NATIONAL IMMIGRATION LAW CENTER

Public Charge: Frequently Asked Questions for Immigration Advocates

Starting September 18, 2026, a new regulation and new guidance on public charge inadmissibility will go into effect. This FAQ reflects our best understanding of the rule as of September 2026.

This FAQ is for general information only. This document is intended for advocates, immigration attorneys, service providers, and others who assist immigrant communities. It is not legal advice, and it can't tell you how the rule applies to a specific situation. The answers below are our best interpretation of the policy, not a guarantee of how any specific case will be decided. People with questions about their own case or situation should consult a trusted immigration attorney or advocate.

Advocates should always determine: 1) whether an individual is subject to public charge; 2) whether the benefit is both public *and* means-tested; 3) who received the benefit (the applicant or someone else); and 4) whether timing matters, including when the benefit was received and when the green card application was/will be filed.

A green card application is filed on the Form I-485, Application to Register Permanent Residence or Adjust Status. Family members who are petitioning (or filing) for their relatives must also file the Form I-130, Petition for Alien Relative. This FAQ will use the term "green card application" and "petition" for ease of reference to refer to those forms.

Public Charge Basics and Scope

1. **Does the DHS public charge rule apply to Department of State (DOS) decisions for people seeking a green card or finishing their green card process *outside* the United States?**
   No, the 2026 public charge rule only applies to certain green card applications processed in the **United States**. DOS has separate policies for applications processed at foreign consulates. NILC is part of litigation regarding public charge-justified restrictions for visa processing. For more information, see https://www.nilc.org/litigation/clinic-v-rubio/.

2. **Which green card applications are subject to public charge? Can someone change what kind of green card they are applying for?**
   Click here for a comprehensive list of who public charge applies to. If someone wants to re-

file a green card, they must have another basis or pathway and should seek advice from a trusted immigration attorney.

3. **Does public charge apply to someone with a green card who is applying for citizenship?**
   No, public charge does not apply to people who have received a green card. There is no public charge test for citizenship applicants.

4. **Does public charge apply when someone requests removing conditions on their green card (extending a marriage-based green card after two years)?**
   No, the public charge test does not apply when someone requests to remove conditions on their green card.

Exemptions and Special Immigration Pathways

1. **If a refugee or asylee applies for a green card after 9/18/26, are they subject to the 2026 rule?**
   By law, refugees and asylees are not subject to a public charge either when they apply for those statuses or when they apply for a green card via the refugee/asylee pathway. They could become subject to a public charge test if they seek a green card through a separate pathway or petition that is unrelated to their asylee or refugee status (like a family-based or employment-based petition).

2. **If a survivor with a T or U visa or an approved VAWA self-petition applies for a green card, are they subject to public charge?**
   No. By law, anyone applying for a green card based on a T visa, U visa, or VAWA self-petition is **not** subject to public charge. This includes any *derivatives* (children, spouses, etc.) if the derivative is filing for their green card based on that derivative T status, U status, or VAWA (regardless of the derivative's age). However, they could be subject to a public charge test if they seek a green card through a separate pathway or petition that is unrelated to their underlying humanitarian status (like a family-based or employment-based petition).

3. **If an individual obtained their green card through a humanitarian status (like refugee status) and is now petitioning for their family members, would the family members be subject to public charge?**
   If the family member currently lives in the United States and files a green card application,

public charge would apply. This is because the green card is being processed via a family-based petition, rather than the refugee pathway.

4. **An immigrant receives benefits in the U.S. while in an "exempt" status (for example, a refugee, asylee, or T/U visa holder). If they are now seeking a green card through a family-based petition, will their past benefits receipt be considered in a public charge test?**
   USCIS's 2026 guidance states that officers will consider "any evidence" regarding the underlying basis for receipt of benefits, such as being in an exempt status (like a refugee or trafficking survivor). The guidance also states that current and/or past receipt of benefits alone is not a sufficient basis to determine that a person is likely to become a public charge. We will need to see exactly how officers will consider benefits used while a person had an exempt status if they apply for a green card through a non-exempt pathway, like a family-based petition.

Effective Date & Timing (Green Card Applications)

1. **Do the 2026 public charge rule and guidance apply to green card applications filed before 9/18/26?**
   No. The 2026 rule and guidance only apply to green card applications filed on or after 9/18/26.

2. **Will the 2026 rule and guidance apply to green card interviews that take place on or after 9/18/26?**
   The rule only applies to green card applications received on or after 9/18/26, regardless of interview date. If a green card application was submitted before then, it is not subject to the 2026 rule.

3. **If someone filed their green card application before 9/18/26, should they be prepared to answer extra or new questions in an interview?**
   USCIS should not be applying the 2026 rule to any applications filed before 9/18/26. Advocates and their clients need to know this, so they can remind officers of filing and applicability dates. If you notice officers asking inappropriate questions, please report patterns and information to NILC or other organizations working on public charge.

4. **If a U.S. citizen turns 21 years old on 9/18/26 and wants to file a family-based petition and green card application for their parent, is there any way to avoid being subject to the 2026 guidance and rule?**
   The 2026 rule will apply to any applications received on or after 9/18/26. USCIS will reject any petition filed for a parent if the petitioner is under 21, even if the petitioner turns 21 while the petition is pending or shortly after submission.

Effective Date and Timing (Public Benefits Receipt)

1. **How will DHS determine *when* someone began receiving public benefits? Is the date someone received a public benefit the date they *applied* for the benefit? If they applied and were approved for benefits before 9/18/26 and continue to receive benefits after 9/18/26, will such receipt be considered?**
   If someone applied for benefits before 9/18/26 and continued to receive benefits after that date, the benefits received on or after that date **will** be considered.

2. **If someone was temporarily receiving public benefits but stopped prior to 9/18/26, will those public benefits be considered?**
   No. Public benefits received before 9/18/26 will not be considered unless they are specifically long-term institutionalization or cash assistance for income maintenance.

3. **If someone applied for a public benefit before 9/18/26, the benefit is granted/received after 9/18/26, and the green card application is filed after 9/18/26 would this person be subject to the 2026 rule?**
   Yes, this person's green card application would be subject to the 2026 rule based on their filing date. Any means-tested public benefits received on or after 9/18/26 could be considered (as could cash assistance/long-term institutionalization received before 9/18/26).

4. **If there is a chance someone will apply via a family petition in the future, should they stop receiving benefits now, or should they wait until they file the green card application?**
   Before making that decision, people should speak with a trusted immigration attorney or legal services provider to understand whether they are eligible or will soon become eligible to apply for a green card through a family member, and when that might happen.

Many people may think they could have a family-based green card in their future. This may be true, but it is important to understand that family-based immigration can involve long waiting periods, including many years or even decades. Stopping vital benefits and services now based on only a distant or uncertain possibility may not be the best choice for them and their family.

How to Tell Whether a Public Benefit May Count

Use of benefits alone should not automatically make someone a public charge and public charge does not apply to everyone. It is important to always first identify whether public charge applies to someone before reviewing whether a benefit program may be considered in a public charge test.

Public benefits rules can vary widely by program and by state. Whether a program may be considered in a public charge test depends on how the program is funded, who runs it, and how eligibility is determined. In addition, USCIS has stated officers may consider the recency, duration, and amount of benefit received, and whether the reason for the benefit is likely to continue. Programs are *more* likely to be considered in a public charge test if they are:

- Government-funded, and
- Eligibility is based on income and/or assets falling below a certain amount (means-tested)

Programs are *less* likely to be considered if they are:

- Privately funded, or
- Available regardless of income/assets, or
- Based on need, safety, education, or another factor other than financial eligibility.

<u>How to read the following chart</u>: Many benefits should not be considered in a public charge decision. Government-funded, means-tested benefits are the only category that may be <u>considered</u>, and even then, only if the person is subject to the public charge test.

Examples are included only to help explain the categories. They are not a complete list and do not mean that every person who uses one of these programs will be subject to a public charge test or found likely to become a public charge.

Funding Source	Type of Benefit	Consideration
Not tied to funding source	Earned benefits. Examples may include unemployment insurance, Social Security retirement benefits, Social Security disability insurance, and veterans benefits	Should not be considered.
Privately funded	Benefits available regardless of income/assets, sometimes called “universal benefits.” Not based on financial need. Examples may include a privately funded scholarship not based on financial need or a privately owned/operated food bank that is accessible by anyone.	Should not be considered.
Privately funded	Benefits where eligibility is based on an individual's income/assets falling below a certain amount. These are means-tested benefits, but not *public* benefits.	Should not be considered.
Government funded	Benefits available regardless of income/assets, sometimes called “universal benefits.” Not based on financial need. Examples may include K-12 public education, universal school lunch programs, or universal basic income programs.	Should not be considered.
Government funded	Benefits where eligibility is based on an individual's income/assets falling below a certain amount. These are means-tested public benefits. Examples may include Medicaid, WIC, and SNAP, depending on the program and whether public charge applies.	May be considered *but only if* the public charge test applies.

1. **How does the regulation define “means-tested public benefit?”**
The regulation does not define what constitutes a means-tested public benefit. The August 2026 guidance states that a benefit is generally considered “means-tested” if eligibility for the benefit is determined based on an individual’s income or assets falling below a certain threshold or amount. The guidance states that a benefit is “public” if the payments or the

assistance are provided by a government agency or by government appropriated funds. This includes federal, state, local, territorial, or tribal programs.

2. **Is there an exhaustive list of benefits considered in public charge?**
   No. USCIS has said that they will not be providing an exhaustive list of benefits that will or will not count in a public charge determination.

3. **What does "universal benefits" mean?**
   The guidance and final rule do not define this term, but it is commonly understood to be a benefit that people can receive regardless of their income. USCIS stated in the Final Rule that benefits that are not means-tested, including universal benefits, are not considered. Some examples might include: a universal school lunch program where all kids get lunch without showing their family's income; a public park; a public library; or a community vaccine clinic with free vaccinations for all (regardless of their income).

4. **How does USCIS define "long-term institutionalization"?**
   Historically, USCIS has interpreted "long-term institutionalization" to mean stays that are not temporary or short-term in a care facility paid for by a government. The definition has historically excluded things like short-term rehabilitation or imprisonment for a crime. If someone is institutionalized in a facility for a temporary or short-term purpose, it has not been counted for public charge purposes. USCIS has not changed this interpretation in the rule or guidance.

5. **Will USCIS count state and local benefits funded by the government?**
   Yes, USCIS will consider a government-funded program, whether it is federal, state, local, territorial, or tribal *if* it is means-tested.

6. **In 2025, several federal agencies published notices redefining "Federal public benefits" under PRWORA. Will the benefits listed in those notices be considered in public charge determinations?**
   The PRWORA agency notices interpret a different term for purposes of benefit eligibility, not for immigration purposes. USCIS has not indicated that it intends to adopt those separate agency definitions for purposes of public charge determinations.

7. **Is a program "means-tested" if it does not have an individual income eligibility determination but is not fully universal? For example, a program available to all**

within a targeted area based on income levels in that area.
USCIS has repeatedly stated that they will consider something means-tested only if the *applicant's* income or assets falls below a certain threshold, not a community/zip code's income.

8. **Will school lunches be considered in a public charge test?**
It depends. If a school meal program is available to all students and does not base eligibility on a person's income or assets, USCIS should not consider it a means-tested public benefit. If the meal was provided because the student or household met an income or asset limit, USCIS could consider it. In the 2026 guidance, USCIS included an example involving school lunches, and in that example the school lunch appeared to carry little weight in a public charge determination.

9. **When the rule and guidance say Social Security benefits are considered earned, are they talking about Social Security Disability Insurance Benefits (SSDI), retirement benefits, or Supplemental Security Income (SSI)?**

    - Social Security retirement benefits are earned benefits and therefore should not be considered means-tested.
    - SSDI is similarly an earned benefit (funded by payroll taxes) that should not be considered means-tested.
    - Survivor benefits are earned benefits granted to surviving family members of a deceased worker, and would not be considered means-tested.
    - Spousal and family benefits are for spouses and children of workers, and are earned benefits (and therefore not means-tested).
    - SSI is income- and asset-based and therefore would be considered a means-tested benefit. SSI was considered even under the 2022 rule.

10. **Will tax credits be considered in a public charge test?**
The preamble to the Final Rule states that considering "means-tested" tax credits is relevant in a public charge determination. They do not specify how or which tax credits may be considered.

Family & Household Benefits

USCIS says it will not automatically treat the household member's benefit as the applicant's benefit. The guidance indicates that USCIS can consider benefits received by household members if those benefits are the applicant's source of financial support or the applicant is legally obligated to support the household member receiving benefits.

Scenario	Consideration
Household member received a means-tested public benefit	Maybe. USCIS may consider the receipt if it reflects the applicant's financial circumstances.
Benefit was granted to a child or household member based on the applicant's income or assets	Maybe. USCIS may consider the underlying financial facts, such as the applicant's income falling below a program threshold.
Household member's benefit is helping financially support the applicant	Yes. USCIS guidance indicates that a household member's benefit receipt may be relevant if it is being used to support the applicant.
The applicant is legally obligated to support the household member receiving the benefit	Yes. USCIS may consider the benefit receipt because it relates to the applicant's financial responsibilities.
Household member receives SSI	Maybe. USCIS may consider SSI receipt or the underlying financial information if the applicant is legally obligated to support the recipient.

1. **How does USCIS define 'family members' or 'household members'?**
   The guidance says officers can consider the following people to be members of an applicant's household:

   - The applicant,
   - The applicant's spouse, if physically residing with the applicant,
   - The applicant's parents, if physically residing with the applicant,
   - The applicant's unmarried siblings under 21 years old, if physically residing with the applicant,
   - The applicant's children (as defined in immigration law at INA 101(b)(1)), if physically residing with the applicant,

- Any other individuals listed as dependents on the applicant's federal income tax return, and
- Any other individuals who list the applicant as a dependent on their federal income tax return.

2. **Could benefits used by a household member who files a family-based petition (I-130) be considered?**
Maybe. The 2026 guidance says USCIS does not attribute any means-tested public benefits received by a household member to the applicant, but USCIS could consider those benefits received in certain circumstances. USCIS claims that the household member's receipt of benefits is relevant because it may reveal something about the applicant's assets, resources, or financial status. According to USCIS, the receipt of means-tested public benefits by a household member may be considered in a public charge determination if:

    - The benefits received by the household member are the applicant's source of financial support; or
    - The applicant is legally obligated to support the household member who is receiving the benefits.

    Elsewhere in the guidance, USCIS also says that if an applicant's children or another household member the applicant is required to support received means-tested public benefits based on the applicant's income or assets falling below a certain level, officers should consider the applicant's income or assets falling below the threshold as part of the assets, resources, and financial status factor.

3. **Could a family member's benefit application, without receipt of benefits, be considered in a green card application?**
The USCIS guidance says that officers can consider benefits receipt by household members, but does not mention applications that do not lead to receipt. One important thing to remember is the green card application does not collect information on family or household members' applications or receipt of benefits.

4. **How does this affect people seeking adjustment of status whose petitioning relatives are receiving Supplemental Security Income (SSI)?**
USCIS has said they will only consider receipt of benefits by household members in certain circumstances (see Question 2 above). If the green card applicant's relative is considered a

"household member" and the applicant is legally obligated to support the SSI recipient, the SSI receipt could be considered.

5. **Do you anticipate a change to the forms where the family member's use of benefits could be reviewed outside of an interview?**
   USCIS has not indicated that they plan to change forms to collect information about family members' receipt of benefits.

6. **To what extent does the financial situation of the petitioner affect the adjustment of status application of the beneficiary?**
   If the petitioner is not a financial sponsor, and is not a household member, their financial status should not be considered in an adjustment of status adjudication. If the petitioner has used means-tested public benefits, USCIS may consider that information as part of the financial status analysis discussed above.

Financial Factors and Bonds

1. **How does USCIS consider income, assets, resources, and financial status?**
   USCIS may consider an applicant's overall financial situation, including income, assets, resources, debts, expenses, household size, and financial obligations. USCIS may also consider whether the applicant has enough financial support to meet their needs and whether they have relied on, or are likely to rely on, means-tested public benefits. This analysis should be individualized and should consider the applicant's full circumstances, not just one piece of information.

2. **Will having received a USCIS Fee Waiver for form filing fees be considered in a public charge test?**
   Receipt of a fee waiver should not be considered a means-tested public benefit but can be considered as part of the totality of the circumstances.

3. **Does having an Affidavit of Support or financial sponsor mean someone will not be found likely to become a public charge?**
   Not necessarily. For many family-based green card applicants, an Affidavit of Support is required and is an important positive factor. However, having a sponsor does not automatically mean that the applicant will not be found likely to become a public charge.

USCIS may still consider the applicant's age, health, family status, income, assets, resources, financial status, education, skills, and other relevant circumstances.

4. **What if a sponsor or joint sponsor has low income or receives public benefits?**
   If a sponsor or joint sponsor does not meet the income requirements, the applicant may need a different or additional sponsor, or the sponsor may need to show sufficient assets. If the sponsor or joint sponsor receives public benefits, that does not automatically mean the applicant will be found likely to become a public charge. However, USCIS may consider the sponsor's financial situation when evaluating whether the Affidavit of Support is sufficient and whether the applicant is likely to have adequate financial support.

5. **What are public charge bonds?**
   A public charge bond is an immigration bond that is like a financial guarantee. If an immigration officer decides that someone is likely to become a public charge, the officer may allow the person's green card application to be approved if a bond is paid. The bond is meant to guarantee that the person will not rely on certain government benefits in the future.

   Under the 2026 rule and guidance, a bond will be breached or violated if the person receives any means-tested public benefit before the bond is cancelled (which can happen when the person dies, leaves the country, has been a green card holder for five years, or becomes a U.S. citizen).

6. **What happens if USCIS thinks someone is likely to become a public charge but might qualify with a bond?**
   If USCIS determines an applicant is likely to become a public charge, USCIS may decide to offer the applicant the opportunity to submit a public charge bond. A bond is not guaranteed, and USCIS does not have to offer one in every case. If a bond is offered and paid, USCIS may approve the green card application despite the public charge concern. Advocates should watch closely for how USCIS applies this process under the 2026 rule and guidance.

Other Factors USCIS May Consider

1. **What other factors will USCIS consider besides public benefits?**
   By law, USCIS should consider the totality of the circumstances when deciding whether someone is likely to become a public charge. This means that benefits receipt is only one part of the analysis. Officers should also consider factors such as the applicant's age; health;

family status; income, assets, resources, and financial status; education and skills; and any Affidavit of Support, if required. **No single factor should automatically determine the outcome**, and current or past receipt of benefits alone should not be enough to find someone likely to become a public charge.

2. **How will withdrawal or cancellation of benefits be considered?**
   If an individual decides to disenroll, cancel, or forgo benefits, USCIS has said they will consider that evidence in a public charge determination as part of the totality of the circumstances. But stopping benefits does not guarantee a better outcome in a public charge case, and it may harm the person or their family by cutting off food, health care, housing, or other essential support. Before stopping benefits, people should speak with a trusted immigration attorney or legal services provider to understand whether public charge applies to them, whether the benefit may be considered, and whether changing benefits use may affect their case.

3. **How does USCIS consider health conditions or disability?**
   USCIS may consider health as one factor in the totality of the circumstances, but a health condition or disability alone should not automatically make someone likely to become a public charge. USCIS should consider the person's entire situation, including someone's ability to work, insurance or other health coverage, access to support, and other relevant factors. Having a disability, chronic health condition, pregnancy, or need for care alone should not lead to a public charge finding.

4. **Is there any mention of English proficiency in the rule or guidance?**
   Yes, the USCIS guidance mentions language skills (including English proficiency) as skills that can be considered as part of the totality of the circumstances.

USCIS Processes

1. **What are RFEs and NOIDs?**
   RFE stands for "Request for Evidence," which officers can send to ask for more evidence if they feel that an applicant did not submit all required evidence; if the evidence submitted is no longer valid; or if the officer needs more information to determine an applicant's eligibility. A NOID is a "Notice of Intent to Deny," which an officer may send if they intend to deny an application, but the officer is basing a decision in whole or in part on information of which the applicant is not aware (or could not reasonably be expected to be aware). The

NOID provides an applicant an opportunity to review and respond to the information.

2. **Will officers review documents like the change of address forms that ask for reports of public benefits received?**
   Officers will have access to all documents and forms included in an applicant's file; they may review any forms that collect public benefits information.

3. **If an applicant is determined to be a public charge (and therefore denied a green card), are they able to appeal that decision?**
   No, there is no appeal of a public charge determination or a green card application denied on that basis; however, an applicant may file a Motion to Reopen or Motion to Reconsider using the Form I-290B within 30 days. An applicant can also re-file a green card application.