

# FEDERAL GUIDANCE ON PUBLIC CHARGE

## When Is it Safe to Use Public Benefits?

MAY 2009

The U.S. government has published guidance on the “public charge” rules — when receiving public benefits may affect your immigration status or your ability to travel outside of the U.S. The guidance explains when it is and is not safe to use public benefits.<sup>1</sup>

### Highlights of the Public Charge Guidance

- Use of Medicaid, the Children’s Health Insurance Program (CHIP), or other health programs by you or your family members will **NOT** affect the public charge decision unless you use Medicaid or other government funds to pay for long-term care (nursing home or other institutionalized care).
- Use of the Supplemental Nutritional Assistance Program (food stamps), WIC (the supplemental food program for women, infants, and children), public housing, or other noncash programs by you or your family members will **NOT** affect the public charge decision.
- Use of cash welfare by your children or other family members will **NOT** affect the public charge decision unless these benefits are your family’s only income.
- Your own use of cash welfare, such as Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), or General Assistance, **MIGHT** affect the public charge decision, depending on your situation. This is because the Department of Homeland Security (DHS) or U.S. State Department can count your use of these benefits in deciding whether you are likely to become a “public charge.”

### Overview of Public Charge

#### ► What is “public charge”?

“Public charge” is a term used in immigration law. The term describes persons who cannot support themselves and who depend on benefits that provide cash — such as TANF or SSI – for their income. Depending on your immigration status, the Department of Homeland Security or U.S. State Department consular officers abroad can refuse to let you enter the U.S., reenter the U.S., or become a lawful permanent resident if they think you will not be able to support yourself without these benefits in the future. Public charge is not an issue for immigrants who are

<sup>1</sup> Immigration and Naturalization Service, “Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,” 64 Fed. Reg. 28689–93 (March 26, 1999), available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1999\\_register&docid=99-13202-filed.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1999_register&docid=99-13202-filed.pdf).



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applying to become a U.S. citizen. Public charge is not an issue for refugees, persons granted asylum, or persons certified as trafficking victims.

### ► How does the government decide whether a person is likely to become a public charge?

When you seek to enter the U.S. or apply for a green card, the government may ask you questions to see if you are likely to become a public charge in the future. The DHS or State Department should look at many factors to decide if you are likely to become a public charge in the future. Although the government can look at whether you use or have used cash welfare, it cannot make its decision based only on what happened in the past. The government must look at all of the following factors together to decide whether you might become a public charge in the future:

- **Age** (Are you elderly or very young, and likely to need support?)
- **Health** (Do you have an illness that requires costly treatment?)
- **Income** (Are you low-income or poor with no assets?)
- **Family size** (Do you have a large family to support?)
- **Education and skills** (Are you working now or can you easily find a job?)

When you are applying for your green card, it is important to give the government information that shows you will not need benefits to support yourself. For example, if you are elderly, but have family in the U.S. with enough money to support you, or if you have a special skill that will get you a good job in the U.S., you should give this information to the government.

### ► What kinds of benefits might cause a public charge problem?

In deciding whether you are likely to become a public charge, DHS can look at whether you have used cash welfare, such as SSI, TANF, or General Assistance, or if you need long-term institutional care. But even if you used cash welfare in the past, you can still show that you will not need it in the future (for example, because you have a job now). DHS is supposed to look at your whole situation when it decides if you are likely to become a public charge in the future.

### ► What if I used Medicaid, CHIP, WIC, food stamps or other noncash programs?

Using CHIP, WIC, or food stamps will not affect your immigration status. Using Medicaid can only be a problem if you are in a nursing home or other long-term care. All other noncash programs, such as housing, school lunch, job training, child care, shelters, disaster relief, and health clinics, will not cause a public charge problem.

### ► What if my children or other family members use benefits?

DHS will not look at whether your children or other family members used health care or other noncash benefits such as those listed above. If your children or other family members use cash welfare (such as TANF or SSI), it will not count against you in a public charge decision unless it is your family's only income.

## Applying for a Green Card

### ► I am applying for a green card through a family member. Can DHS refuse to give me a green card because they think I am likely to use cash welfare one day?

Yes. If DHS thinks you cannot support yourself and that you will rely on cash welfare in the future, they can refuse to give you a green card — even if you are not using cash benefits now. (See the earlier question for some hints about how you might prove that you will not rely on cash

welfare in the future.) Other than cash programs and long-term institutional care, your use of benefits for which you are eligible will not cause a problem when you are applying for a green card.

► **I used cash welfare several years ago but do not receive cash benefits today. Will I have trouble getting a green card?**

You should not be denied a green card just because you used cash welfare in the past. But, you will need to show that you are not likely to need cash welfare in the future. It will be easier to show this if it was a long time ago that you used welfare, or if you used it only briefly to get through a hard time.

► **I am not receiving cash welfare, but I am very sick and live in a nursing home. Could I have trouble getting my green card?**

Yes. If you are in a nursing home or have a serious long-term illness, you will have trouble getting your green card unless you can show that you will be able to get the care you need in the future without relying on Medicaid or other publicly funded programs to pay for your institutional care.

► **If my relative sponsors me to live in the United States, will this help me prove that I will not need cash welfare in the future?**

Yes. Most people who are applying for a green card based on family relationships must have a “sponsor” who can show that he or she has enough money to support you (at 125% of the poverty level — currently \$32,238 for a household of five). If your relative does not have enough money to do this, she will have to find a “joint sponsor” who is also willing to help support you. Your sponsor and, if necessary, the joint sponsor, will each have to sign a legal agreement (“affidavit of support”), promising to support you until you have credit for 40 quarters (10 years) of work in the U.S., or until you become a U.S. citizen. Your sponsor and joint sponsor must also agree to repay the government if you use certain benefits during that time. This agreement will help convince the government that you will not need welfare.

► **I have filed a “self-petition” for an immigrant visa under the Violence Against Women Act (VAWA). Will my use of cash welfare be considered in the public charge determination?**

No. Domestic violence survivors who have filed a VAWA self-petition can use any benefits, including cash welfare, without affecting the public charge determination. The government may look at other factors, such as your age, income, health, education, and family situation, in determining whether you are likely to become a public charge, but it will not consider any benefit programs.

► **I applied for a U visa as a survivor of domestic violence. If I get cash benefits for myself or my children, will I have trouble getting a U visa?**

Probably not. U visa applicants can apply for a “waiver” of the public charge test. This means that even if a U visa applicant is found likely to become a public charge, DHS can grant the U visa.

► **I have a U visa. If I get cash benefits for myself or my children, will I have trouble getting my green card?**

No. U visa holders who apply for a green card will not be subject to the public charge test. If you or your children are eligible for cash benefits, you can use them and other benefits without harming your chances of getting a green card.

## Refugees and Others Not Subject to Public Charge

► **I am a refugee. Will I have problems if I use public benefits?**

No. The public charge law does not apply to:

- Refugees or persons granted asylum in the U.S.
- Victims of trafficking
- Cubans or Nicaraguans applying for adjustment of status under the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA)
- Applicants for adjustment of status under the Haitian Refugee Immigration Fairness Act of 1998
- Cubans applying for adjustment under the Cuban Adjustment Act who were paroled as refugees before April 1, 1980
- Amerasian immigrants when they are first admitted to the U.S.
- “Lautenberg” parolees (certain Soviet and Indochinese parolees applying for adjustment of status)
- Certain Indochinese, Polish, and Hungarian parolees applying for adjustment of status
- Registry applicants (persons in the U.S. since before January 1, 1972)
- Special immigrant juveniles

Using benefits, including cash welfare, will not cause a problem for these immigrants.

## Persons with Green Cards

► **I have my green card. Will my use of cash assistance affect my status?**

In general, using cash welfare for which you are eligible is not a problem once you have your green card. It will not affect your ability to become a citizen. However, using cash welfare could be a problem if you travel outside of the U.S. for more than six months (see the question on travel below). Using noncash benefits for which you are eligible will not cause a problem for you.

► **I have my green card and I get cash welfare. Can I travel outside of the United States?**

If you are a lawful permanent resident who gets SSI, TANF, or other cash welfare right now, you should not travel outside of the U.S. for more than 180 days (about 6 months). Any time you are gone for more than 180 days, the DHS can ask you questions about whether you are likely to become a public charge and may not let you reenter the country.

If you are returning to the U.S. after being outside of the country for 180 days or less, in most cases DHS will not ask you questions about public charge when you return. DHS will ask you these questions only if they suspect that you intended to live permanently in another country,

committed certain crimes, or had a pending deportation or removal case when you left the country.

► **I have my green card and get public benefits. Can I still receive my benefits while I am out of the country?**

If you plan to be outside of the country for more than 30 days, you should check with the agency providing the benefit. It may be against the rules to continue receiving public benefits while you are outside the U.S. It could hurt your chances of reentering the U.S. or becoming a U.S. citizen if you received benefits that you were not supposed to receive.

► **When I return from a trip, can the government make me pay back benefits that I used before I left?**

No. The government is not supposed to ask you to pay back these benefits unless you received them improperly (for example, if you were not really living in this state but claimed to be a resident, or if you did not tell your welfare worker about all of your income). If you are at the airport or the border and DHS or another agency asks you to pay back benefits, you should get legal help immediately. This is true no matter what your immigration status is.

► **I have my green card. Can DHS deport or “remove” me because I use benefits?**

No. DHS cannot deport/remove you just for using public benefits that you qualify to receive. The government has said that deportations due to public charge are “rare” and can happen only when an unusual set of conditions are met:

- You received cash welfare or long-term institutional care for reasons that existed before you entered the U.S., and
- You got the cash welfare or long-term care less than 5 years after you entered the U.S., and
- You or your sponsor have a legal debt to the government agency that gave you the cash or long-term care, and you or your sponsor got a notice from the government that you owed the debt within 5 years of entering the U.S., and
- You or your sponsor have refused to repay the benefits after the government filed a lawsuit and won in court.

Most programs, such as SSI and TANF, do not create a debt for you. In some states, General Assistance may create a debt for you. Some programs may create a debt for your sponsor. Even where a debt is created, however, states generally have not filed lawsuits seeking repayment from immigrants or their sponsors.

## Citizens and Applying for Citizenship

► **I have my green card and I am receiving SSI or other cash benefits. Will this stop me from becoming a U.S. citizen?**

No. If you are properly receiving public benefits, you cannot be denied citizenship for receiving benefits. But if you received public benefits improperly (for example, after providing false information about your income or where you live), or misled DHS when you got your green card, the DHS may decide that you do not have “good moral character,” and you could have trouble becoming a U.S. citizen. If you have any questions about this, you should talk to an immigration lawyer or community agency before you apply for citizenship.

► **I am a U.S. citizen. Will I lose my citizenship if I get benefits?**

No, you cannot lose your citizenship based on receiving benefits. Once you become a U.S. citizen, DHS cannot deport you, and they must always let you reenter the U.S. after a trip to another country.

## Sponsoring Your Relatives

► **Will I have trouble sponsoring my relatives if I have used benefits?**

Using benefits should not affect your ability to sponsor your relative. You will need to show that you or the joint sponsor earns enough income to support your relative. To meet this requirement, you cannot count as income the benefits that you receive.

**IF YOU ARE NOT SURE** whether you could be considered a public charge, talk to an immigration lawyer or community agency before you apply for a green card or travel outside the U.S.

**FOR HELP, CALL:**