



WHAT YOU NEED TO KNOW ABOUT **PUBLIC CHARGE**

A summary of how public charge does - **and does not** - impact
immigrants and their families

MARCH 2024

Starting back in December 23, 2022, U.S. Citizenship and Immigration Services (USCIS) began applying a new rule on public charge that replaces the Trump-era rule and applies to adjustment of status applications involving a public charge test mailed on or after December 23, 2022. For applications submitted to USCIS before that date (even if decided after), USCIS will apply long-standing policy from 1999, as it had before the new rule went into effect.

The new rule strengthens and improves longstanding guidance on public charge. Notable improvements in the new rule:

- ▶ Making it clear that having a disability cannot be the sole basis for a public charge denial
- ▶ Adding that USCIS will consider proof that someone's institutionalization was illegal
- ▶ Adding that having received benefits as a child, related to pregnancy, while serving in the military, or related to having experienced crime, domestic violence, or other adverse circumstances are relevant when looking at a person's life circumstances in addition to health, income, etc.

Although a slightly different public charge policy applies to consular processing cases, these key points summarized here are the same. In all cases, it is safe for immigrants and their families to use health, nutrition, and housing programs for which

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they qualify. Health care programs, including Medi-Cal and COVID care, housing, food programs like CalFresh, and many other vital services are not considered in a public charge test. Get the care and help your family needs!

WHAT IS PUBLIC CHARGE?

Public charge, or the “public charge test,” refers to an assessment that immigration officers will make when deciding certain immigration applications (see below for information on the applications where public charge applies). As part of the assessment, the immigration officer will look at an applicant’s age, health, income, etc. to determine whether the applicant **seems likely to become primarily dependent on the government for support in the future.**

If the officer decides that the applicant will need to rely on government support in the future, their immigration application can be **denied** for public charge.

NOTE

PUBLIC CHARGE IS NOT A WAY FOR ICE TO FIND OR DEPORT PEOPLE. SIMPLY USING GOVERNMENT BENEFITS AND PROGRAMS DOES NOT TRIGGER IMMIGRATION ENFORCEMENT AGAINST YOUR FAMILY.

DOES PUBLIC CHARGE APPLY TO ME? MY FAMILY?

Public charge does **NOT** apply to all immigrants. It only applies to people who are submitting certain immigration applications. If you’re not submitting any immigration application right now, and don’t have any plans to submit one in the near future, then public charge does NOT apply to you.

If you are submitting a visa application to come to the United States from abroad, or an application for a green card through a family member who is a U.S. citizen or permanent resident (green card holder), then public charge may apply to you. In that case, public charge would only apply to you, not your family members who are not

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submitting immigration applications. If another family member was also applying for a green card through family, then they would also be subject to a public charge test.

If you are submitting an immigration application, then it depends what type of application you're submitting. A public charge test does NOT apply if you're submitting any of these applications:

- ▶ Application for Special Immigrant Juvenile Status (SIJS), or an application for a green card based on having SIJS
- ▶ Application for a U visa or T visa, or an application for a green card filed by someone who has a U visa or T visa
- ▶ Application for asylee or refugee status, or an application for a green card based on being an asylee or refugee
- ▶ Application for VAWA, or an application for a green card based on VAWA
- ▶ Application for DACA, whether an initial application or a renewal application
- ▶ Application for Temporary Protected Status (TPS)
- ▶ Application to renew your green card
- ▶ Application for U.S. citizenship

If you're not sure what type of immigration application you are filing or are planning to file, talk to a trusted legal representative. **You can find free or low-cost immigration legal help by visiting ilrc.me/findhelp.**

WHAT THE PUBLIC CHARGE TEST LOOKS AT

If you are subject to a public charge test, the immigration officer deciding your application will look at your age, health, income, education, and other factors to determine whether you appear likely to rely on certain public benefits programs (like CALWORKs) in the future. One of the main things they will focus on is whether you have a qualifying affidavit of financial support (I-864) from the person who is

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sponsoring you, and also possibly from a joint sponsor.

Having used public benefits in the past does not necessarily mean the immigration officer will deny your application for public charge reasons. The officer must still consider the affidavit of support and your age, health, etc. before making a decision about whether they think you will need support from the government in the future.

NOTE

MOST IMMIGRANTS ONLY QUALIFY FOR BENEFITS THAT ARE SAFE TO USE, AND DO NOT COUNT TOWARDS PUBLIC CHARGE.

As part of the public charge test, immigration officers are only allowed to consider **some** public benefits programs. Other programs do not count and will not be considered as part of the public charge test.

These are the only programs that immigration officers will consider as part of the public charge test, ONLY IF received by the person who is submitting the immigration application:

- ▶ Cash assistance for income maintenance like SSI, CalWORKs, CAPI, General Assistance
- ▶ Long term institutionalized care, like in a nursing home, paid for by Medi-Cal

If an applicant's family member is the one who actually qualifies to receive the public benefit, then it does NOT count. **For example:**

MARIA'S CHILD DANIEL, WHO WAS BORN HERE, QUALIFIES FOR SSI. MARIA DOES NOT QUALIFY FOR SSI. IT IS OKAY THAT DANIEL RECEIVED MONEY THROUGH SSI; MARIA CAN APPLY FOR A GREEN CARD AND DANIEL'S RECEIPT OF SSI WILL NOT HURT HER APPLICATION.

WHAT HAPPENS IF THE IMMIGRATION OFFICER DECIDES I AM LIKELY TO BECOME A PUBLIC CHARGE?

If the immigration officer reviewing your application decides that you are likely to

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become a public charge in the future, they will deny your application (or may give you an opportunity to post a bond of \$1,000 or more). Remember that the public charge test only applies to some immigration applications. The public charge test applies if you are seeking permission to enter from outside the United States (if you are submitting a visa application to come to the United States), or if you are applying for a green card through a U.S. citizen or permanent resident (green card holder) family member.

PUBLIC BENEFITS THAT ARE SAFE TO USE EVEN IF PUBLIC CHARGE APPLIES TO YOU

Many public benefits are safe to use (if you otherwise meet the eligibility requirements) even if your immigration application will be subject to a public charge test, including:

- CHIP
- WIC
- Medi-Cal (except to pay for long-term institutionalization)
- Free and reduced cost school meals
- CalFresh (food stamps)
- P-EBT
- Head Start
- Unemployment
- Social Security retirement
- Worker's compensation
- Tax credits, like EITC
- COVID-19 stimulus check
- COVID-19 vaccine
- Disaster relief
- Food pantries
- Section 8 housing and other housing programs
- Federal financial aid for college
- **Many more!** Consult with a trusted immigration legal representative if you are wondering about a program that you don't see in this list.

To find free or low-cost immigration legal help visit ilrc.me/findhelp



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Remember that if public charge doesn't apply to you, either because you aren't filing any immigration applications, or because you are submitting an immigration application that doesn't have a public charge test (like asylum or SIJS), you can safely use ANY public benefits for which you qualify.

PUBLIC CHARGE AND COVID-19

Immigration officials will NOT consider COVID-19 testing, treatment, or the COVID-19 vaccine as part of the public charge test. Other uses of Medi-Cal and health care do not count, either, unless to pay for long term institutionalization. COVID-19 related stimulus checks from the government, other disaster relief, and tax credits do not count for public charge. Unemployment benefits are also safe to use.

STILL HAVE QUESTIONS?

Getting the help and care you and your family need is usually more important than the public charge test on an immigration application. Public charge will only change a family's decision to use public benefits programs in very few cases. Get advice from a trusted immigration legal services provider before making important decisions about receiving public benefits that will affect your family's health and well-being.

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