

What is “public charge?”

A public charge is a person that the government determines is likely to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at the government’s expense. If the immigration officer or the consular officer determine, at the time of application for an immigrant visa or adjustment of status, that the applicant is “likely at any time to become a public charge,” the individual is considered “inadmissible” to the U.S. and is no longer eligible to become a permanent legal resident.

How is public charge determined?

The government assesses whether someone is likely to become a public charge in one of two ways: 1) totality of the circumstances test, in which many factors are considered (age, health, family status, assets, resources, financial status, education and skills, among other case-specific factors) and on the whole, whether someone in the future is anticipated to be a public charge; and 2) affidavit of support test, which is required in all family-based immigration cases, whether the application is in the U.S. or at a U.S. consulate abroad.

Only the applicant (person applying for immigrant admission or adjustment of status) is evaluated for public charge. Public benefits received by family members are not considered, unless those benefits are the only means of income for the family.

Are there any exceptions to the public charge evaluation?

Certain groups of people are exempt or eligible for a waiver from the public charge test. These categories include refugees and asylees; T and U visa applicants or visa-holders; VAWA self-petitioners; and individuals granted NACARA, HRIFA, TPS, and DACA.

Which public benefits are considered in the test?

Cash-based assistance at the federal, state, and local levels are the primary forms of benefits that are considered to be public cash assistance.

The following cash benefits are currently considered as to whether someone is likely to be a public charge:

- 1) Cash assistance for income maintenance, food stamps, including Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF, which is called CalWORKs in California), State Child Health Insurance Program (SCHIP), and state and local cash assistance programs (often called “General Assistance” programs); and
- 2) Institutionalization for long-term care at government expense in a nursing home or mental health institution, and covered by Medicaid

Which public benefits are NOT included in the public charge determination?

Past, current, or future receipt of non-cash benefits and special-purpose cash benefits that are not intended for income maintenance are not subject to public charge consideration. Such federal programs and similar state or locally-sponsored programs include:

- Emergency Medicaid;
- Short-term, non-cash emergency relief;
- Services provided under the National School Lunch and Child Nutrition Acts;
- Immunizations and testing and treatment for communicable diseases;
- Student assistance under the Higher Education Act and the Public Health Service Act;
- Certain forms of foster-care or adoption assistance under the Social Security Act;
- Head Start programs;
- Means-tested programs under the Elementary and Secondary Education Act; and
- Job Training Partnership Act programs.

Special notes regarding adjudication at a U.S. Consulate

In January 2018, the U.S. Department of State made changes to the public charge determination in the [Foreign Affairs Manual \(FAM\)](#) that governs cases at the U.S. consulate. These changes direct the officer to assess past or current receipt of public assistance of any type by the visa applicant or a family member in the visa applicant’s household in determining whether the applicant is likely to become a public charge in the future.

While it remains unclear whether consular officers are adjudicating public charge determinations differently in practice, the new FAM guidance to consular officers specifies the following: If the applicant’s financial circumstances are very different than when the applicant received public assistance, it would weigh against a public charge finding. If the applicant’s financial circumstances are similar to when the person received the benefits, it would weigh in favor toward finding the person to be likely to be a public charge and therefore ineligible to become a permanent resident.

Additionally, whether a sponsor and any member of the sponsor’s household has previously received (especially in the past three years), or presently receives means-tested benefits may also be considered by the consular office in making a public charge determination.

New public charge rule from USCIS – effective February 24, 2020

Starting February 24, 2020, USCIS will implement a final public charge rule (updating its regulations at 8 CFR 212.21(a)). The changes represent a more in-depth analysis of most applicants for adjustment of status (excepting certain categories such as asylees and refugees who remain exempt from a public charge determination). The Public Charge rule applies only prospectively for any applications filed after February 24, 2020 and does not require filing new forms for any currently pending cases.

The rule also affects applications for change or extension of nonimmigrant status. For nonimmigrants who are seeking to change status or extend status, the standard is lower and retrospective: the public charge inquiry is an examination of only whether the applicant received 12 months or more of public benefits during any 36-month period while in the nonimmigrant status the applicant wishes to change or extend.

The new USCIS rule also does not directly apply to consular immigrant processing cases; however, a similar substantive inquiry does apply at the consulates through a revised and updated Department of State's (DOS) FAM Foreign Affairs Manual (FAM). Immigrant visa applicants remain subject to the FAM's (Foreign Affairs Manual) standards and requirements which has been updated to include the same definition of a public charge and factors for determination as outlined below.

New definition of public charge

In brief, the new rule changes the standard as to how USCIS decides whether an applicant for adjustment of status or admission is "likely at any time to become a public charge" and therefore inadmissible to the United States. The new rule redefines public charge as a noncitizen *who receives or is likely to receive one or more of the specified public benefit, for more than 12 months in the aggregate within any 36-month period* (such that, for instance, receipt of two benefits in one month counts as two months). The revised inquiry expands into how much the applicant is able to be self-sustaining through earned income as well as detailed analysis of the applicant's and the family's personal financial circumstances.

Specific Factors in the Totality of Circumstances Test and Weighing of the Evidence

For each of the following enumerated factors, the Public Charge Rule sets forth standards by which the adjudicating officer determines whether or not the applicant is likely to become a public charge. Moreover, each of these factors are further weighed positively or negatively according to additional qualifications.

1. Age – whether the applicant is of employable age; ages 18 to retirement are viewed positively;
2. Health – whether the applicant has a medical condition that impacts self-care, attend school, or work;
3. Family status – based on household size, such that larger families are considered likely to receive public benefits, which is a negative factor;
4. Assets/resources/financial status – whether the applicant meets a threshold of household income, has any financial liabilities, has sufficient resources to cover reasonably foreseeable medical costs, and whether the applicant has applied for and/or received public benefits after February 24, 2020;
5. Education and skills, including English language proficiency – whether the applicant has employment history, education, and/or skills to be employable;
6. Prospective immigration status and expected period of admission – whether the applicant is seeking a change or extension of nonimmigrant status (subject to a lower level of scrutiny); and
7. If applicable, Affidavit of support – the relationship between the applicant and the financial sponsor affects this factor, including whether there is a joint sponsor who is not also a household member (Form I-864 Affidavit of Support does not apply to most employment-based I-485 applications).

Definition of public benefits, with three exceptions

The following programs qualify as public benefits under this rule. Use of these benefits will subject the applicant to a public charge determination:

- 1) Supplemental Security Income (SSI);
- 2) Temporary Assistance for Needy Families (TANF);
- 3) Any other federal, state or local cash benefit programs (i.e., general assistance);
- 4) Supplemental Nutrition Assistance Program (SNAP, i.e., food stamps);
- 5) Section 8 Housing Assistance under the Housing Choice Voucher Program;
- 6) Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation);
- 7) Public Housing under Section 9 of the U.S. Housing Act of 1937; and
- 8) Federally funded Medicaid.

However, there are three areas that are exempt categories of benefits and do not count against being a public charge:

- 1) Medicaid Exemptions
 - Emergency Medicaid;

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- Services provided under the Individuals with Disabilities Education Act;
 - School-based services;
 - Benefits received by individuals under age 21; and
 - Benefits received by pregnant women.
- 2) Public benefits received by military families while the applicant was in the U.S. armed services or at the time of filing or adjudication of the case
 - 3) Child applicants who will automatically naturalize through a U.S. citizen parent with whom they live in the U.S.

New Forms and Documentary Evidence

To date, USCIS has revised several forms (including Form I-485) and has created a new Form I-944 to collect additional information regarding public charge in the permanent residency application context.

The supporting documentary evidence requires more comprehensive information from both the applicant (and any financial sponsors, in the family-based application context), including tax transcripts, credit reports, health insurance policies, and detailed information about the assets and liabilities of the applicant and any household members.

USCIS has also revised several nonimmigrant visa application forms, mainly to collect data on whether the applicant has used or been certified to receive the eight public benefits itemized above.