

SEPTEMBER 2021

## **PUBLIC CHARGE**

### **WHAT THE COMMUNITY NEEDS TO KNOW**

#### **THE TRUMP CHANGES TO PUBLIC CHARGE ARE NO LONGER IN EFFECT!**

The government has been blocked from applying the Trump public charge rule to visa cases processed abroad since July 29, 2020, and stopped applying the Trump rule to adjustment cases processed within the United States on March 9, 2021. Now, all immigration cases involving public charge will be decided based on longstanding guidance from 1999, making it safe for immigrants and their families to use health, food assistance, and housing programs for which they qualify. **Health care programs, including Medicaid (Medi-Cal in California) and COVID care, housing, food programs like food stamps (SNAP, or CalFresh in California), and many other vital services are once again safe to use.**

#### **WHAT IS PUBLIC CHARGE?**

Public charge is a test to determine if someone applying for permanent residence (a “green card”) or a visa to enter the United States seems likely to depend on certain 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 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.



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## 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 support where available will far outweigh a public charge concern. And health care, food assistance, and housing programs cannot be considered in a public charge test.

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; for more information, they should talk to a trusted immigration legal provider.

## 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, do not count in the public charge test, unless the benefits are your family's sole source of financial support.

## WHAT DOES THE PUBLIC CHARGE LAW SAY?

Everyone subject to a public charge test must show that they are not likely to depend on certain 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).

## 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 the public charge test.** For example, use of Medicaid (Medi-Cal in California), Food Stamps (called SNAP, or CalFresh in California), housing programs, WIC, emergency and disaster relief, Head Start, free and reduced-cost school meals, stimulus checks, tax credits, and many other benefits are not part of the public charge test.

## WHAT PUBLIC BENEFITS ARE PART OF THE PUBLIC CHARGE TEST?

The public charge test **only 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 definition of public charge has changed a few times over the past couple of years, and it can be confusing to keep track of the current rules. If you think you are using a benefit that could be a problem, do not disenroll

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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 a public benefit. 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.

### **WILL MY ACCESSING COVID-19 TESTING, TREATMENT, OR VACCINES AFFECT PUBLIC CHARGE?**

No! The government has stated that it will not consider COVID-19 testing, treatment, or preventive care, including vaccinations, as part of the public charge test.

### **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 <https://keepyourbenefits.org/en/na/>, 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)
- "福利" (Chinese)
- "lợi ích" (Vietnamese)