



SEPTEMBER 2020

## PUBLIC CHARGE

# WHAT THE COMMUNITY NEEDS TO KNOW

### 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 of removal 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, speak 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 public charge test only considers 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 PUBLIC CHARGE RULES SAY?**

Everyone subject to a public charge test must 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 considered in a public charge test).

If you have a public charge test, additional public charge rules apply to your case depending on where you submit your immigration application. The public charge rules for people applying for a green card at an immigration office in the United States differ from the rules for people applying for a green card or a visa to enter the United States at a consulate or embassy abroad. It is sometimes hard to know whether a person will apply for their green card in the United States (where the Department of Homeland Security, or DHS, rule applies), or whether they must travel to a U.S. consulate or embassy abroad for their interview (where the Department of State, or 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 your application and what rules apply to your case.

## **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.

## **COULD ANY USE OF PUBLIC BENEFITS MAKE ME A PUBLIC CHARGE?**

No! **Many public benefits and supportive programs are not part of any public charge test.** For example, use of WIC, Medicaid during pregnancy (including up to 60 days after a pregnancy), emergency Medicaid, and Medicaid for 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 public charge test either), Head Start, free and reduced-cost school lunches, and many other benefits are not part of the public charge test. Many states and counties have health care and other non-cash public programs that are not part of the public charge test and will not impact your immigration case either.

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

The public charge test **considers**:

- reliance on public cash assistance for income maintenance (also sometimes known as “welfare,” and including programs like Supplemental Security Income (SSI), Temporary Assistance to Needy Families (TANF, or CalWORKs in California), or General Assistance); and
- long-term institutionalized care paid for by the government (e.g., in a nursing home or mental health institution).



The government recently expanded the benefits that immigration officers could consider in a public charge test to also include use of:

- federally-funded Medicaid (called Medi-Cal in California), with exceptions for Medicaid use for emergency, pregnancy and after a pregnancy, use by children and young adults, and Medicaid programs funded by the state;
- federally-funded Food Stamps (called SNAP, or CalFresh in California); and
- federal public housing and Section 8 housing assistance and project-based rental assistance.

The public benefits programs that an immigration officer will consider in your public charge test, if you have one, may depend on where you are applying for an immigration benefit and the status of lawsuits that are currently challenging the new public charge rules.

The current definition of public charge is changing and often confusing. If you think you are using a benefit that could be a problem, do not disenroll from the program without checking with a legal expert. People applying for a green card are generally only eligible for programs that do not impact public charge, or they may qualify for an immigration option that does not include a public charge test as part of the application process.

Also, **an immigration officer cannot deny your green card or visa application solely because you are receiving one or more public benefits. 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 that count is just one part of the public charge test.

## WILL MY ACCESSING COVID-19 TESTING AND TREATMENT AFFECT PUBLIC CHARGE?

No! The government has stated that it will not consider COVID-19 testing, treatment, or preventive care, including a vaccine if one becomes available, as part of the public charge test. Additionally, the immigration officer will also take into account other factors in your life due to the pandemic, like whether you lost your job under COVID-19 and had to use public benefits as a result.

## I HAVE QUESTIONS... WHAT SHOULD I DO?

Consult an immigration expert to discuss your case before making important decisions about the well-being of your family. Visit the California Department of Social Services' Public Charge Provider List at [www.cdss.ca.gov/benefits-services/more-services/immigration-services/immigration-services-contractors/public-charge-contact-list](http://www.cdss.ca.gov/benefits-services/more-services/immigration-services/immigration-services-contractors/public-charge-contact-list) to find free or low-cost legal services providers in your area who can provide public charge assistance. To find free or low-cost immigration legal services nationwide, visit the Immigration Advocates Network at [www.immigrationadvocates.org/nonprofit/legaldirectory/](http://www.immigrationadvocates.org/nonprofit/legaldirectory/).

You can also review <http://keepyourbenefitsCA.org>, a resource developed by public benefits experts and immigration lawyers to help you understand how use of public benefits could impact your immigration options. The resource is available in English, Spanish, and Chinese. A companion resource is available via text message. Text one of the following to (650) 376-8006 depending on your language preference:

- “benefit” (English)
- “libre” (Spanish)
- “ ㄟ 貳 ” (Chinese)
- “lqoiich” (Vietnamese)