

# When is It Safe for Immigrants to Get Benefits? Public Charge Rules and Changes

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## Introduction

### What is public charge?

**Public Charge** is a term in immigration law. It refers to a person who depends on government assistance to meet their basic needs. The U.S. government can deny a Green Card (Lawful Permanent Resident status) or entry into the U.S. to certain immigrants if they appear likely to become a public charge in the future.

Public charge has been part of federal immigration law for decades. The federal government is taking steps to change *how it applies* the public charge test. This has raised concern about when it is safe for immigrants and their families to get 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

### How does the government decide if an immigrant is likely to become a public charge?

Under the immigration laws, the government must consider *several factors* in the public charge test, including the immigrant's age, health, family status, income, savings and property, education, and skills. The government cannot base its decision on just one factor. The government must also look at

whether the immigrant is likely to become a public charge *in the future*.

### Are all immigrants subject to the public charge test when applying for Green Card status?

No. **The test primarily applies to people seeking to immigrate through a visa petition filed by a family member.** These categories of immigrants are NOT subject to the public charge test:

- Refugees
- Asylees
- T visa applicants and holders
- Domestic violence survivors who get immigration relief under the Violence Against Women Act (VAWA)
- U visa applicants and holders
- Special Immigrants from Iraq and Afghanistan
- Cubans and Nicaraguans eligible under the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA)
- Special Immigrant Juveniles
- Registry applicants (people who have been in the U.S. since 1972)

## ***Changes for People Applying for Green Cards outside the U.S.***

### **What has the federal government done to change the public charge test for Green Card applications outside the U.S.?**

Some people must apply for Green Card status outside the U.S. at a consulate. In January 2018, the federal government changed the public charge instructions in the Foreign Affairs Manual consular officials use to decide visa applications. These new instructions are now in effect.

### **I have to apply for a Green Card outside the U.S. How will the changes affect me?**

Under the new instructions, consular officials may consider the use of noncash benefits, such as food or medical assistance, by you and your family members. Before, consular officials only considered cash assistance or government-funded long-term care. They only considered benefits used by family members if they were the family's only source of support.

The new instructions also give less weight to the Affidavit of Support your family member must file for you when you apply for your Green Card. The Affidavit of Support is still a positive factor. It is no longer enough on its own to support a finding that you are unlikely to become a public charge.

Consular officials must still consider *several factors* in the public charge determination. They must also consider if you are likely to become a public charge *in the future*. Consular officials cannot base their decision solely on the use of benefits by you or your family members.

## **Do I have to apply for my Green Card outside the U.S.?**

If you do not know if you are eligible to apply for your Green Card inside the U.S., consult with an immigration attorney. See resources at the end of this publication.

## ***Proposed Changes - Applying for Status Inside the U.S.***

### **What has the federal government done to change the public charge test for Green Card applications inside the U.S.?**

The Department of Homeland Security ("DHS") published a proposed public charge rule on October 10, 2018. This proposed rule would apply when immigrants apply for Green Cards with U.S. Citizenship and Immigration Services (USCIS) in the U.S. This process is called adjustment of status.

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- ❖ **This is only a proposed rule. It may not become a final rule. It may change before it becomes final.**

The government must accept public comments on the rule until December 10, 2018. After that, the government must take other steps before it can finalize the rule.

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### **What does the proposed rule say?**

It would expand the definition of public charge and increase the types of public benefits the government may consider in deciding if you are likely to become a public charge. It also has other provisions that may make it harder for you to get your Green Card if you have a low income.

## What benefits does USCIS currently consider in the public charge test for immigrants applying for status inside the U.S.?

Currently, USCIS only considers the use of *cash assistance* and *government-funded long-term care in an institutional setting*, such as when the government pays for your stay in a nursing home, in the public charge determination. Programs that would present a problem under current rules include:

- Supplemental Security Income (SSI)
- Aged Blind and Disabled Assistance (ABD)
- Temporary Assistance for Needy Families (TANF)
- State Family Assistance (SFA)
- Washington's state funded program that pays for certain immigrants to live in nursing homes or similar settings

## What benefits could USCIS consider in the public charge test under the proposed rule?

In addition to cash benefits and government-funded long-term care, the *proposed* rule would also let USCIS consider an immigrant's use of these benefits:

- **Medicaid**, except for emergency Medicaid and other exceptions - see below
- **Food assistance paid for by the federal government** (Basic Food)
- **Assistance to help people on Medicare pay for prescription drugs** (Medicare Part D Low Income Subsidies)

- **Housing assistance**, such as section 8 housing vouchers

## Are there benefits USCIS would NOT consider under the proposed rule?

Yes. Under the proposed rule, USCIS would **NOT** consider

- benefits received by an immigrant's family members
- emergency medical assistance – this includes emergency medical treatment received in a hospital setting, cancer treatment, and dialysis
- disaster relief - help after a natural disaster like an earthquake or flood
- programs that are entirely state, local, or tribal, such as Washington's state-funded Food Assistance Program - call your caseworker to find out if this is the program you are on
- benefits received by members of the U.S. military and their family members
- certain Medicaid disability services related to education
- Medicaid received by some foreign-born children of U.S. citizens
- Qualified Health Plans purchased on Healthplanfinder, and tax credit and subsidies to help with the costs
- the Women, Infants and Children (WIC) nutrition program
- medical treatment received at health clinics
- immunizations and testing and treatment of symptoms of communicable disease

- benefits, other than cash or long term care at government expense, you got before the rule is final and effective
- any other benefits not specifically listed in the proposed rule

**I am applying for a Green Card inside the U.S. My U.S. citizen children get food and medical assistance. Will this be a problem?**

USCIS will mostly consider benefits received by **you** – the applicant. Your children and spouse can receive food or medical assistance without it affecting your application for status. USCIS can consider the use of cash assistance by your child or spouse if it is your family’s only source of support.

**My child is applying for a Green Card inside the U.S. She uses medical benefits. Will this be a problem?**

Under current rules, no. USCIS will not consider your child’s use of medical benefits when they apply for Green Card status.

The proposed rule would allow USCIS to consider the receipt of non-emergency Medicaid. However, the rule would not allow USCIS to consider medical benefits received before the rule is finalized. In addition, many medical programs would not be considered under the proposed rule. (See above.)

***If you already have your Green Card***

**I have a Green Card. Can the government deport me if I use public benefits?**

Under the law, the government can only deport a person on public charge grounds in

extremely limited circumstances. Both these would have to be true:

- You became a public charge within five years of entry to the US
- For reasons that existed *before* you entered

**Example:** Two years after you come to the U.S., you are in an accident. You become dependent on government assistance. You are not subject to the public charge ground of deportation. The reason you need assistance arose after you entered the U.S.

The government has deported very few people on public charge grounds. The proposed rule cannot change existing law. It does not interpret the public charge ground of deportability.

**I have a Green Card. I use public benefits. Will this be a problem when I apply to become a citizen?**

No. The public charge test does not apply to Green Card holders when they apply to become naturalized citizens. The proposed rule does not and cannot change this.

However, under both the proposed rule and the existing changes to the Foreign Affairs manual, it may be harder for you to petition for your family members if you use public benefits.

**Will there be a public charge test when I renew my Green Card?**

No.

## **I have a Green Card. I use public benefits. How can I prevent problems with my immigration status?**

- Always give true and complete information to welfare offices such as the Department of Social and Health Services and the Health Care Authority. Promptly report any income or household changes.
- Inform welfare offices 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, the government may prevent you from returning under public charge rules.

### ***What you need to know:***

- **The rules have not changed for people applying for their Green Card with USCIS inside the U.S.** The government must accept public comments on the rule until December 10, 2018. After that, the government must take other steps before it can finalize the rule.
- **The rules have already changed for people who must apply for their Green Cards outside the U.S.** However, the public charge test is still a test that looks to the future and considers many factors. You can still try to show you will not need public assistance *in the future*, looking at *several 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.

- **The public charge test does not apply to all immigrants.** If you are a refugee or asylee, or in another exempt (excused) category, you are not subject to the public charge test. The changes do not affect you.
- **The public charge test does not apply when Green Card holders apply to renew their Green Cards or become naturalized U.S. citizens.**
- **Do not go off assistance or take your family members off assistance. Get legal advice about your individual situation.** Stopping benefits may not help your immigration case. Having medical care and enough food may help you to work and support your family. If you are eligible to apply for a Green Card inside the U.S., the proposed rule does not allow USCIS to consider assistance you receive before the rule is finalized, other than cash or government-funded long-term care.

**What if I still have more questions about my situation after reading this?**

Talk with your immigration attorney, or contact:

**CLEAR** at 1-888-201-1014 (M-F, 9:15 am – 12:15 pm)

OR

**Northwest Immigrant Rights Project:**

- 800-445-5771 (Western Washington)

- 888-756-3641 (Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Klickitat, Walla Walla Whitman & Yakima counties)
- 866-271-2084 (Adams, Chelan, Douglas, Ferry, Grant, Lincoln, Okanogan, Pend Oreille, Spokane & Stevens counties)

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