

Public Charge

Information & Plan of Action



What is Public Charge?

“Public charge” is a test used by the US government to determine and potentially bar entry if someone applying for immigration status in the U.S. is likely to depend on government assistance in the future. Rules on public charge have existed since the 1800s to exclude low-income working immigrants of color from obtaining lawful permanent residency in the U.S. The expanded rule* would make it more difficult for immigrants who are already in the U.S. to get a green card, and incite fear among communities.

The Department of Homeland Security previously published the public charge final rule on August 14, 2019. Communities and advocates quickly mobilized to challenge the rule, which led to several injunctions that blocked the rule from being implemented. **On January 27, 2020, the Supreme Court announced to allow the rule to be implemented while the litigation continues in court. On January 30, 2020, USCIS announced that the administration will implement the final rule on February 24, 2020 except in the state of Illinois. However, concerned community members should consult with the service provider and an immigration attorney about their rights to benefits and immigration status.** The test does not apply to U.S. citizens, refugees, asylees, U-visa holders, T-visa holders, VAWA applicants, special immigrant juveniles and most permanent residents (green card holders). Benefits received by family members where the applicant is not the sole beneficiary are not part of the consideration.

“Public charge” is generally determined through a **totality of circumstances test**. This includes consideration of the Applicant’s:

- Age
- Health
- Income, assets, resources
- Education/skills
- Family status (family members they support, and family who will support them)

The test will weigh “positive” and “negative” factors as potential indicators of reliance on public assistance.

Current Test	<ul style="list-style-type: none"> • The Sponsor’s annual household income must be <u>125% above</u> the Federal Poverty Level. A joint sponsor may be added to meet this requirement. 	
Public Charge Rule Change	Factors Weighed <u>Negatively</u> in Public Charge Determination	Factors Weighed <u>Heavily Positive</u> in Public Charge Determination
	<ul style="list-style-type: none"> • Receipt of public benefits* for more than 12 months in the aggregate within any 36-month period** • Children or seniors • Medical condition(s) likely to require extensive treatment or impact the Applicant’s ability to work • Persons with limited English proficiency 	<ul style="list-style-type: none"> • Applicant is authorized to work or their annual household income is at least 250% of the Federal Poverty Level • Applicant has private health insurance, not including subsidized insurance received under the Affordable Care Act

* = See “Programs Currently Included for Public Charge” and “Benefits Added in Proposal for Public Charge” lists

** = Heavily negative weighted factor

The rule will also expand the list of public benefits considered for public charge determination:

Programs <u>Currently Included</u> for Public Charge	Benefits <u>Newly Added</u> for Public Charge
<ul style="list-style-type: none"> ● Cash assistance <ul style="list-style-type: none"> ○ Supplemental Security Income (SSI) ○ Temporary Assistance for Needy Families (known as CalWORKS in CA) ○ Comparable state or local programs that provide cash aid ● Government-funded long-term institutional care 	<ul style="list-style-type: none"> ● Non-emergency Medicaid (known as Medi-Cal in CA; except used by persons under age 21, pregnant persons, and disability services related to education) ● Supplemental Nutrition Assistance Program (known as CalFresh in CA or food stamps) ● Federal Public Housing, Section 8 housing vouchers, and Section 8 Project-Based Rental Assistance

Key Points You Should Know

- **USCIS announced the implementation date as the litigation continues.** We can still fight back. If you or your family member have already applied for an adjustment of status by Feb. 24, 2020, the new rule may not impact you and you should consult with a trusted attorney or the service provider before making any important decisions that may impact your families’ health and future.
- **The rule change does not affect eligibility to naturalize or rights to public benefits.** Immigrants and their families who are currently eligible for benefits will continue to be eligible for those benefits. Many local and state programs, such as free school lunch and Healthy San Francisco, remain unimpacted.
- **The public charge rule may impact permanent residents (LPR’s) who seek re-entry to the U.S. after leaving for more than 180 days.** Any LPR who has departed the U.S. for more than 180 days is subject to a re-evaluation of their residency and public charge test. Before your trip, consult with an immigration attorney.
- **The public charge rule for people applying for lawful permanent residency from *outside* the U.S. already changed in January 2018.** Please consult with a trusted immigration attorney if you are concerned about how this might affect you.

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Consult with an Immigration Attorney or Service Provider

Public charge determination is not solely based on the receipt of government benefits and negative factors listed in the rule change -- immigration officials will also consider many other circumstances that relate to your ability to support yourself in the future. You should consult with an immigration attorney so they can make a thorough assessment based on your circumstances and immigration status. CAA can provide referrals to immigrant legal organizations in San Francisco that provide free and low-cost consultations.

Know Your Rights

A community united is a community empowered and ready to fight back. Help us spread power by utilizing the following tools to assess your level of risk:

- **Screening tools by web at keepyourbenefitsCA.org and by text message at [1-650-376-8006](tel:1-650-376-8006).** Text “benefits” (for English), “libre” (Spanish), “福利” (Chinese) or “lợi ích” (Vietnamese).
- **Multilingual Know Your Rights info by Protecting Immigrant Families at bit.ly/PIFPublicChargeKYR**

For general immigration inquiry or free legal referral, please contact CAA Immigration Hotline at 1-415-761-3222.

* = See “Benefits Added in Proposal for Public Charge” lists