



PUBLIC CHARGE?

Screening Tool and Attorney Referral Information for Community-Based, Social Services, and Advocacy Organizations¹

Disclaimer: This document is not legal advice, and does not substitute for the advice of an immigration expert.

What is "public charge"? Public charge is a technical legal term used in immigration law. It is part of a screening process used by U.S. immigration officials with non-citizens who are applying for lawful permanent resident (LPR) status, commonly also called getting a green card. If someone is considered to be a public charge or likely to become a public charge they won't be able to get a green card. Changes are expected to the law, but for now, the rules have not changed. Because the change in rules is being covered a lot in the news, some non-citizen clients may fear applying for or continuing to receive government benefits.

Understand that as of now,* though the government has proposed changes in the rules, nothing has actually changed for non-citizens seeking to apply for a green card in the U.S.

As explained in the FAQ's below, however, the public charge **rules have already changed for people seeking a visa to enter the U.S. from the U.S. Consulate in their home country.**

Does public charge affect all non-citizens? No. USCIS does **not** screen all noncitizens who are applying for, or want to apply for, permanent resident status, to see whether they are or may become public charges. Noncitizens in certain exempt immigration classifications (discussed on page 2, below) are not subject to a public charge screening, nor will they be even if the proposed rule changes are adopted.

Do all public benefits count for public charge? At least for now, **not all public benefits put a non-citizen at risk of being classified as a public charge.** Currently, the public charge evaluation considers the receipt of **only** two types of benefits: **(1) cash benefits (cash welfare, SSI); and (2) government-funded long-term-institutional care (nursing home type care)** as an indication that the person may be a public charge and so should not be allowed to become a permanent resident. However, the government is proposing to expand the list of benefits that would count for public charge.

Overview: To assist you in answering client questions about how receiving government benefits may affect their immigration status, this packet contains the following tools:

- A **screening tool** that staff members from community, social services, and advocacy organizations can use to help answer clients' questions about whether receiving government benefits will affect their immigration status.
- A list of **frequently asked questions and answers** that will help you respond to client questions relating to the receipt of government benefits and expected changes to the rules.
- **Lawyer referral information.** Some issues require a lawyer's expertise. If the person you are screening does not already have a lawyer and your organization does not have legal staff or partners available to answer client questions, this packet contains information about how to reach a lawyer, and in what circumstances a lawyer's help may be especially important.

Instructions: Start by taking the client through the multi-step screening tool:

- When the person you are screening reaches a green light like this  **you are done screening them, and they are not at risk under current rules.* But go to Step 4 for answers to frequently asked questions.**
- When you see a yellow light like this  **go to the next step.**
- When you see a red light like this  **refer the client to a lawyer.**
- When you see ***ASK***, it means you may need to ask a lawyer for help during the screening.

What if the person does not want screening but is concerned about how receiving benefits may affect their status? Persons concerned about public charge should go through the screening first to understand their level of risk before seeking a legal consultation. *Instructions about how to reach a lawyer are on page 6.*

¹ This document was prepared by The Legal Aid Society, Empire Justice Center and Make the Road New York.

*This document states the rules as of November 27, 2018. The rules are not likely to change before March 2019.

SCREENING FOR RISK OF PUBLIC CHARGE

Step 1: Check to see if the person being screened is subject to a public charge determination based on current immigration status.

Background: Not everyone undergoes a public charge screening by immigration officials. For example, persons who are already green card holders, naturalized citizens, or in an “exempt” status **do not have to worry about public charge**. This means that **they can use any type of benefit without worrying about it affecting their immigration status**.

Screening Question 1: <i>Are you currently a Lawful Permanent Resident (LPR, or green card holder) or naturalized citizen?</i>	
<p>If YES:</p> 	<p>The person being screened can use any type of benefit. (Review Step 4 in case the person has any frequently asked questions (FAQs)). Advise LPRs being screened to consult an immigration attorney if they are planning to travel abroad, if (a) the trip might exceed 6 months or (b) they have any criminal convictions.</p>
<p>If NO:</p> 	<p>Continue.</p>

Check any boxes below that apply and answer screening Question 2:

Exempt statuses that lead to a green card: People who have the following status are **not** subject to public charge screening: (***ASK*** if you or the person being screened doesn't know their current status)

- | | |
|--|---|
| <input type="checkbox"/> Refugees

<input type="checkbox"/> Asylees

<input type="checkbox"/> Special Immigrant Juveniles (SIJ)

<input type="checkbox"/> T Visa holders (trafficking survivors)

<input type="checkbox"/> U Visa applicants or holders (for certain crime victims)

<input type="checkbox"/> Noncitizens who have continuously lived in the US since before 1/1/72, who are eligible to apply for a green card because they have been in the US for so long | <input type="checkbox"/> Persons eligible to adjust under the Cuban Adjustment Act (CAA)

<input type="checkbox"/> Persons eligible to adjust under the Nicaraguan Adjustment & Central American Relief Act (NACARA)

<input type="checkbox"/> Persons applying for or granted status as a battered immigrant under VAWA (victim of domestic violence)

<input type="checkbox"/> Persons eligible to adjust under the Haitian Refugee Immigration Fairness Act (HRIFA)

<input type="checkbox"/> Special Immigrant Visa Holder (Afghan or Iraqi nationals who have helped the US) |
|--|---|

Screening Question 2: <i>Did you check any box above (exempt categories)?</i>	
<p>If YES:</p> 	<p>The person being screened is not at risk of public charge, and can use any type of benefit. (Review Step 4 in case the person being screened has any frequently asked questions (FAQs)).</p>
<p>If NO:</p> 	<p>Go to Step 2.</p>

Step 2: Is the person being screened pursuing or planning to pursue an immigration status that requires a public charge determination?

Background: Under current law, non-citizens are at risk only if they are in the process of applying for permanent resident/LPR/green card status through a US citizen or LPR family member (or in limited circumstances, when the sponsoring employer is a family-owned business). If the person being screened is in the process of applying for LPR status through a family member now, or is planning to do so in the near future, they will usually know or have one of the following forms of **common documentation**:

- Pending or approved Form I-130 (family-based visa petition); and/or
- Pending Form I-485 (application for LPR/green card status) through a family-based visa petition as described above.

Tip: Clients who have already filed the Form I-485 should also have submitted a signed Form I-864 affidavit of support from their sponsor. (If the client filed a Form I-485 and does not have a sponsor, it may be because they are not subject to a screening for public charge. Check Step 1, above.)

There are three categories of people who should answer yes at Step 2:

(a) People currently pursuing adjustment through a family member, as described above.

(b) People planning to seek adjustment through a family member: If a person being screened is *planning* to seek LPR status through a family-based petition, but has not yet started the process.

(c) People receiving benefits now that may trigger public charge only if they decide to seek adjustment through a family member at some point in the future: This category includes people whose immigration status makes them eligible to safely receive benefits now that could be negatively considered for public charge only if they seek family-based adjustment in the future. Some examples are:

- persons granted DACA or other deferred action
- people granted TPS
- people under an Order of Supervision
- people granted Withholding of Removal
- people granted parole for more than a year or less than a year
- citizens of Micronesia, Marshall Islands or Palau
- others receiving Cash Assistance because they are considered Permanently Residing Under Color of Law (PRUCOL)

Screening Question 3: <i>Is the person being screened in one of the three categories, (a), (b), (c) listed above?</i>	
If YES	 <p>Go to Step 3.</p>
If NO:	 <p>Good for now. People in this category can use benefits without risk of public charge under current rules, but should consult an immigration lawyer if they want to assess more fully their eligibility to apply for permanent resident status in the future and how the receipt of benefits could affect them.</p>

Step 3: Check if the person being screened is currently receiving benefits in the Risk Zone, or plans on receiving benefits in the Risk Zone.

Background: Under current law, only the receipt of certain benefits is considered by U.S. immigration authorities in making public charge determinations. Check to see if the client receives or wants to receive any of the following benefits:

- CASH ASSISTANCE (SSI, welfare, TANF, FA, in New York State also called SNA); or
- LONG-TERM INSTITUTIONAL CARE (nursing home care at public expense)

IMPORTANT NOTE: Medicaid, SNAP, public housing and other programs that help low-income individuals and families **do not count for public charge under current law**. Some of these benefits may count after the proposed changes go into effect, but the proposed rule says that they will not count if received prior to the new rules becoming effective.

Screening Question 4: <i>Does the person being screened receive or want to receive Cash Assistance or Long-Term Institutional Care?</i>	
<p>If YES:</p> 	<p>Refer to lawyer. (Remember: This only applies if the person answered Yes to Screening Question #3.)</p>
<p>If NO:</p> 	<p>Refer to lawyer if the client says no, but is worried about the receipt of benefits that may trigger public charge when the rules change: Medicaid, SNAP, Section 8, public housing, Medicare Part D subsidies. Review Step 4 in case your client has any frequently asked questions (FAQs).</p>

Step 4 Review Frequently Asked Questions

Background:

Persons NOT at current risk of public charge may nonetheless be concerned about the risk of receiving benefits for which they are eligible, despite getting a green light on the screening. **This is a serious matter, because if they forego needed assistance for rent, utilities, food, or health, they could be facing an emergency quickly.** If this is the case, use the questions and answers below to help address the person’s concerns.

What is "public charge"? Public charge is a legal term in immigration law that that applies to someone who wishes to apply for Lawful Permanent Resident status (LPR status/green card) or to enter the country on a visa based on a qualifying family relationship, and who the government decides is likely to be primarily dependent on the government for financial support. It does not apply to every non-citizen. There are many classes of non-citizens whose applications for a green card are not subject to a public charge evaluation (see exempt list under Step 1, above). Public charge is an issue for only a very specific category of non-citizens.

Who in the U.S. should be worried about public charge? Right now, it is primarily non-citizens who are applying for a green card through a family member, including, but not limited to, persons applying as an "immediate relative" of a U.S. citizen: a spouse of a U.S. citizen, a parent of an adult U.S. citizen child (≥21) or the minor (<21), unmarried child of a U.S. citizen, or in any of the family-based preference categories.

Who in the U.S. is NOT subject to public charge? People who are already LPRs, including those applying for citizenship/naturalization; and whole groups of immigrants who are "exempt" under the law from having to show immigration that they will not need financial help, such as refugees, VAWA self-petitioners and victims of trafficking. For a list of who is exempt and not subject to public charge, see exemption list under Step 1 above.

When will the rules change? Right now, there is no way to know exactly when the proposed public charge rules will change, but they will likely not go into effect before March 2019.

Have the rules already changed for people seeking a visa to enter the U.S. at the consulate office in their country? Yes, the rules affecting public charge have already changed at the U.S. consulates in other countries. If a sponsored family member is expected to be scheduled for a consular interview in the next few months, the person being screened should consult an immigration lawyer about how the changes might affect their relative.

What if the person being screened has TPS or DACA and is receiving cash assistance? If the person being screened is currently receiving Cash Assistance because they have TPS or DACA, there is no danger of losing TPS or DACA status merely because of receipt of benefits. However, if the client may be eligible to become an LPR now or in the future through a U.S. Citizen or LPR relative (see Step 2, above), they should speak to a lawyer.

What if the person being screened has a long work history, or a spouse or parent with a long work history? If the person being screened has worked and paid taxes for 10 or more years (or if they can be credited with qualifying work performed by their spouse or parent), they may be exempt from public charge even if they are applying to adjust to LPR status through a family member. If the person being screened thinks they fall into this specific category, they should discuss with a lawyer.

What if the person being screened plans to apply for a green card/LPR status through a family-based petition and asks if they should close their benefits case or not apply for benefits because they are worried about changes to the public charge rules? Under current rules, receiving Cash Assistance or institutionalized long-term care may make certain immigrants at risk for a public charge determination, BUT receiving other benefits like SNAP and Medicaid does NOT put immigrants at risk for public charge consideration under current immigration law. **People with this question should be referred to a lawyer as advised at Step 3.**

What about clients who fear removal/deportation on public charge grounds? For the last several decades, removal based on public charge has been very, very rare. The only people who have been at risk are those who have already obtained LPR status through a family member, who have had their LPR status for less than five years, and who are still required to have a financial sponsor. However, as of October 1, 2018, USCIS is intending to serve a Notice to Appear (which is the summons for removal proceedings in immigration court) in the event an immigration application is denied and the applicant has no lawful status. This includes applicants seeking to adjust their status to LPR, through family members. For this reason, anyone subject to public charge who is considering adjustment of status should speak with a lawyer to carefully assess their eligibility for adjustment.

Are the changes expected to apply retroactively? The proposed rule indicates that USCIS will not punish people for receiving benefits now that do not count for public charge under current law.

What will stay the same even if the rules change? People who are currently not subject to public charge based on their exempt status will continue to remain exempt from public charge screening when they apply to adjust their status, even if the rules change.

What are some of the changes expected?

- **Benefits that Count to Determine Public Charge.** The proposed rules include the following benefits in addition to Cash Assistance and long-term institutional care: Medicaid, SNAP, Section 8, Public Housing, Medicare Part D subsidies
- **Who Would the Changes Impact?** In addition to green card applicants based on a family-based petitions or certain employment-based petitions, people seeking to renew or extend their non-immigrant visas will also likely be subject to public charge screening if the rules change.

What should I tell my client about how to know when the rules change?

To sign up for text alerts from Make the Road NY, Text "ROAD" to 52886.

To sign up for text alerts from the New York Immigration Coalition, Text: "NYIC" to 864237.

What if I need attorney referral information? *See next page.*

ATTORNEY REFERRAL INFORMATION:

If your organization does not have staff or a partner that provides legal services for your non-citizen clients, here are some resources:

New York City:

- The Legal Aid Society:
Immigration Helpline, 844-955-3425, M-F, from 9 am - 5pm
- Make the Road New York:
Brooklyn, 718-418-7690; Queens, 718-565-8500; Staten Island, 718-727-1222

Long Island:

- Empire Justice Center, 631-650-2306

Westchester:

- Make the Road New York, 914-948-8466

Rest of New York State:

- Office for New Americans Hotline, 1-800-566-7636
- New York Immigration Coalition state-wide list of legal resources, <https://www.nyic.org/providers/>

SUMMARY CHART: CURRENT PUBLIC CHARGE RULES AND PROPOSED NEW RULES

	Current Rules (as of 11/19/18)	Proposed New Rules
Benefits that count	<ul style="list-style-type: none"> • Cash Assistance • Long-term Institutional Care 	<ul style="list-style-type: none"> • Cash Assistance • Long-term Institutional Care • Medicaid (not emergency) • SNAP • Section 8, public housing • Medicare Part D subsidies
When is someone at potential risk of being denied an immigration benefit on the grounds they are or may become a public charge?	<ul style="list-style-type: none"> • Noncitizens living in the US who are in the process of applying to adjust to permanent resident/green card status through a family-based petition (or certain family-sponsored employment-based petitions) • Other noncitizens who are planning in the future to apply for permanent resident/green card status through a family-based petition 	<ul style="list-style-type: none"> • At the point of applying for LPR status or planning to apply, as in current law • At the point non-immigrant visa holders seek to extend, renew or change their visas
Who is not subject to public charge screening?	<ul style="list-style-type: none"> • See list on Page 2; also includes current LPR/green card holders who are looking to naturalize 	<ul style="list-style-type: none"> • Will remain the same. Except adds members of the U.S. armed services to the exempt list