

Key Points for Assistors to Help Clients Understand Public Charge



This handout is for people working directly with clients to help explain specific aspects of the public charge regulation. Background information is available here:

<https://protectingimmigrantfamilies.org/resources/>

This document is not intended to provide legal advice.

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Talking points to share with clients

- The 2019 public charge rule, which expanded benefits considered in a public charge determination, was removed. The previous public charge rules from 1999 are in effect as of March 9, 2021.
- If you decide to apply for a Green Card at some point, benefits your family members use will not be considered in the public charge test. The only benefits considered are those used by the applicant themselves.
- Laws protect the privacy of people who apply for or receive help through public programs.
- Get help to decide what's best for your family. If you can, consult with an immigration attorney or BIA-accredited representative about your own situation.



Quick Reference for Assistors

- The 2019 rule was in effect from February 24, 2020 to March 9, 2021. Applications finalized during that time were considered under the 2019 rules. Applications that were still pending on March 9 are being assessed under the previous rules from 1999.
- With limited exceptions, benefit agencies can only share information with other government agencies for administrative purposes. In addition, individuals applying for benefits for children or other household members are not required to provide their immigration status – only the applicant must provide their immigration status.
- The information here relates to individuals applying within the U.S and outside the U.S.
- Benefits used by family members are not considered in the public charge test. The only benefits considered are those used by the applicant themselves.

When the public charge test is applied



When an individual applies for a visa to enter the U.S. temporarily or permanently



When an individual who is in the U.S. applies for an adjustment of status to Lawful Permanent Resident (i.e. Green Card holder)



When a Lawful Permanent Resident reenters the U.S. after being abroad for more than 6 consecutive months



The public charge test does not apply to many immigrants and public benefits

Immigration statuses *not* affected

- Lawful Permanent Residents applying for citizenship
- Refugees
- Asylees
- Survivors of domestic violence, trafficking, and other serious crimes (U and T visa holders)
- Special Immigrant Juveniles
- Violence Against Women Act (VAWA) self-petitioners
- Certain people paroled into the U.S.
- Benefits received by active-duty service members, and by their spouses and children

Public benefits *not* included

The following list is based on U.S. Department of Homeland Security 1999 Field Guidance that went into effect again when the 2019 public charge rule was removed.

- Benefits received by immigrant's family members
- Supplemental Nutrition Assistance Program for Women Infants and Children (WIC)
- Supplemental Nutrition Assistance Program (SNAP, also called Food Stamps)
- Emergency Medicaid
- School-based Medicaid services (e.g., the Individuals with Disabilities Education Act)
- Medicaid services except for Long-Term Care services
- Child Health Plan *Plus* (CHP+)
- Medicare, including Use of Low-Income Subsidy (LIS) for Medicare Part D prescription drug coverage
- Advanced Premium Tax Credits
- Cost Sharing Reductions
- Colorado Indigent Care Program (CICP)
- Sliding Fee Discount Program at National Health Center Corps certified sites
- Energy Assistance (LEAP)
- Free/Reduced Price School meals
- Transportation vouchers or non-cash transportation services
- Non-cash TANF benefits
- Federal Earned Income Tax Credit and Child Tax Credit
- Disaster relief
- Pell grants and student loans
- Social Security retirement benefits*
- Veteran's benefits
- Childcare services

Any program not explicitly listed in the rule

*Specific related programs *are* included: Social Security Income (SSI).



Factors that are considered as part of the Public Charge test

The public charge test considers only the following factors. Based on these factors, a person is considered a 'public charge' if they are likely to become "primarily dependent on the government for subsistence".

Considerations in the Rule*

- Age
- Health
- Family status
- Income and resources
- Education and skills
- Sponsorship/Affidavit of support
- Use of federally funded Medicaid for long-term institutional care
- Use of federal, state, local, and tribal cash assistance for income maintenance programs (e.g., SSI, TANF)

* Only the benefits included in this list can be considered under the rule



Frequently Asked Questions

How is the use of public benefits measured under public charge?

Someone is considered a public charge if they are likely to become "primarily dependent on the government for subsistence." Current and past use of benefits (cash assistance for income maintenance and federally funded long-term institutional care) will be considered in a public charge assessment as well as the other considerations listed above (age, health, etc.).

Is the public charge assessment new?

No, public charge tests have been used in immigration decisions for over a hundred years.

How is public charge defined?

The public charge test asks whether someone is likely to rely on government cash assistance for the majority of their support or Medicaid for long-term institutionalization.

What happens if a person is determined likely to become a public charge?

If immigration officials determine an individual is likely to become a public charge, the individual's application for admission or adjustment of status may be denied. The public charge determination does not impact the individual's current status but could impact their ability to enter or remain in the U.S. legally once their visa status expires.

Is a dependent's or family member's use of benefits considered in a person's public charge test?

No, only the applicant's use of benefits is considered. For example, if a citizen child receives child-only cash TANF benefits, the child's benefits will not be considered in a parent's Green Card application unless the family relies on this cash as their sole means of financial support.

How is the current rule different from the 2019 public charge rule?

The rules have different definitions of public charge and include different factors that can be considered in deciding if a person is likely to become a public charge. The rule in effect before February 23, 2020, and in effect now only considers the public benefits of cash assistance for income maintenance programs and federally funded Medicaid for institutionalization for long-term care. The 2019 rule expanded the benefits considered to include federal housing assistance, SNAP, and Medicaid. In addition, the 2019 rule asked whether someone is more likely than not to use 12 months of public benefits in a 36-month period, rather than if someone is likely to rely on government cash assistance or institutionalization for the majority of their support.

When did it revert back to previous guidance?

The 2019 rule went into effect on February 24, 2020. On March 9, 2021, the U.S. Department of Homeland Security announced that it will return to using the 1999 Field Guidance.

My client is still worried about public charge. How can I reassure them it is safe to apply for public benefits?

This is a very common fear. The recent changes to public charge caused a large 'chilling effect' where many immigrants and family members of immigrants decided to disenroll from benefits or to not enroll in benefits at all. You can remind clients of how benefits can support the health and financial stability of their family. In these discussions, remember that you are not a lawyer and cannot give legal advice. You can refer your client to an immigration attorney who can give legal advice and specific advice on what is best for each family.

Is there a list of immigration lawyers in Colorado?

Yes, you can find Colorado immigration lawyers listed here:

<https://www.immigrationlawhelp.org/search?state=CO>

Where can I go for additional resources?

- Covering Kids and Families is posting resources **for assisters** here: <https://ckf.chn.org/public-charge-resources/>
- Protecting Immigrant Families **national campaign** resources available here: <https://protectingimmigrantfamilies.org/>