

The logo for the Shriver Center on Poverty Law features the text "Shriver Center on Poverty Law" in a white, sans-serif font. The text is arranged in four lines: "Shriver", "Center on", "Poverty", and "Law". The text is set against a green background that has a white, stylized shape resembling a map of the United States or a similar abstract form.

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Public Charge and Guaranteed Income May 2023

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Public Charge: Current Status

- **DHS' new public charge rules** went into effect on December 23, 2022.
- **Department of State** is applying a **similar policy** to applications processed abroad. DOS plans to propose rules that will be consistent with DHS' final rule.
- **Lawsuit** challenging new rule was filed, but rule remains in place
- Visit **KeepYourBenefits.org**
 - Tool with guidance on whether public charge applies

Stay tuned to www.pifcoalition.org for updates

Public Charge



Public charge ground of inadmissibility: a person who is likely to become primarily dependent on the government for subsistence.

Based on “Totality of the Circumstances”: age, health, income/employment, education/skills, family situation and affidavit of support. Can also consider cash assistance for income maintenance, or long-term institutionalization at government expense.

Can result in denial of admission to U.S., adjustment to lawful permanent residence (green card), or reentry (after 180 days).

Does not apply to: asylees, survivors of domestic violence, trafficking, serious crime, special immigrant juveniles, etc. LPRs do not face public charge test when applying for citizenship.

Totality of the Circumstances

- ▶ **USCIS considers:**
 - ▶ Age
 - ▶ Health
 - ▶ Income and resources
 - ▶ Education and skills
 - ▶ Household size
- ▶ **Where an Affidavit of Support is required, considered favorably**
- ▶ **No one factor is determinative.**
 - ▶ No bright lines/weights.
 - ▶ A little guidance on evidence for health, education, household for income purposes
- ▶ **Disability alone is not sufficient** to make a person likely become a public charge
- ▶ **Officers must articulate specific reasons** for any public charge denial.

Two Types of Public Benefits Considered

Public cash assistance for income maintenance

Supplemental Security Income (SSI)

TANF cash assistance

- “Child only” benefits not considered in a parent’s immigration application

State/local cash assistance for income maintenance (e.g. General Assistance)

Will consider amount, duration, recency of receipt, as well as other factors in TOC test.

Long-term institutionalization at government expense

Limited to **institutional services**, such as a nursing facility or mental health institution

Does not include short-term rehabilitation, home and community based services, incarceration, or institutionalization that is imposed unlawfully.

Public Benefits Not Considered

Health Care: Medicaid (except long term institutionalization), Marketplace coverage, Medicare, immunizations, testing/treatment for communicable diseases

Nutrition: SNAP, WIC, free and reduced school meals

Housing: Public housing, Section 8 Vouchers or Rental Assistance

Special Purpose or Supplemental Benefits: disaster assistance, pandemic assistance, cash for child care, housing, energy assistance, or other specific purposes

Federal, state or local tax credits: CTC, EITC

Cash Assistance that is Not Considered

Special Purpose or Supplemental Assistance

Cash payments for child care, housing, energy assistance, student loans, or other supplemental special purposes

Disaster Assistance

Cash payments that are provided as part of pandemic or disaster relief funds, such as the American Rescue Plan Act

Earned Benefits such as Social Security retirement benefits, government pensions, veterans' benefits, and unemployment insurance

[Chapter 7 - Consideration of Current and/or Past Receipt of Public Cash Assistance for Income Maintenance or Long-term Institutionalization at Government Expense | USCIS](#)

Clarifications and Improvements

- **Benefits used by family members or dependents are not considered**
 - e.g. SSI/TANF used by citizen child not considered in parent's application
- **Lists 29 categories of noncitizens exempt from a public charge test, including potential future categories**
- **Benefits received while in an exempt category are not considered**
- **Benefits used by immigrants who are treated like refugees for benefits eligibility purposes do not count**
 - E.g. trafficking survivors, Afghan/Iraqi SIV holders, Afghan/Ukrainian parolees, Cuban/Haitian entrants
- **VAWA self-petitioners, T or U status** generally will not be subject to a public charge test, *regardless of their pathway to adjust status*

Things to Keep in Mind

- **Many immigrants are NOT subject to public charge.**
- **Negative and positive factors are balanced.** No one factor is determinative. Applicants may be able to overcome a negative factor by showing other positive factors in this forward-looking test.
- **Each situation is different.** People with questions should consult an immigration attorney about their individual case.
- **Stay tuned for updates** on any changes in policy www.pifcoalition.org

Where it Comes Up: I-485 Form

In applying to adjust to lawful permanent resident status in the U.S., applicants complete the I-485 form which, for those subject to public charge, asks:

68.a. Have you ever received Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), or State, Tribal, territorial, or local, cash benefit programs for income maintenance (often called “General Assistance” in the State context, but which also exist under other names)? Yes No

Application to Register Permanent Residence or Adjust Status

USCIS Form I-485
OMB No. 1615-0023
Expires 08/31/2015

For USCIS Use Only

Performance Category:	Receipt	Action Block
Country Chargeable:		
Priority Date:		

Under Form I-485 Receipt:

<input type="checkbox"/> Applicant <input type="checkbox"/> Interview <input type="checkbox"/> Interviewed <input type="checkbox"/> Waived	Section of Law <input type="checkbox"/> INA 209(a) <input type="checkbox"/> INA 249 <input type="checkbox"/> INA 209(b) <input type="checkbox"/> INA 249(a) <input type="checkbox"/> INA 245(a) <input type="checkbox"/> INA 245(b) <input type="checkbox"/> INA 245(c) <input type="checkbox"/> INA 245(d) <input type="checkbox"/> Other
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To be completed by an attorney or accredited representative (if any).

<input type="checkbox"/> Select this box if Form G-28 is attached.	Volag Number (if any)	Attorney State Bar Number (if applicable)	Attorney or Accredited Representative USCIS Online Account Number (if any)
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▶ START HERE - Type or print in black ink. A-Number ▶ A- []

NOTE TO ALL APPLICANTS: If you do not completely fill out this application or fail to submit required documents listed in the Instructions, U.S. Citizenship and Immigration Services (USCIS) may deny your application.

Part I. Information About You (Person applying for lawful permanent residence)

Your Current Legal Name (do not provide a nickname)

1.a. Family Name (Last Name)	1.b. Given Name (First Name)	1.c. Middle Name	3.a. Family Name (Last Name)	3.b. Given Name (First Name)	3.c. Middle Name

Other Names You Have Used Since Birth (if applicable)

NOTE: Provide all other names you have ever used, including your family name at birth, other legal names, nicknames, aliases, and assumed names. If you need extra space to complete this section, use the space provided in Part 14, Additional Information.

2.a. Family Name (Last Name)	2.b. Given Name (First Name)	2.c. Middle Name	4.a. Family Name (Last Name)	4.b. Given Name (First Name)	4.c. Middle Name

Other Information About You

NOTE: In addition to providing your actual date of birth, include any other dates of birth you have used in connection with any legal name or non-legal names in the space provided in Part 14, Additional Information.

5. Date of Birth (mm/dd/yyyy)	6. Sex <input type="checkbox"/> Male <input type="checkbox"/> Female	7. City or Town of Birth

Form I-485 Edition 12/25/22 Page 1 of 20

Resources on Public Charge

- ▶ **Public Charge: What Advocates Need to Know** (NILC/PIF)
- ▶ **Public Charge, Benefits and Immigration | Keep Your Benefits** (Legal Aid Society of San Mateo County)
- ▶ **Public Charge Community Resources** (PIF)
- ▶ **Partner Toolkit** (PIF)
- ▶ **State Policymaker Toolkit** (PIF)

GUARANTEED INCOME PROGRAMS?

- “Guaranteed income programs that are not equivalent to public cash assistance for income maintenance, in that they typically do not provide the primary source of income for recipients, and/or are made available without income-based eligibility rules” will not be considered.
- “However, if a guaranteed income program functions like cash assistance for income maintenance in that it is income-based and provides the primary source of support for the recipients, then it would be considered in a public charge inadmissibility determination.”

Chapter 7 - Consideration of Current and/or Past Receipt of Public Cash Assistance for Income Maintenance or Long-term Institutionalization at Government Expense | USCIS

GUARANTEED INCOME & PUBLIC CHARGE

Step 1: How is the guaranteed income program funded?

Private dollars	does <i>not</i> count
ARPA dollars	does <i>not</i> count <ul style="list-style-type: none">• Final Rule: “special-purpose or supplemental programs, as well as disaster and similar assistance is excluded”• Policy Manual: “Cash payments that are provided as part of pandemic or disaster relief funds, such as the American Rescue Plan Act.” are not counted
Non-ARPA public dollars	Go to step 2

GUARANTEED INCOME & PUBLIC CHARGE

Step 2: Is the guaranteed income program *equivalent* to cash for income maintenance (like SSI, TANF or General Assistance)?

- Are there income-eligibility rules? (if no – *not* counted)
- Does the program provide the primary source of income for recipients?
- Possible factors:
 - ❖ What is the income eligibility threshold?
 - ❖ How much money do households receive? How frequently?
 - ❖ Who is the program designed to assist?
 - ❖ Recipients' ability to work?

IMPLICATIONS FOR GI PROGRAM DESIGN

If using a mix of funding, consider paying those subject to the public charge test with *only* "safe" sources of funding (e.g. private money, ARPA), and providing information to that effect.

Consider eligibility rules that do not apply an income test to each applicant or household (e.g. SEED used neighborhood median income)

Consider the relationship between income eligibility thresholds and payment amount

- Lower eligibility thresholds + higher payments → supports counting for public charge
- Higher eligibility thresholds + lower payments → supports *NOT* counting for public charge

EXAMPLE 1

Eligibility Requirements:

- Household Income at or below 100% FPL

Payment Structure

- \$1000 a month for 12-months

Funding

- 50% ARPA
- 50% private

EXAMPLE 2

Eligibility Requirements:

- Household Income at or below 250% FPL

Payment Structure

- \$500 a month for 24-months

Funding

- 80% public (non-ARPA)
- 20% private