Navigating the New Public Charge Rule

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Agenda

- What is Public Charge?
- History and Impact
- Who Does It Apply To?
- What Does the New Rule Mean in Practice?
- Practice Scenarios
- Community Messaging
- Resources
- Q &A

What Is Public Charge?

- Part of application process for many people seeking a visa, lawful permanent resident (LPR) status, and/or admission to the U.S.
- Under long-standing U.S. law, certain individuals can be denied entry into or permission to adjust their status if they are determined likely to become a “public charge”
- For decades, this was defined in sub-regulatory guidance as **primarily dependent on the government for subsistence**, as measured by:
  - Cash assistance for income maintenance
  - Institutionalization for long-term care (ex: nursing home paid for by Medicaid)

Recent Changes to Public Charge Policy

Trump 1 Public Charge Rule
Significantly broadened the definition of public charge to include receipt of large array of benefits

Biden Public Charge Rule
Restored clear guardrails, largely codified 1999 guidance

Trump 2 Public Charge Rule
Rescinds Biden-era rule, gives officers extreme discretion

Impact of These Changes on the Public

- The 2019 rule created mass confusion and chill
  - SNAP participation among children who are U.S. citizens in households that include noncitizens dropped by 22.5% from 2018-2019
  - Medicaid enrollment decreased by over a quarter million for children in families that include noncitizens from 2016 to 2019
- Lingering concerns and significant chill even after the Biden rule
  - Around 1 in 4 adults in mixed status families avoided safety net programs in 2023 because of public charge concerns

Anticipated Impact of The New Rule

- KFF estimates this policy, together with other actions by the Administration, could cause between **1.4 million and 4.1 million eligible people to disenroll** from Medicaid or CHIP, including about 560,000 to about 1.7 million U.S. citizen children

- DHS estimates that the rule will result in a reduction of government spending on public benefits programs of up to **$13 billion** a year

Who Does Public Charge Apply To?

May Apply

- People applying for family-based or certain employment-based LPR status
- LPRs who leave the country for more than 180 days

Does Not Apply

- U.S. citizens/those seeking to naturalize
- Green card renewals
- Exempt groups (U, T, VAWA, SIJ, Asylees, Refugees), who apply for LPR status on that basis

2026 Public Charge Final Rule

- Rescinds the 2022 rule without any regulatory replacement
- Removes clear guardrails that:
  - Limited officers to only considering 2 types of benefits
  - Made clear that benefits received by family members would not be considered
- **Effective date:** September 18, 2026

What Will Officers Consider?

No concrete list of benefits that officers can or cannot consider

- Guidance indicates officers will have broad discretion to consider *any* **"means-tested" public benefits** used after September 18 as part of the "totality of the circumstances" → *decisions should not be based on benefits use alone.*
  - **Means-tested-** eligibility is based on income falling below a certain threshold
  - **Public-** provided by the government (federal, state, local, or tribal)

Other Factors Officers Must Consider

- Age
- Health
- Education and Skills
- Family Status
- Assets, Resources, and Financial Status
- Affidavit of Support

What Will Officers *Not* Consider?

Guidance and preamble language suggests officers should not consider:

- "Earned" benefits- e.g. Medicare, government pensions, unemployment insurance
- Universal benefits available regardless of income- e.g. libraries, public playgrounds, emergency fire services
- Health care the applicant pays for without government subsidies

Receipt of Benefits by a Family Member

- Benefits received by family members are not directly considered as part of a public charge assessment
- However, DHS **may consider as part of an applicant's assets, resources and financial status** the extent to which family members receive means-tested benefits

Implementation Timeline and Impact

Green card applications submitted before 9/18/26	Green card applications submitted on or after 9/18/26
Officers may only consider: • Use of cash support for income maintenance, or • Long-term care at govt. expense	For benefits use before 9/18/26, officers may only consider: • Use of cash support for income maintenance, or • Long-term care at govt. expense
	For benefits use on or after 9/18/26, officers may consider: • Use of *any* "means tested" benefits

Scenario 1- Henry

Henry is a 45-year-old with three children who applied for a family-based green card. He has a vocational certificate and works part-time. His spouse is employed full time, and their household income is slightly above the federal poverty guidelines. He received Medicaid for emergency medical care in 2025, but he has not received other means-tested public benefits.

Scenario 2- Bella

Bella is a 70-year-old who is divorced and no longer in the workforce. She lives with her U.S. citizen adult son. She has a serious condition that requires extensive medical care and prevents her from working. She has limited retirement savings, assets or resources, and no health insurance. Her son sponsored her for her family-based green card and filed an affidavit of support, but he is also supporting three other family members.

Scenario 3- Phoebe and Sam

Phoebe and her husband Sam were granted asylum, and their son was born in the U.S. They want to sign their son up for SNAP and Medicaid, but are worried that if they do, it could hurt their chances of getting a green card.

Scenario 4- Rhonda

Rhonda is an LPR and wants to apply to become a U.S. citizen. She is retired after many years working at a restaurant. She uses Medicare and is worried about the naturalization process.

Community Messaging

- **The rule only applies to those subject to public charge-** most people do not need to worry about going through a public charge assessment in the future
- **Those who applied for a green card before September 18, 2026 are not affected by this new rule-** it only applies to those applications filed on or after September 18th
- **Officers must consider the totality of circumstances**- not benefits use alone

Community Messaging, cont.

- Public charge **does not affect** whether a person is eligible for benefits
- Those seeking a green card or LPRs who want to travel for more than 180 days should **consult with an attorney if possible**
- Families should review information and **make a decision that works best for them**
- It is important to **stay connected to local community-based organizations** for further guidance and support

Keep Your Organization Up to Date

- **Follow updates and track any changes**
  - Three lawsuits have been filed challenging the policy
  - Watch for updates from USCIS and other agencies
- **Refer to trusted sources for information**
  - PIF coalition, NILC, KeepYourBenefits.org

Resources

- **For Advocates:**
  - PIF: Public Charge Regulation Toolkit
  - NILC: Public Charge Rule: What You Need to Know
    NILC: Public Charge Applicability Table for Advocates
- **Community Resources:**
  - Public Charge: Does this Apply to Me? (now in 9 languages)
  - Public Charge Community Talking Points
- **CBPP Analysis:** Harsh New "Public Charge" Policy

PROTECTING IMMIGRANT FAMILIES

DOES PUBLIC CHARGE APPLY TO ME?

September 2026

WHAT IS PUBLIC CHARGE?

Public charge is an immigration policy for some people who want to get a green card (Lawful Permanent Residency status) through their family members or a visa to come to the U.S. It also applies to some people with green cards who leave the U.S. for more than six months. By law, immigration officers must look at your whole life situation to decide if you can get a green card. They look at your age, your health, and your family. They also check your income, education, and work skills. Part of this check includes whether a family member or someone else has promised to support you financially.

The public charge test looks at whether you are likely to depend on the government at any time. A new policy starting September 18, 2026 says officers can look at any type of government-funded benefits you have used that are limited to people with low incomes – but having received a benefit does not automatically make you ineligible. Because these rules are complicated, it is a good idea to talk to a lawyer before you leave the country or apply for your green card.

DOES PUBLIC CHARGE APPLY TO ME?

Public Charge Does Not Apply to You if:

- You're a U.S. citizen
- You already have your green card / permanent residency and stay in the US
- You're applying for TPS, U or T Visa, Asylum or Refugee status, or Special Immigrant Juvenile (SIJ) Status
- You're applying for a green card based on having SIJ or being an asylee or refugee, or your green card application is filed by someone who has a U or T visa
- You have no current pathway to obtain a green card, such as DACA, TPS, Parole, or you're undocumented, or you do not plan to apply for a green card in the future

Public Charge May Apply if:

- You plan to apply for a family-based green card
- You have a green card but leave the country for more than 6 months

This is not legal advice - every family's situation is different. Speak to a knowledgeable immigration attorney before submitting any immigration-related application.

Questions or comments

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