



Public Charge:

When is it safe for immigrants to use public benefits?

This publication explains the U.S. government's published guidance on the "public charge" rules, which govern when receiving public benefits may affect:

- your immigration status or
- your ability to travel outside of the U.S.

We also explain when it is and isn't safe to use public benefits.

1. Highlights of the Public Charge Guidance

- Use of Medicaid, Healthy Options, children's health, prenatal care or other health services by you or your family members won't affect your immigration status unless you use Medicaid or other government funds to pay for long-term care (in a nursing home or other institution).
- Use of food assistance, WIC, public housing, or other non-cash programs by you or your family members won't affect your immigration status.
- Use of cash welfare by your children or other family members won't affect your immigration status unless these benefits are your family's only income.
- Your own use of cash welfare might affect your immigration status, depending on your situation. Examples of "cash welfare" include

SSI, TANF, State Family Assistance or Disability Lifeline (formerly GAU). The government can count your use of these benefits in deciding whether you're likely to become a "public charge."

2. Overview of Public Charge

What is "public charge?"

"Public charge" is a legal term. We use it to describe persons who cannot support themselves and who depend on government benefits that provide cash for their income. Examples of cash welfare:

- TANF
- State Family Assistance
- Disability Lifeline (DL) (formerly GAU)
- Supplemental Security Income (SSI)

Depending on your immigration status, the Immigration Service (United States Citizenship and Immigration Services, formerly INS) and State Department consular officers abroad can refuse to let you enter the U.S., re-enter the U.S., or become a permanent resident, if they think you won't be able to support yourself without these benefits in the future. Under very rare circumstances explained below, the Immigration Service can also deport you if you become a public charge within 5 years of entering the U.S.

Public charge isn't an issue if you're one of the following:

- immigrants who are applying for citizenship
- refugees
- asylees
- persons certified as victims of trafficking

How does the government decide whether I'm likely to become a public charge?

When you seek to enter the U.S. or apply for a green card, the government may ask you questions to see if you're likely to become a public charge in the future. The government can look at whether you've used *cash* welfare. But it cannot make its decision based solely on that. It must also look at all of the following factors together to decide whether you might become a public charge in the future:

- Age: are you elderly or very young, and likely to need support?
- Health: do you have an illness that requires costly treatment?
- Income: are you low-income or poor with no assets?
- Family size: do you have a large family to support?
- Education and skills: are you working now, or can you easily find a job?

When you seek to enter the U.S. or apply for a green card, you must give the government information showing that you won't need benefits to support yourself. Example: if you're elderly, but have family in the U.S. with enough money to support you, or if you have a special skill that will get you a good job in the U.S., give the government this information.

What kinds of benefits might cause a public charge problem?

In deciding whether you're likely to become a public charge, the government can look at whether you've used cash welfare, or if you need long-term institutional care. But even if you used cash welfare in the past, you can still show that you won't need it in the future. (Example: you have a job now.) The government is supposed to look at your whole situation when it decides if you might become a public charge in the future.

What if I used Medicaid, Healthy options, children's health, prenatal care, WIC, food assistance or other non-cash programs?

Using Medicaid can only be a problem if you're in a nursing home or other long-term care. No other non-cash programs will cause a public charge problem.

What if my children or other family members use benefits?

The government won't look at whether your children or other family members used health care or other non-cash benefits.

If your children or other family members use cash welfare, it will count against you in a public charge decision only if it's your family's only income.

3. Applying for a Green Card

I'm applying for a green card. Can the Immigration Service refuse to give me a green card because they think I might use cash welfare one day?

In certain cases, yes. If the Immigration Service thinks you cannot support yourself and that you'll rely on cash welfare in the future, it can refuse to give you a green card -- even if you're not using cash benefits now. (See below for a list of immigration

categories not subject to a public charge determination.)

See above for some hints on how you might prove that you won't rely on cash welfare in the future.

◆ Using *non*-cash programs won't cause a problem with your green card application.

I used cash welfare several years ago, but I don't receive cash benefits today. Will I have trouble getting a green card?

You shouldn't be denied a green card just because you used cash welfare in the past. But you'll need to show that you're not likely to need cash welfare in the future. It's easier to show this if you used welfare a long time ago, or only briefly to get through a hard time.

I'm not receiving cash welfare, but I'm very sick, and I live in a nursing home. Could I have trouble getting my green card?

Yes. If you're in a nursing home or have a serious long-term illness, you'll have trouble getting your green card unless you show that you'll be able to get the care you need in the future without relying on Medicaid or other publicly funded programs to pay for your institutional care.

My relative will sponsor me to live in the United States. Will this help me prove that I won't need cash welfare in the future?

Yes. Most people applying for a green card through a family member must have a "sponsor" who can show that s/he has enough money to support you (at 125% of the poverty level -- \$27,562 for a family of four). If the relative who petitioned for you doesn't have enough money to support you,

s/he'll have to find a "co-sponsor" who's also willing to help support you.

Your sponsor and, if necessary, your co-sponsor, will each have to sign a legal agreement ("affidavit of support"), promising to support you until you have credit for 40 quarters (10 years) of work in the U.S., or until you become a U.S. citizen. Your sponsor and co-sponsor must also agree to pay the government if you use certain benefits during that time. The affidavit of support will help convince the government that you won't need welfare.

I filed a "self-petition" for an immigration visa under the Violence Against Women Act (VAWA). Will my use of cash welfare be held against me in the public charge determination?

No. Domestic violence survivors who have filed a VAWA self-petition can use any benefits, including cash welfare, without affecting the public charge determination. However, in determining whether you're likely to become a public charge, the government may look at other factors, such as your:

- age
- income
- health
- education
- family situation

I applied for a U visa as a victim of a crime. If I get cash benefits for myself or my children, will I have trouble getting a U visa or my green card?

Probably not. U visa applicants can ask for a "waiver" of the public charge test. This means that the government can grant a visa even if you're found likely to become a public charge. Once you're granted a U visa you shouldn't have difficulty getting your

green card. U visa holders who apply for a green card aren't subject to a public charge test.

4. Refugees and others not subject to public charge

I'm a refugee. Will I have problems if I use public benefits?

No. The public charge law doesn't apply to the immigrants listed below:

- Refugees or persons granted asylum in the U.S.
- Victims of trafficking
- Cubans or Nicaraguans applying for adjustment of status under the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA)
- Applicants for adjustment of status under the Haitian Refugee Immigration Fairness Act of 1998
- Cubans applying for adjustment under the Cuban Adjustment Act who were paroled as refugees before April 1, 1980
- AMER-ASIAN immigrants when they're first admitted to the U.S.
- "Lautenberg" parolees (certain Soviet and Indo-Chinese parolees applying for adjustment of status)
- Registry applicants (persons in the U.S. since before January 1, 1972)
- Special immigrant juveniles
- Applicants for Temporary Protected Status (TPS)

Using any benefits, including cash welfare, won't cause a problem for these immigrants.

5. Persons with green cards

I have my green card. Will I have problems with the Immigration Service if I get cash welfare?

Generally, no.

Getting cash welfare won't affect your ability to become a citizen.

It could be a problem if you travel outside of the U.S. for more than 6 months. See the question on travel below.

Using non-cash benefits won't cause you a problem.

I have my green card and I get cash welfare. Can I travel outside of the United States?

If you're a lawful permanent resident (green card holder) who gets any cash welfare right now, avoid taking any trips outside of the U.S. that will last longer than 180 days (about 6 months). Any time you're gone for more than 180 days, the Immigration Service can ask you questions about whether you're likely to become a public charge, and may not let you re-enter the country.

If you're outside of the U.S. for 180 days or less, in most cases the Immigration Service won't ask you questions about public charge when you re-enter the U.S. The Immigration Service will only ask you these questions if you:

- intended to live permanently in another country,
- committed certain crimes, or
- had a pending deportation or removal case when you left the country.

I have my green card and get non-cash benefits. Can I still receive my benefits while I'm out of the country?

If you plan to be outside of the country for more than 30 days, check with the agency providing the benefit. It may be against the rules to continue receiving public benefits while you're outside of the U.S. It could hurt your chances of re-entering the U.S. or becoming a U.S. citizen if you received benefits that you weren't supposed to receive.

When I return from a trip, can the government make me pay back medical services like Medicaid or prenatal care, or food assistance that I used before I left?

No. The government isn't supposed to ask you to pay back these benefits unless you received them improperly (example: if you weren't really living in Washington but claimed to be a resident, or if you didn't tell your welfare worker about all of your income).

◆ If you're at the airport or the border and the Immigration Service or other agency asks you to pay back benefits, get legal help immediately, no matter what your immigration status is.

I have my green card. Can the Immigration Service deport me because I use benefits?

No. The Immigration Service cannot deport you just for using public benefits that you're qualified to receive.

The Immigration Service has said that deportations due to public charge are "rare." A deportation will happen only if *all* of the following are true:

- you received *cash welfare or long-term institutional care* for reasons that existed before you entered the U.S., **and**
- you got the cash welfare or long-term care *less than 5* years after you entered the U.S., **and**
- you or your sponsor have a *legal debt* to the government agency that gave you the cash or long-term care, and you or your sponsor got a notice from the government that you owed the debt within 5 years of entering the U.S., **and**
- you or your sponsor have *failed to repay* the benefits after the government filed a lawsuit and won in court.

◆ **Remember:** if you need benefits because you became sick, had an accident or other crisis *after* coming to the U.S., then you cannot be deported for using those benefits. If you begin using benefits more than 5 years after entering the U.S., then you cannot be deported even if you or your sponsor owes the government money for these benefits. For most permanent residents, this 5-year period starts again every time you enter the U.S. after being gone for more than 180 days.

6. Citizens and applying for citizenship

I have my green card. I'm receiving SSI or other cash benefits. Will this stop me from becoming a U.S. citizen?

No, so long as you're properly receiving public benefits. But if you ever got public benefits improperly (example: after providing false information about your income or where you live), or misled the Immigration Service when you got your green card, the Immigration Service may decide that you lack "good moral character." Then you could have trouble becoming a U.S. citizen. If you have any questions about this, talk to an immigration lawyer or community agency before you apply for citizenship.

I'm a U.S. citizen. Will I lose my citizenship if I get benefits?

No. You cannot lose your citizenship if you get benefits. Once you become a U.S. citizen the Immigration Service cannot deport you. It must always let you re-enter the U.S. after a trip to another country.

Northwest Justice Project wishes to acknowledge the work of the National Immigration Law Center, whose publications were adapted for use here.

7. Sponsoring Your Relatives

Will I have trouble sponsoring my relatives if I've used benefits?

When you sponsor a relative, you'll need to show that you or your co-sponsor earn enough income to support your relative. To meet this requirement, you cannot count as income the benefits that you received. Currently, the affidavit of support form for sponsors asks whether you or your household members have used benefits within the past 3 years. This is because you can't count any cash welfare when you add up your family's income.

IF YOU'RE NOT SURE whether public charge applies to you, talk to an immigration lawyer or community agency before you apply for a green card or before you travel outside of the U.S.

◆ For more information: in Western Washington, call the CLEAR line (1-888-201-1014) or the Northwest Immigrant Rights Project: (Western Washington) 206-587-4009, (Eastern Washington) 509-854-2100.

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