



PUBLIC CHARGE:

WHAT THE COMMUNITY NEEDS TO KNOW ABOUT PUBLIC CHARGE

WHAT IS PUBLIC CHARGE?

Public charge is a test to determine if someone applying for permanent residence (a “green card”), or for a visa to enter the United States, seems likely to depend on public benefits in the future. If the U.S. government decides that the applicant is likely to become a public charge, the government can deny their green card or visa application.

WHO DOES PUBLIC CHARGE AFFECT?

Public charge affects **people who are applying for permanent residence through a U.S. citizen or permanent resident relative petition, or who are applying for a visa to enter the United States**. Other immigration cases, like asylum, U visas, naturalization, and cancellation in court are not affected!

WHO IS NOT AFFECTED BY PUBLIC CHARGE?

Many immigrants do not have to worry about public charge because there is no public charge test for the immigration status for which they are applying. For example, these people are not subject to a public charge test:

- **Refugees** and **asylees**
- People with a **U Visa**, **T Visa**, **VAWA**, or **SIJS**
- **DACA** and **TPS** applicants
- The majority of **permanent residents**
- **U.S. Citizens**

Also remember that **if a person is not currently applying for any immigration status, they are not affected by public charge**. The public charge test only matters when a person submits an application for an immigration benefit (and even then, only certain applications—most commonly, an application for a green card through a U.S. citizen or permanent resident family member). Most immigrants do not need to worry about public charge.

If you are ready to become a permanent resident, consult with an immigration expert.

SHOULD UNDOCUMENTED IMMIGRANTS WORRY ABOUT PUBLIC CHARGE?

It depends. If a person is not eligible to apply for a green card through a family member, then public charge is not an issue. For many, the need for health care, food support, and housing will far outweigh a public charge concern. If a person has a family member who is a U.S. citizen or permanent resident and thinks they might be eligible to apply for a green card through that family member, the person should talk to an immigration expert.

I WANT TO APPLY TO BECOME A U.S. CITIZEN. WILL IT HURT MY CASE IF I USE BENEFITS?

No! There is no public charge test for naturalization, the process to become a U.S. citizen. Permanent residents who travel outside the United States for more than 180 days on any single trip could have to pass a public charge test when they return to the United States.

WHAT IF MY CHILDREN OR OTHER FAMILY MEMBERS RECEIVE PUBLIC BENEFITS?

The new rules that took effect on February 24, 2020 only consider benefits received by the person applying for the green card or visa. Benefits used by your family members, like U.S. citizen children, should not count in the public charge test.

WHAT DO THE NEW PUBLIC CHARGE RULES SAY?

There are two new public charge rules: one from the Department of Homeland Security (DHS), and a similar one from the Department of State (DOS). The new rules set a stricter test for people applying for a green card at an immigration office in the United States, or for a green card or a visa to enter the U.S. at a consulate or embassy abroad, to show that they are not likely to depend on public benefits in the future. An immigration officer will consider different factors, including family income, the applicant's age and health, how likely the applicant is to be employed, and receipt of certain public benefits (however, most green card applicants do not qualify to receive the benefits included in the new rule).

It is hard to know whether a person will apply for their green card in the United States (where the DHS rule applies), or whether they must travel to a U.S. consulate or embassy outside the United States for their interview (where the DOS rule applies). Talk to a trusted legal service provider if you are getting ready to file an application for a green card. They will advise you where you need to file.

WHEN DID THE NEW PUBLIC CHARGE RULES TAKE EFFECT?

The new DHS rule took effect for applications filed in the United States on February 24, 2020. This rule does not apply to applications to get a green card in the United States that were filed before February 24. The new rule does not consider any public benefits used before February 24, 2020.

The new DOS rule, for people applying for permanent residence through a relative **at a U.S. embassy or consulate abroad** or for a visa to enter the country, took effect on **February 24, 2020**. People whose cases are processed at a consulate or embassy abroad who have interviews on or after February 24, 2020 may be asked to complete a new public charge questionnaire form and will be evaluated under the new DOS rule.

There are several lawsuits against the rule change, and different federal courts are considering whether the new rules are lawful. In the future, the rules could be stopped or changed. But for now, the rules are in effect. It is important to stay informed about public charge, as additional changes may occur.

DOES PUBLIC CHARGE AFFECT MY ELIGIBILITY FOR CERTAIN PUBLIC BENEFITS?

No! Public charge does NOT impact whether you are eligible for health and other public benefits programs. If you qualify for certain public benefits, you are still eligible.

ARE ALL PUBLIC BENEFITS PART OF THE NEW PUBLIC CHARGE RULES?

No! **Many public benefits and programs are not part of the public charge test in the new rules.** For example, use of WIC, Medicaid for pregnant women (including up to 60 days after a pregnancy), emergency Medicaid, and Medicaid use by children under 21 (note: in California, some use of Medi-Cal for children and young adults up to age 26 is not part of the new rule), Head Start, free and reduced cost school lunches, and many other benefits are not part of the public charge test and will not impact your immigration case. Many states and counties have health care and other non-cash public programs that are not part of the new rules either.

WHAT PUBLIC BENEFITS ARE PART OF THE NEW PUBLIC CHARGE RULES?

The public charge test **ONLY** considers use of **federally-funded Medicaid (called Medi-Cal in California, with exceptions for emergency, pregnancy, use by children and young adults, as mentioned above, and Medi-Cal programs funded by the state); federally-funded Food Stamps (called SNAP, or CalFresh in California); federal public housing, Section 8 housing assistance and project-based rental assistance; federal, state, and local cash assistance; long-term institutionalized care paid for by the federal government; and no other programs.**

If you think you are using a benefit that could be a problem, check with a legal expert. People applying for a green card generally do NOT use these programs because they are not eligible for them.

I FILED MY GREEN CARD APPLICATION BEFORE FEBRUARY 24, 2020. DO THE NEW PUBLIC CHARGE RULES APPLY TO ME?

It depends where you filed it. The new DHS rule, which applies to cases decided by USCIS, does not apply to cases filed with USCIS before February 24, 2020.

Remember that different public charge rules apply if your green card interview will be at a U.S. embassy or consulate abroad. People whose cases are processed at a U.S. consulate or embassy with interviews on or after February 24, 2020 may be asked to complete the new public charge questionnaire form, [DS-5540](#), and will be evaluated under the new DOS rule, which is similar to the new DHS rule.

IF I USE ONE OR MORE OF THE PUBLIC BENEFITS IN THE NEW PUBLIC CHARGE RULES ON OR AFTER FEBRUARY 24, 2020, WILL MY GREEN CARD OR VISA APPLICATION BE DENIED?

First, if you are applying for a green card and think you receive a benefit that might be a problem, talk to a trusted legal services organization. Most people applying for green cards cannot use the benefits in the new rules because they are not eligible for them. You might be using a program that is okay.

Even so, an immigration officer cannot deny your green card or visa application solely because you are receiving one or more of the public benefits in the rules on or after February 24, 2020. Officers must evaluate many factors when they are considering whether you are likely to depend on public benefits in the future, including your family’s income and other resources, your age and health condition, and your education and likelihood of being employed. Receipt of one or more of the benefits included in the new rules is just one part of the public charge test.

I HAVE QUESTIONS...WHAT SHOULD I DO?

Consult an immigration expert to discuss your individual case before making important decisions about the well-being of your family. Visit <https://www.cdss.ca.gov/benefits-services/more-services/immigration-services/immigration-services-contractors> or <https://www.immigrationadvocates.org/nonprofit/legaldirectory/> to find a free or low-cost trusted immigration legal services provider in your area. If you need to talk to a legal services organization about your eligibility for public benefits, visit <https://www.lawhelp.org/>.

You can also review <http://keepyourbenefitsCA.org>, a resource developed by the California Protecting Immigrant Families campaign that is available in English, Spanish, and Chinese, to see how public benefits use could affect your immigration options. A similar tool, also developed by the California Protecting Immigrant Families campaign, is available via text message. Text one of the following to 650-376-8006 depending on your language preference:

- “benefit” (English)
- “libre” (Spanish)
- “福利” (Chinese)
- “lợi ích” (Vietnamese)