

## PUBLIC CHARGE?

### Screening Tool and Attorney Referral Information for Community-Based, Social Services, and Advocacy Organizations<sup>1</sup>

Disclaimer: This document is not legal advice, and does not substitute for the advice of an immigration expert.

**What is “public charge”?** Public charge is a technical legal term used in immigration law. It is part of a screening process used by U.S. immigration officials with non-citizens who are applying for lawful permanent resident (LPR) status, commonly also called getting a green card. If someone is considered to be a public charge or likely to become a public charge, they won't be able to get a green card.

**Who should use this screening tool?** This screening tool is designed to be used by advocates and case workers who interface with people who are concerned about the impact receiving public benefits may have on their immigration options, including people who are subject to public charge because they are in the process of adjusting through a family member here in the U.S., and other non-citizens, who are not subject to public charge, but continue to fear that receiving benefits may affect their immigration status.

**What is the purpose of the tool?** The tool will (a) help identify people who are going to face a public charge determination so that they can be referred for legal help if they need it; (b) help assure people who are not subject to public charge that there are no adverse immigration consequences related to their use of benefits; and (c) make sure people have accurate information about the current state of the law on public charge.

**Is there a new public charge Rule in effect?** No. A new Rule on public charge was issued on August 14, 2019 (the “Rule”). It was supposed to go into effect on October 15, 2019; but the Court in *Make the Road New York et al. v. Cuccinelli et al.* and other courts temporarily blocked the new Rule from taking effect. We do not know how long the block will last. If the plaintiffs win their case, the Rule may never go into effect. **While the litigation plays out in the courts, people who face public charge will only be subject to the current public charge rule which has not changed since 1999. Note: Many people may not yet know that the new Rule has been blocked. This tool will help you explain to people that they are not subject to the new Rule at this time.**

**Overview:** To assist you in answering client questions about how receiving government benefits may affect their immigration status, this packet contains the following tools:

- A **screening tool** that staff members from community, social services, and advocacy organizations can use to help answer clients' questions about whether receiving government benefits will affect their immigration status.
- A list of **frequently asked questions and answers** that will help you respond to client questions relating to the receipt of government benefits and expected changes to the rules.
- **Lawyer referral information.** Some issues require a lawyer's expertise. If the person you are screening does not already have a lawyer and your organization does not have legal staff or partners available to answer client questions, this packet contains information about how to reach a lawyer, and in what circumstances a lawyer's help may be especially important.

**Instructions:** Start by taking the client through the multi-step screening tool:

- When the person you are screening reaches a green light like this  **you are done screening them, and they are not at risk under current rules.\* But review answers to frequently asked questions.**
- When you see a yellow light like this  **go to the next step.**
- When you see a red light like this  **refer the client to a lawyer.**
- When you see **\*ASK\***, it means you may need to ask a lawyer for help during the screening.

**What if the person does not want screening but is concerned about how receiving benefits may affect their status?** Persons concerned about public charge should go through the screening first to understand their level of risk before seeking a legal consultation. *Instructions about how to reach a lawyer are on page 6.*

<sup>1</sup> This document was prepared by The Legal Aid Society, Make the Road New York, and the Empire Justice Center.

## SCREENING FOR RISK OF PUBLIC CHARGE

**Step 1: Check to see if the person being screened is subject to a public charge determination based on current immigration status.**

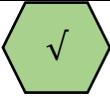
**Background:** Not everyone undergoes a public charge screening by immigration officials. For example, persons who are already green card holders, naturalized citizens, or in an “exempt” status **do not have to worry about public charge**. This means that **they can use any type of benefit without worrying about it affecting their immigration status**.

<b>Screening Question 1: <i>Are you currently a Lawful Permanent Resident (LPR, or green card holder) or naturalized citizen?</i></b>	
<p><b>If YES:</b></p> 	<p>The person being screened can use any type of benefit. (Review frequently asked questions (FAQs) with person being screened). Advise LPRs being screened to consult an immigration attorney if they are planning to travel abroad, if (a) the trip might exceed 6 months or (b) they have any criminal convictions.</p>
<p><b>If NO:</b></p> 	<p>Continue.</p>

**Check any boxes below that apply and answer screening Question 2:**

**Exempt statuses that may lead to a green card:** People who have the following status are **not** subject to public charge screening: (*\*ASK\** if you or the person being screened doesn't know their current status)

- |   |  |
|---|--|
| <input type="checkbox"/> Refugees   | <input type="checkbox"/> Persons eligible to adjust under the Cuban Adjustment Act (CAA)   |
| <input type="checkbox"/> Asylees  | <input type="checkbox"/> Persons eligible to adjust under the Nicaraguan Adjustment & Central American Relief Act (NACARA)       |
| <input type="checkbox"/> Special Immigrant Juveniles (SIJ)  | <input type="checkbox"/> Persons applying for or granted status as a battered immigrant under VAWA (victim of domestic violence) |
| <input type="checkbox"/> T Visa applicants and holders (trafficking survivors)  | <input type="checkbox"/> Persons eligible to adjust under the Haitian Refugee Immigration Fairness Act (HRIFA)                   |
| <input type="checkbox"/> U Visa applicants or holders (for certain crime victims)   | <input type="checkbox"/> Special Immigrant Visa Holder (Afghan or Iraqi nationals who have helped the US)                        |
| <input type="checkbox"/> Noncitizens who have continuously lived in the US since before 1/1/72, who are eligible to apply for a green card because they have been in the US for so long |  |

<b>Screening Question 2: <i>Are you exempt from public charge (e.g., are any of the boxes indicating an exempt category checked)?</i></b>	
<p><b>If YES:</b></p> 	<p>The person being screened is not at risk of public charge, and can use any type of benefit. (Review FAQs with person being screened).</p>
<p><b>If NO:</b></p> 	<p>Go to the next step.</p>

**Step 2: Check to see if the person being screened has already applied for an immigration status that requires a public charge determination.**

**Background:** Under current law, non-citizens are at risk only if they are in the process of applying for permanent resident/LPR/green card status through a US citizen or LPR family member (or in limited circumstances, when the sponsoring employer is a family-owned business). Anyone who submits a **Form I-485 (application for permanent residence/green card) while the new Rule continues to be blocked** is subject to the current public charge test (not the new Rule).

If the person being screened is in the process of applying for a green card through a family member now, or is planning to do so in the near future, they will usually know about it or have one of the following forms (check as applicable):

- Notice I-797 where the fine print (likely under the case type) says receipt for filing I-485; and/or
- Form I-485 (application for LPR/green card status) through a family-based visa petition as described above.

**Tip:** Clients who have already filed the Form I-485 usually also have submitted a signed Form I-864 affidavit of support from their sponsor.

<b>Screening Question 3: <i>Have you submitted your green card application (one or both boxes above are checked)?</i></b>	
<p><b>If YES:</b> </p>	<p>If yes, the person may be in the process of adjusting through a family member and is subject to the current public charge rule, not the new Rule. <b>If they have already filed their application the new Rule does not apply to them. Use of benefits like federal Medicaid, SNAP, Section 8/public housing will not count against them.</b> If they have questions about the status of their pending application, they should ask their lawyer or be referred to a lawyer for more information. Review FAQs with person being screened.</p>
<p><b>If NO:</b> </p>	<p>If the person has NOT already applied, go to the next step.</p>

**Step 3: Determine if the person being screened is possibly eligible for a green card through a family member.**

**Background:** Because the current rule on public charge is more favorable than the new Rule, and the new Rule is blocked at this time, it is important to figure out if the person could quickly apply for a green card while the new Rule is blocked. Check any boxes below that apply to the person being screened:

- An immediate family-member has already filed an I-130 petition for the person being screened (the “applicant”) and the family member who filed the petition is the applicant’s (a) U.S. citizen spouse; (b) U.S. citizen adult child (21 or older); (c) U.S. citizen parent and the applicant is an unmarried child under 21.
- No I-130 petition has been filed, but the person being screened is the immediate family member of one of the following: (a) U.S. citizen spouse; (b) a U.S. citizen adult child (21 or older); (c) a U.S. citizen parent and the person being screened is an unmarried child under 21.
- An I-130 petition has already been filed by a NON immediate family relative to the person being screened, but an application (I-485) has not yet been filed.
- A petition (I-140 or ETA 750) was already filed by an employer who is a family member but an application (I-485) has not yet been filed.

**Screening Question 4: Are you eligible to apply for a green card now or in the near future (checked one of the boxes above)?**

**If YES:**



**Refer to lawyer.** A lawyer can help to figure out if the person being screened is eligible to **apply for a green card while the current rules are still in effect**, and how the new Rule would affect any application they submit if the new Rule goes into effect at a later date.

**If NO:**



**Good for now.** People in this category can use any benefits now, but should be aware that if they do apply for a green card in the future, any use of cash assistance (or long-term institutional care) can be a negative factor. Use of federal Medicaid, SNAP, and Section 8/public housing would only start to count when and if the Rule goes into effect. Use of these benefits now – while the Rule is blocked – will not be counted against the person. Review frequently asked questions (FAQs) with the person being screened for more information.

## Frequently Asked Questions

### Background:

Persons NOT at current risk of public charge may nonetheless be concerned about the risk of receiving benefits for which they are eligible, despite getting a green light on the screening. **This is a serious matter, because if they forego needed assistance for rent, food, or health, they could be facing an emergency quickly.** If this is the case, use the questions and answers below to help address the person's concerns.

**What is "public charge"?** Public charge is a legal term in immigration law that that applies to someone who wishes to apply for Lawful Permanent Resident status (LPR status/green card) or to enter the country on a visa based on a qualifying family relationship, and who the government decides is or is likely to be too dependent on the government for financial support. It does not apply to every non-citizen. There are many classes of non-citizens whose applications for a green card are not subject to a public charge evaluation (see exempt list under Step 1, above). Public charge is an issue for only specific categories of non-citizens.

**When will the rules change?** A new Rule was issued on August 14, 2019, but it was temporarily blocked by the Court on October 11, 2019. The new Rule will only ever go into effect if (a) plaintiffs fail to win their case seeking a permanent stop to the Rule; or (b) if the government successfully appeals the Court's October 11, 2019 decision and/or obtains a stay of the October 11, 2019 decision. **Because of these possibilities, we do not know how long the new Rule will be blocked, but we will update this tool when there is more information.**

**Is there any litigation to stop the Rule from going into effect?** Yes. Numerous states, localities, and non-profit organizations have sued to have the Rule stopped from going into effect and declared unlawful. As of the date this version of the Screening Tool is published, five courts from around the country have issued orders saying the Rule is likely to be found illegal and which block the new Rule from going into effect. The government is in the process of trying to put the Rule into effect by seeking a stay of the court orders that stopped the Rule and appealing those decisions. The screening tool will be updated as new information is received.

### How will I know if the new Rule is going to go into effect?

Sign up for text alerts from Make the Road NY – Text "ROAD" to 52886.

Sign up for text alerts from the New York Immigration Coalition – Text: "NYIC" to 864237.

### QUESTIONS ABOUT WHO PUBLIC CHARGE APPLIES TO

**Who in the U.S. should be worried about public charge?** Primarily non-citizens who are applying for a green card through a family member, including, but not limited to, persons applying as an "immediate relative" of a U.S. citizen: a spouse of a U.S. citizen; a parent of an adult U.S. citizen son or daughter ( $\geq 21$ ); the minor ( $< 21$ ), unmarried child of a U.S. citizen; or in any of the family-based preference categories. In

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addition, people being sponsored by a small business owned by their family will be subject to public charge. In addition, a person who already has a green card, and who is returning to the U.S. after traveling outside the U.S. (a) for more than 180 days, or (b) has certain criminal convictions, will be subject to public charge.

**Who in the U.S. is NOT subject to public charge?** People who already have green cards, including those applying for citizenship/naturalization; and whole groups of immigrants who are "exempt" under the law from having to show immigration that they will not need financial help, such as refugees, VAWA self-petitioners and victims of violent crimes. For a list of who is exempt and not subject to public charge, see exemption list under Step 1 above.

**Have the rules already changed for people seeking a visa to enter the U.S. at the consulate office in their country?** Yes, the rules affecting public charge have already changed at the U.S. consulates in other countries in certain ways, and there are other new rules pending, that have not been implemented yet. If a sponsored family member is expected to be scheduled for a consular interview in the next few months, the person being screened should consult an immigration lawyer about how the changes might affect their relative.

**What if the person being screened has a long work history, or a spouse or parent with a long work history?** If the person being screened has worked and paid taxes for 10 or more years (or if they can be credited with qualifying work performed by their spouse or parent), they may be exempt from needing a sponsor. Having a long work history will likely be treated as a favorable fact in the public charge analysis, but technically the person being screened will still be subject to public charge.

**Will the categories of people considered exempt from public charge remain the same?** People who are currently not subject to public charge based on their exempt status will continue to remain exempt from public charge screening when they apply to adjust their status, even after the new Rule eventually becomes effective.

**Does the Rule apply to sponsors?** No. Sponsors still have to have income at or over 125% of the poverty level. Sponsors are not disqualified from sponsorship because they receive government benefits, but if they qualify for government benefits, they may need a joint sponsor to ensure that they meet the income guidelines.

## QUESTIONS ABOUT THE NEW RULE

**What are some of the changes that would take effect if the new Rule is ever implemented?**

- **New Benefits would Count to Determine Public Charge.** The new Rule would include the following benefits in addition to Cash Assistance and long-term institutional care funded by the government: federal Medicaid for a very limited group of immigrants (most immigrants who receive federal Medicaid are exempt), SNAP, Section 8, and Public Housing. To count, a benefit must be received for 12 months out of a 36-month period (if two benefits received, the benefits count if received for 6 months out of a 36-month period; if three benefits received, the benefits count if received for 4 months out of a 36-month period).
- **Who Would the Changes Impact?** In addition to green card applicants based on a family-based petitions or certain employment-based petitions, people seeking to renew or extend their non-immigrant visas would also be subject to certain aspects of the new public charge Rule.
- **New factors considered.** The Rule would treat as negative factors new circumstances presented by the applicant, including being unemployed, having less than 125% of the poverty level in income, having a disability, being limited English proficient, being under 18 or over 61, having a large family, having debt or a low credit score, and others. The only positive factors would be being in a household that has income or resources over 250 percent of the poverty level or being authorized to work and having such income (approximately \$64,000 for a family of four) or having private health insurance (not including health insurance for which the applicant receives subsidies in the form of premium tax credits under the Affordable Care Act).

**Would past use of benefits that count for public charge count against a person applying for the green card?** The new Rule says that use of benefits that count only under the new Rule – SNAP, federal Medicaid, and Section 8/public housing – would count only against an applicant who receives those benefits for him- or her-self (not on behalf of children) **on or after** the Rule becomes effective. However, new applicants would have to list all benefits they have received on the new Form I-944 Declaration of Self-Sufficiency, which is confusing. **Any** use of cash assistance **before** the Rule were to become effective

would also count as a negative factor, instead of only use that counts as “primary dependence” under the old standard.

**How do I know if I have federal Medicaid? *Under the current rule, no form of health insurance (other than long-term institutional care funded by Medicaid) counts for public charge purposes.***

Under the new Rule, federal Medicaid would count. Very few immigrants who are subject to public charge are eligible for federal Medicaid. In New York State, the only immigrants who are not LPRs or naturalized citizens who are eligible for federal Medicaid are those who are pregnant, within 60 days postpartum or under 21. This means that if you receive health insurance from the government, it is State Medicaid or the Essential Plan or Child Health Plus. Even under the new Rule, these three programs would NOT count for public charge. If the new Rule were in effect and you are pregnant or within 60 days postpartum or under 21, your federal Medicaid receipt would not count for public charge. Also, if you have ever received Emergency Medicaid, this would not count for public charge. Other programs like NYC Care, H+H Options, or other forms of hospital charity care or other charity care also would not count for public charge.

**What if the person being screened has TPS or DACA and is receiving Cash Assistance?** If the person being screened is currently receiving Cash Assistance because they have TPS or DACA, there is no danger of losing TPS or DACA status merely because of receipt of benefits. However, if the client may be eligible to apply for a green card now or in the future through a U.S. Citizen or LPR relative (see Step 2, above), they will be subject to public charge at that point. Under the new Rule Cash Assistance received by someone with TPS would not count against them when they seek to adjust.

**What if the person being screened plans to apply for a green card through a family-based petition and asks if they should close their benefits case or not apply for benefits because they are worried about changes to the public charge rules?** Under current rules, receiving Cash Assistance or institutionalized long-term care will make certain immigrants at risk in a public charge determination, BUT receiving benefits like SNAP, federal Medicaid and Section 8/public housing will not put people at risk under current Rules. These benefits would only count if the new Rule goes into effect, and even then, only use after the new Rule goes into effect would count.

**What about clients who fear removal/deportation on public charge grounds?** For the last several decades, removal based on public charge has been very, very rare. The only people who have been at risk are those who have already obtained LPR status through a family member, who have had their LPR status for less than five years, and who are still required to have a financial sponsor. However, as of October 1, 2018, USCIS started serving a Notice to Appear (which is the summons for removal proceedings in immigration court) in the event an immigration application is denied and the applicant has no lawful status. This includes applicants seeking to get their green cards through family members. For this reason, anyone subject to public charge who is considering adjustment of status should speak with a lawyer to carefully assess their eligibility for adjustment **before** applying.

## ATTORNEY REFERRAL INFORMATION:

If your organization does not have staff or a partner that provides legal services for your non-citizen clients, here are some resources:

**New York City:**

- City of New York:  
Action NYC Hotline, 800-354-0365, M-F, from 9am-5pm, or call 311 and say “Action NYC”
- The Legal Aid Society:  
Immigration Helpline, 844-955-3425, M-F, from 9am -5pm

**Rest of New York State:**

- Office for New Americans Hotline, 1-800-566-7636
- Empire Justice Center, 631-650-2306 (Long Island)
- New York Immigration Coalition state-wide list of legal resources, <https://www.nyic.org/providers/>