

When Is It Safe For Immigrants To Get Benefits? Public Charge Rules and Possible Changes

What is public charge?

“Public Charge” is a legal term. It describes people unable to support themselves who depend on government benefits as their main source of financial support. The U.S. government can deny a Green Card or entry into the U.S. to certain immigrants who appear likely to become a public charge in the future.

Public charge has been part of federal immigration law for decades. The law has not changed, but the Trump administration is taking steps to change *how the government applies* the public charge test. This has raised concern about when it is safe for immigrants and their families to access public assistance.

Should I read this?

Read this

- To find out what *has* and *has not* changed about public charge rules.
- For help deciding if, and when, to use benefits you or your family members need.

What does the government consider in deciding if someone is likely to become a public charge?

Under the Immigration and Nationality Act (“INA”), the public charge test for getting your Green Card is a *prospective* test. It looks at the

likelihood you will become a public charge *in the future*. U.S. Citizenship and Immigration Services (“USCIS”) and consular officials must take into account *a number of factors*, including your age, health, family status, resources, education, and skills.

Are all immigrants subject to the public charge test when applying for lawful permanent resident (“Green Card”) status?

No. The test primarily applies to people seeking to immigrate through a visa petition filed by a family member, and some people petitioned by an employer. The law exempts some immigrants, including:

- Refugees and persons granted asylum
- Trafficking victims
- Domestic violence survivors with an approved I-360 self-petition or who have been granted cancellation of removal/suspension of deportation under the Violence Against Women Act (VAWA)
- U visa holders
- Cubans or Nicaraguans applying for adjustment under the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA)

- Special Immigrant Juveniles

What has the administration done to change how the public charge test is applied?

- U.S. Citizenship and Immigration Services (“USCIS”) has drafted a proposed rule expanding the definition of public charge and making other changes to how the test is applied. The proposed rule would apply to people applying for lawful permanent residence in the U.S. with USCIS. *This is only a proposed rule. It may not become a final rule, or it may change before it becomes final.*
- The U.S. State Department recently changed the public charge instructions in the Foreign Affairs Manual that consular officials use to decide visa applications. *These instructions only apply to people going through consular processing (outside the U.S.) of their application for a visa or lawful permanent resident status.*

How would the proposed rule change the public charge test?

It would change longstanding policy about what benefits USCIS can consider in the public charge determination.

Currently, USCIS only considers the use of **cash assistance** and **government-funded long-term care** in the public charge determination. Cash assistance programs that may be a problem include SSI, Aged Blind and Disabled assistance

(ABD), Temporary Assistance for Needy Families (TANF), and State Family Assistance (SFA). Food assistance, medical coverage, and subsidized housing are not considered. Also, USCIS primarily considers assistance received by the immigrant applying for a Green Card. USCIS only considers cash assistance received by eligible family members, such as US citizen children, if it is the family’s only source of support.

The proposed rule would let USCIS consider many more benefits beyond cash and long term care, including

- Washington Apple Health
- Food assistance
- WIC (Special Supplemental Nutrition Program for Women, Infants, and Children)
- Housing assistance, such as section 8 housing vouchers
- Low-Income Home Energy Assistance Program (LIHEAP)
- Earned Income Tax Credit
- Premium subsidies for Qualified Health Plans purchased on Healthplanfinder

The proposed rule would also let the government consider benefit use by the immigrant’s family members when those benefits are not the family’s sole source of support.

What has changed about the public charge test for people who must go through consular processing?

Under the new instructions in the Foreign Affairs Manual, consular officials may consider the receipt of *noncash* benefits by the visa applicant or a family member in the public charge determination. Before, consular officials only considered cash assistance or government funded long-term care.

The instructions also give less weight to the Affidavit of Support petitioners must file for people seeking to immigrate through a family visa petition. **The Affidavit of Support is still a positive factor, but is no longer enough on its own** to support a finding that a person is unlikely to become a public charge.

Consular officials must still consider a **number of factors** in the public charge determination. The instructions still focus on whether someone seeking to enter the U.S. is likely to become primarily dependent on cash or long-term care **in the future**. Consular officials cannot base their decision solely on the visa applicant's or family member's use of benefits.

I am a lawful permanent resident. I have used public benefits. Can I be deported under the public charge rules?

Under the Immigration and Nationality Act, you can only be deported on public charge grounds if both these are true:

- You became a public charge within five years of entry to the US

- For reasons that existed **before** you entered

You **cannot** be deported on this ground if you become a public charge because of something that happens after you enter the U.S., like an unexpected illness or injury. Only a small number of people have ever been deported on public charge grounds.

I am a lawful permanent resident. I have used public benefits. Does that make me ineligible to become a citizen?

No. The public charge test does **not** apply to lawful permanent residents applying to become naturalized citizens. The proposed rule does not (and cannot) change this.

However, if you receive benefits by intentionally giving the welfare office false information about your income, household size, or other eligibility factors, you could become ineligible to naturalize and face other immigration consequences.

I am a lawful permanent resident. I use public benefits. How can I prevent problems with my immigration status?

- Always provide welfare agencies true and complete information. Promptly report any income or household changes.
- Inform welfare agencies if you will be outside the state, including for travel abroad, for over a month.

- Do not let other people use your benefits while you are away.
- Avoid trips outside the U.S. for more than 180 days. If you are gone longer, you may have difficulties re-entering.

I am worried that public charge rule changes will affect me. What can I do?

These proposed changes are concerning, but keep in mind:

- **The rules have not yet changed for people applying for status inside the U.S. with USCIS.** The government must publish the proposed rule in the Federal Register and give the public a chance to comment. The government may significantly change the proposed rule in response to public comments before finalizing it.
- **The public charge test is still a prospective test considering many factors.** No matter the proposed rule or changes to consular instructions, you can still try to show you will not need public assistance *in the future*, looking at *a number of factors*. Example: You received public assistance in the past.

You can show you are in good health and have training or job skills that will help you find work in the future.

- **Exempt immigrants remain exempt.** If you are in an immigration category exempt from the public charge test, you will still be exempt.
- **There may be no benefit to going off benefits or taking your children or other family members off benefits.** The proposed rule states the government will only consider benefits used after the proposed rule is finalized.
- **Your own situation matters.** Having medical care and enough food are important for long-term health. They may help you work and support yourself in the future. Even if you receive assistance, you can do things to get work like taking English language and/or job training classes.

If you have questions about your individual situation, talk with your immigration attorney if you have one, or call the CLEAR line at 1-888-201-1014.

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