



## **FAQs on USCIS's New Rule on Public Charge<sup>1</sup>**

### **1. What is Public Charge?**

- a. Public Charge is a forward-looking test that USCIS applies primarily in the following two situations when:
  - i. A person applies for their FIRST green card (lawful permanent residence)
    - 1. Public charge test does not apply when applying for citizenship
  - ii. A person is applying for an extension of stay or to change their current visa

### **2. Who is affected by USCIS's Public Charge test?**

- a. Those who are present in the US and are being sponsored by family members and are applying for a green card
- b. Those who are present in the US and are applying to "extend" their status.
  - i. for example, H1B work visa to permanent residency; or extending a non-immigrant tourist visa.
- c. Green card holders who leave the country for 6 months or more
- d. Green card holders who commit a crime

### **3. Who is NOT affected by the Public Charge test?**

- a. Refugees and asylees who are applying for adjustment of status (green card or permanent residency)
- b. Survivors of crimes who are applying for a U or T visa, and the Violence Against Women Act (VAWA)
- c. Applicants for withholding of removal or relief under the Convention Against Torture
- d. Applicants for initial or re-registration of Temporary Protected Status (TPS)
- e. Applicants for renewal of DACA status
- f. Cubans applying for adjustment of status under the Cuban Adjustment Act
- g. Amerasians who are applying for adjustment of status
- h. Special immigrant visa holders (from Iraq and Afghanistan)
- i. Special Immigrant Juveniles Status (SIJS)
- j. Applicants for "registry" based on their having resided in the United States since before January 1, 1972

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<sup>1</sup> This FAQ only addresses USCIS's new rule on Public Charge, which applies to immigrants already in the United States. If an immigrant is outside of the United States, there is a different, but similar Public Charge rule applied by the US Department of State. This FAQ does not address that rule, and immigrants outside the United States.

- k. Applicants for benefits under the Nicaraguan Adjustment and Central American Relief Act (NACARA)
- l. Applicants for benefits under the Haitian Relief and Immigrant Fairness Act (HRIFA)
- m. Lautenberg parolees who are applying for adjustment of status
- n. green card holders (EXCEPT in the two circumstances above); and
- o. US citizens

**4. What does the Public Charge Test entail?**

- a. The Public Charge test is a “totality of the circumstances” test and includes 6 factors that USCIS uses to evaluate whether the applicant is “more likely than not” going to receive one or more public benefit for more than 12 months in the aggregate (in any 36 month period).
- b. *Hypothetical: Mr. Y receives OHP and Snap at the same time for 3 months starting June, 2020 and for an additional 4 months in October, 2022. Mr. Y may be subject to the Public Charge Test because he received 2 types of public benefits for 7 months total, “aggregating” or adding up to 14 months of benefits in the period of June, 2020 through June 2023. USCIS evaluates the applicant’s 6 factors:*

- i. Age
- ii. Health
- iii. Family/household Status
- iv. Assets, Resources, and Financial Status

**1. Form I-944, Declaration of Self Sufficiency:**

- a. Has the “alien applied for, been certified to receive, or received public benefits, as defined in 8 CFR 212.21(b), on or after October 15, 2019?”
- b. *Receipt of one or more public benefit after Oct. 15, 2019, does not automatically make you a public charge. But, if the applicant has received one or more public benefits for more than 12 months in the aggregate (in any 36 month period), this will be a heavily negative factor.*
- c. Rule is not retroactive, but the receipt of public benefits in the past, before Oct. 15, 2019, is a negative factor.
- d. An applicant’s receipt of public benefits solely on behalf of another individual does not constitute receipt. For example, a parent may apply for SNAP or TANF benefits on behalf of a U.S. citizen child.
- e. Public benefits received by any other person in the applicant’s household will not be considered.
- v. Education and Skills

- vi. Affidavit of Support
- vii.

**5. What public benefits are counted in the Public Charge test?**

- a. SSI
- b. TANF
- c. Institutionalization for long term care
- d. Non-emergency OHP (Medicaid)
- e. SNAP
- f. Section 8 Housing Vouchers
- g. Section 8 Project Based Rental Assistance
- h. Federal Public Housing

**6. What programs and benefits will NOT be counted in the Public Charge test?**

- a. Anything that is not included above, will NOT be considered in the public charge test.
- b. These programs/benefits include:
  - i. Emergency OHP
  - ii. Oregon's Cover All Kids, and any health care programs for children who are under 21 years of age
  - iii. OHP for pregnant women
  - iv. Emergency OHP (CAWEM)
  - v. WIC
  - vi. Community and School food pantries and programs
  - vii. And so much more! For a more complete list, please refer to the Oregon Law Center's Public Charge Sheet and the USCIS website <https://www.uscis.gov/greencard/public-charge>

**7. What should I do if I am applying for a green card and I have been receiving a public benefit that I think would be counted in the Public Charge test?**

- a. You should contact a licensed immigration lawyer and/or call the Oregon Law Center Public Benefits hotline at: **1-800-520-5292**.
- b. Keep in mind that this rule is narrow—Most people applying for a green card and are subject to the Public Charge test cannot qualify for the public benefits that are counted in the Public Charge test.
- c. Also, as a general rule of thumb, if the benefit that you are using wasn't concerned with your immigration status, it's likely that that benefit is not counted in the Public Charge test.

**8. Will health services related to COVID-19 be subject to the public charge test?**

- a. USCIS states that it will not consider testing, treatment, or preventative care (including vaccines, if a vaccine becomes available) related to COVID-19 as part of a public charge inadmissibility determination.
- b. However, USCIS will still consider in a public charge analysis receipt of the cash and non-cash public benefits described in the rule, including most forms of federally funded Medicaid for those over the age of 21.
- c. If your client's receipt of those benefits is related to the spread of COVID-19 or associated social distancing or quarantine, USCIS encourages applicants to submit a statement with their application to explain how current conditions have affected the applicant. The receipt of benefits and the statement would be considered in the totality of the circumstances of the public charge test. Similarly, if your client was unable to work or go to school because of social distancing or quarantine rules, USCIS will consider a statement from the applicant explaining the circumstances, along with relevant supporting documentation.
- d. It is important to remember that receipt of benefits by family members who are not applying for a green card will not be considered.