>10</sup> 84 Fed. Reg. at 41,501.

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	<p>charge, such as by impacting the alien’s ability to work.</p> <ul style="list-style-type: none"> <li>○ Health <ul style="list-style-type: none"> <li>▪ DHS will consider whether the alien’s health makes the alien more or less likely to become a public charge, including whether the alien has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien’s ability to provide and care for him- or herself, to attend school, or to work upon admission or adjustment of status.</li> <li>▪ Evidence. USCIS’ consideration includes but is not limited to the following: <ul style="list-style-type: none"> <li>• (A) A report of an immigration medical examination performed by a civil surgeon or panel physician where such examination is required; or</li> <li>• (B) Evidence of a medical condition that is likely to require extensive medical treatment or institutionalization after arrival or that will interfere with the alien’s ability to provide and care for him or herself, to attend school, or to work upon admission or adjustment of status.</li> </ul> </li> </ul> </li> <li>○ Family Status <ul style="list-style-type: none"> <li>▪ When considering an alien’s family status, DHS will consider the alien’s household size, as defined in the proposed rule, and whether the alien’s household size makes</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>○ Health <ul style="list-style-type: none"> <li>▪ DHS will consider whether the alien’s health makes the alien more likely than not to become a public charge at any time in the future, including whether the alien has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien’s ability to provide and care for himself or herself, to attend school, or to work upon admission or adjustment of status.</li> <li>▪ Evidence. USCIS’ consideration includes but is not limited to the following: <ul style="list-style-type: none"> <li>• (A) A report of an immigration medical examination performed by a civil surgeon or panel physician where such examination is required (to which USCIS will generally defer absent evidence that such report is incomplete); or</li> <li>• (B) Evidence of a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien’s ability to provide and care for himself or herself, to attend school, or to work upon admission or adjustment of status.</li> </ul> </li> </ul> </li> <li>○ Family Status <ul style="list-style-type: none"> <li>▪ When considering an alien’s family status, DHS will consider the alien’s household size, as defined in the Final Rule, and whether the alien’s household size makes the alien more likely than not to become a public charge at any time in the future.</li> </ul> </li> <li>○ Assets, Resources and Financial Status <ul style="list-style-type: none"> <li>▪ When considering an alien’s assets, resources, and financial status, DHS will consider whether</li> </ul> </li> </ul>

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	<p>the alien more or less likely to become a public charge.</p> <ul style="list-style-type: none"> <li>○ Assets, Resources and Financial Status <ul style="list-style-type: none"> <li>▪ When considering an alien’s assets, resources, and financial status, DHS will consider whether: <ul style="list-style-type: none"> <li>• (A) The alien’s household’s annual gross income is at least 125 percent of the most recent Federal Poverty Guidelines based on the alien’s household size as defined by the proposed rule, or if the alien’s household’s annual gross income is under 125 percent of the recent Federal Poverty Guidelines, whether the total value of the alien’s household assets and resources is at least 5 times the difference between the alien’s household’s gross annual income and the Federal Poverty Guideline for the alien’s household size;</li> <li>• (B) The alien has sufficient household assets and resources to cover any reasonably foreseeable medical costs related to a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien’s ability to provide care for him- or herself, to attend school, or to work; and</li> </ul> </li> </ul> </li> </ul>	<p>such assets, resources, and financial status excluding any income from illegal activities or sources (e.g., proceeds from illegal gambling or drug sales, and income from public benefits listed in the Final Rule make the alien more likely than not to become a public charge at any time in the future, including whether:</p> <ul style="list-style-type: none"> <li>• (A) The alien’s household’s annual gross income is at least 125 percent of the most recent Federal Poverty Guideline (100 percent for an alien on active duty, other than training, in the U.S. Armed Forces) based on the alien’s household size as defined by section 212.21(d);</li> <li>• (B) If the alien’s household’s annual gross income is less than 125 percent of the most recent Federal Poverty Guideline (100 percent for an alien on active duty, other than training, in the U.S. Armed Forces), the alien may submit evidence of ownership of significant assets. For purposes of this paragraph, an alien may establish ownership of significant assets, such as savings accounts, stocks, bonds, certificates of deposit, real estate or other assets....</li> <li>• (C) The alien has sufficient household assets and resources to cover any reasonably foreseeable medical costs, including as related to a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien’s ability to provide care</li> </ul>

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	<ul style="list-style-type: none"> <li>• (C) The alien has any financial liabilities or past receipt of public benefits as defined in 8 CFR 212.21(b) that make the alien more or less likely to become a public charge.</li> <li>○ Education and Skills <ul style="list-style-type: none"> <li>▪ When considering an alien’s education and skills, DHS will consider whether the alien has adequate education and skills to either obtain or maintain employment sufficient to avoid becoming a public charge, if authorized for employment.</li> <li>▪ Evidence. USCIS’ consideration includes but is not limited to the following: <ul style="list-style-type: none"> <li>• (A) The alien’s history of employment;</li> <li>• (B) Whether the alien has a high school degree (or its equivalent) or higher education;</li> <li>• (C) Whether the alien has any occupational skills, certifications, or licenses; and</li> <li>• (D) Whether the alien is proficient in English or proficient in other languages in addition to English.</li> </ul> </li> </ul> </li> <li>○ Prospective Immigration Status and Expected Period of Admission <ul style="list-style-type: none"> <li>▪ The immigration status that the alien seeks and the expected period of admission as it relates to the alien’s ability to financially support for himself or herself during the duration of their stay....</li> </ul> </li> <li>○ An Affidavit of Support, if Required</li> </ul>	<p>for himself or herself, to attend school, or to work;</p> <ul style="list-style-type: none"> <li>• (D) The alien has any financial liabilities; and whether</li> <li>• (E) The alien has applied for, been certified to receive, or received public benefits, as defined in 8 CFR 212.21(b), on or after October 15, 2019.</li> </ul> <li>○ Education and Skills <ul style="list-style-type: none"> <li>▪ When considering an alien’s education and skills, DHS will consider whether the alien has adequate education and skills to either obtain or maintain lawful employment with an income sufficient to avoid being more likely than not to become a public charge.</li> <li>▪ Evidence. USCIS’ consideration includes but is not limited to the following: <ul style="list-style-type: none"> <li>• (A) The alien’s history of employment, excluding employment involving illegal activities, e.g., illegal gambling or drug sales...;</li> <li>• (B) Whether the alien has a high school diploma (or its equivalent) or has a higher education degree;</li> <li>• (C) Whether the alien has any occupational skills, certifications, or licenses; and</li> <li>• (D) Whether the alien is proficient in English or proficient in other languages in addition to English.</li> <li>• (E) Whether the alien is a primary caregiver as defined in 8 CFR 212.21(f), such that the alien lacks an employment history, is not currently employed, or is not employed full time. Only one alien</li> </ul> </li> </ul> </li>

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	<ul style="list-style-type: none"> <li>▪ A sufficient affidavit of support must meet the sponsorship and income requirements of section 213A of the Act and comply with 8 CFR 213a.</li> <li>▪ (A) Evidence. USCIS' consideration includes but is not limited to the following: <ul style="list-style-type: none"> <li>• (1) The sponsor's annual income, assets, and resources;</li> <li>• (2) The sponsor's relationship to the applicant; and</li> <li>• (3) The likelihood that the sponsor would actually provide the statutorily required amount of financial support to the alien, and any other related considerations.<sup>11</sup></li> </ul> </li> </ul>	<p style="text-align: right;">within a household can be considered a primary caregiver of the same individual within the household.</p> <ul style="list-style-type: none"> <li>○ Prospective Immigration Status and Expected Period of Admission <ul style="list-style-type: none"> <li>▪ DHS will consider the immigration status that the alien seeks and the expected period of admission as it relates to the alien's ability to financially support for himself or herself during the duration of the alien's stay....</li> </ul> </li> <li>○ An Affidavit of Support, if Required <ul style="list-style-type: none"> <li>▪ If the alien is required under sections 212(a)(4)(C) or (D) to submit an affidavit of support under section 213A of the Act and 8 CFR part 213a, and submits such a sufficient affidavit of support, DHS will consider the likelihood that the sponsor would actually provide the statutorily-required amount of financial support to the alien, and any other related considerations.</li> <li>▪ (A) Evidence. USCIS consideration includes but is not limited to the following: <ul style="list-style-type: none"> <li>• (1) The sponsor's annual income, assets, and resources;</li> <li>• (2) The sponsor's relationship to the applicant, including but not limited to whether the sponsor lives with the alien; and</li> <li>• (3) Whether the sponsor has submitted an affidavit of support with respect to other individuals.<sup>12</sup></li> </ul> </li> </ul> </li> </ul>

<sup>11</sup> 83 Fed. Reg. at 51,291-51,292.

<sup>12</sup> 84 Fed. Reg. at 41,502-41,504.

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Heavily Weighted Negative Factors	<ul style="list-style-type: none"> <li>- (i) The alien is not a full-time student and is authorized to work, but is unable to demonstrate current employment, recent employment history or no reasonable prospect of future employment;</li> <li>- (ii) The alien is currently receiving or is currently certified or approved to receive one or more public benefit, as defined in the proposed rule;</li> <li>- (iii) The alien has received one or more public benefit, as defined in the proposed rule, within the 36 months immediately preceding the alien’s application for a visa, admission, or adjustment of status;</li> <li>- (iv) <ul style="list-style-type: none"> <li>o (A) The alien has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien’s ability to provide for him- or herself, attend school, or work; and</li> <li>o (B) The alien is uninsured and has neither the prospect of obtaining private health insurance, or the financial resources to pay for reasonably foreseeable medical costs related to a [sic] the medical condition; or</li> </ul> </li> <li>- (v) The alien had previously been found inadmissible or deportable on public charge grounds.</li> </ul>	<ul style="list-style-type: none"> <li>- (i) The alien is not a full-time student and is authorized to work, but is unable to demonstrate current employment, recent employment history, or a reasonable prospect of future employment;</li> <li>- (ii) The alien has received or has been certified or approved to receive one or more public benefits, as defined in § 212.21(b), for more than 12 months in the aggregate within any 36-month period, beginning no earlier than 36 months prior to the alien’s application for admission or adjustment of status on or after October 15, 2019;</li> <li>- (iii) <ul style="list-style-type: none"> <li>o (A) The alien has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien’s ability to provide for himself or herself, attend school, or work; and</li> <li>o (B) The alien is uninsured and has neither the prospect of obtaining private health insurance, nor the financial resources to pay for reasonably foreseeable medical costs related to such medical condition; or</li> </ul> </li> <li>- (iv) The alien was previously found inadmissible or deportable on public charge grounds by an Immigration Judge or the Board of Immigration Appeals.</li> </ul>
Heavily Weighted Positive Factors	<ul style="list-style-type: none"> <li>- (i) The alien’s household has financial assets, resources, and support of at least 250 percent of the Federal Poverty Guidelines for a household of the alien’s household size; or</li> <li>- (ii) The alien is authorized to work and is currently employed with an annual income of at least 250 percent of the Federal Poverty Guidelines for a household of the alien’s household size.<sup>13</sup></li> </ul>	<ul style="list-style-type: none"> <li>- (i) The alien's household has income, assets, or resources, and support (excluding any income from illegal activities, e.g., proceeds from illegal gambling or drug sales, and any income from public benefits as defined in § 212.21(b)) of at least 250 percent of the Federal Poverty Guidelines for the alien’s household size;</li> <li>- (ii) The alien is authorized to work and is currently employed in a legal industry with an annual income, excluding any income</li> </ul>

<sup>13</sup> 83 Fed. Reg. at 51,292.

	2018 NPRM	2019 Final Rule
		<p>from illegal activities such as proceeds from illegal gambling or drug sales, of at least 250 percent of the Federal Poverty Guidelines for the alien’s household size; or</p> <ul style="list-style-type: none"> <li>- (iii) The alien has private health insurance, except that for purposes of this paragraph (c)(2)(iii), private health insurance must be appropriate for the expected period of admission, and does not include health insurance for which the alien receives subsidies in the form of premium tax credits under the Patient Protection and Affordable Care Act, as amended.<sup>14</sup></li> </ul>
<p>Consideration of Receipt of Public Benefits Below the Threshold <sup>iii</sup></p>	<ul style="list-style-type: none"> <li>- N/A</li> </ul>	<ul style="list-style-type: none"> <li>- Under the proposed rule, DHS would not have considered the receipt of benefits below the applicable threshold in the totality of the circumstances. As a consequence, USCIS would have been unable to consider an alien’s past receipt of public benefits below the threshold at all, even if such receipt was indicative, to some degree, of the alien’s likelihood of becoming a public charge at any time in the future. Under this final rule, adjudicators will consider and give appropriate weight to past receipt of public benefits below the single durational threshold described above in the totality of the circumstances. (As stated in the Benefits Received Before Effective Date and Previously Excluded Benefits section of this rule, DHS will not apply this rule to benefits received before the effective date of the rule, except for those benefits that would have been considered under the 1999 Interim Field Guidance.)<sup>15</sup></li> </ul>

<sup>i</sup> The final rule drops the proposed rule’s “monetizable” and “nonmonetizable” labels for public benefits. DHS states it did so in response to receiving public comments “regarding a variety of issues” including the “complexity of the bifurcated standard and lack of certainty.” The final rule also states DHS will not consider Medicaid received by children under 21 and pregnant women, as well as receipt of the Medicare Part D Low-Income Subsidy (“LIS”). DHS states it made these changes in response to receiving public

<sup>14</sup> 84 Fed. Reg. at 41,504.

<sup>15</sup> 84 Fed. Reg. at 41,297.

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comments which raised concerns over their inclusion in the proposed rule's definition of public benefits. DHS states it chose to leave out Medicaid for children under 21 and pregnant women to "reflect[] Congressional intent to allow states to extend coverage to" these populations "without requiring them to wait five years as required by PRWORA ["Personal Responsibility and Work Opportunity Act"]" and because Medicaid coverage for pregnant women "ultimately benefits the U.S. citizen child(ren) who is born to" the immigrant woman. Furthermore, DHS states it chose to leave out the Medicare Part D LIS because of the importance of Medicare, the program's heightened eligibility standard, and because Medicare Part D "only provides medical prescription coverage, and not health insurance as a whole."

<sup>ii</sup> DHS states its decision to equate "likely at any time" with "more likely than not" is "consistent with the approach many courts have taken in the [sic] determining the meaning of likely.... [and] with how the DHS regulations implementing withholding of removal and deferral of removal under the Convention Against Torture have used "more likely than not" interchangeably with "likely to.'"

<sup>iii</sup> Although the final rule sets a single durational period threshold of over 12 months of receipt of public benefits in a 36 month period, DHS states that immigration adjudicators can also take into account past receipt of public benefits below this durational threshold and outside the 36-month window. Thus, the final rule renders its own single durational threshold meaningless, and gives adjudicators discretion to consider the minimal receipt of public benefits in making a public charge determination.