

Affordable Housing and Public Charge Toolkit:

Determine whether applicants for adjustment of status in federally subsidized housing could be subject to a public charge determination

This toolkit helps immigration legal practitioners ascertain: (1) whether their green card applicant client subject to the public charge rule is eligible for and currently receiving a federal housing subsidy subject to public charge, and (2) if so, how to report these benefits on the Form I-944 Declaration of Self-Sufficiency.¹ The I-944 Form is USCIS' new public charge form, part of implementing the Department of Homeland Security's public charge rule that took effect on February 24, 2020.²

Immigrants adjusting status and housing assistance:

Under the public charge rule, immigrants who are subject to the public charge grounds of inadmissibility must disclose on Form I-944 whether they are receiving public housing or Section 8 assistance.³ This requirement impacts very few categories of immigrants because most immigrants subject to public charge are ineligible for these housing programs.

Importantly, some mixed status households reside in public or Section 8 housing and pay a “pro-rated” rent. In this situation, the eligible household members receive the housing subsidy, while household members with ineligible immigration status receive no subsidy. Thus, it is possible for an applicant for adjustment of status to be a resident of a unit that receives some public housing or Section 8 assistance and still be a *non-recipient* of such housing assistance. Only benefits for which the applicant is the beneficiary affect their public charge determination. The housing assistance received by their family members does not factor into their public charge determination.

What public assistance programs are included in public charge determinations?

There are many different types of federal, state and local affordable housing programs, but the only programs that are covered in the public charge rule are use of federally-funded public housing and Section 8 housing as of February 24, 2020. The I-944 Form refers to the following:

- Public Housing Under the Housing Act of 1937, 42 U.S.C. 1437 et seq -- Public housing is housing owned and operated by a local or state public housing authority and is fully subsidized by the federal government. In public housing, the public housing authority functions as the landlord.
- Section 8 Housing Assistance under the Housing Choice Voucher Program (HCV) and Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation) (PBS8) -- Whereas in the public housing authority is the landlord in public housing, in Section 8 housing, either the public housing authority or the U.S. Department of Housing and Urban Development (HUD) is the entity that makes partial rental payments to a separate landlord on behalf of the tenant. Under

the HCV program, a tenant has a voucher from the local public housing authority to pay a portion of the rent in the private rental market. Under the PBS8 program, the assistance is tied to the specific housing unit rather than the tenant. In a building, it is possible for some units to have a project-based Section 8 subsidy, and for other units to have no subsidy at all.

REMEMBER, as of February 24, 2020:

You only have to determine whether or not your client is receiving these particular housing assistance benefits. You don't have to disclose any benefits that your client is not directly receiving. Most immigration categories subject to the public charge test **are not eligible** to receive a housing benefit under the public housing or Section 8 programs. See the chart provided by the National Housing Law Project for a detailed description of immigration categories eligible for public and Section 8 housing assistance and subject to the public charge test at bit.ly/3n0ybGQ.

Any other types of housing assistance programs are not required to be reported on the I-944 form.

A reminder: State and local housing subsidies do not factor into public charge determinations.

How to determine what kind of housing assistance your client receives

IF you determine that your client's current immigration status makes them eligible for public housing assistance or Section 8 assistance, you can determine whether or not they reside in public or Section 8 housing with the following steps:

1. Obtain a copy of your client's lease to determine who their landlord is and whether they are paying rent based on their income. If a Public Housing Authority (PHA) is listed as the landlord, the client is very likely living in Public Housing. If the client's lease refers to the PHA or HUD making payments to the landlord or the landlord's duty to notify the PHA when terminating the tenancy, the client is probably living in Section 8 Moderate Rehabilitation housing or participating in the Section 8 HCV or Project-Based program.

Another good indicator of the program is the amount of rent paid by the tenants receiving the housing assistance. Public housing and Section 8 residents typically pay 30% of their income towards rent and utilities.⁴ A sample lease for the 3 programs covered by public charge is available here:

- Here is an example of a public housing⁵ lease:
https://www.hud.gov/sites/documents/DOC_10768.PDF
- This is an example of a Housing Choice "Section 8" voucher lease addendum: [HCV lease addendum](#)
- This is a link to the lease that is used in HUD subsidized housing programs such as project-based Section 8: [Link to HUD Model lease](#)

2. If you do not have a copy of your client’s lease, there may be three other options for identifying whether your client is receiving public housing or project-based section 8 assistance. For Housing Choice Vouchers, the only way to confirm a client’s participation in the program is by obtaining a copy of the lease, talking to the private landlord, or requesting information directly from the PHA as there is no public dataset available with this information.

- **Local HUD Office** - You can contact your local HUD Office, which may be able to assist. The local HUD office should have lists of all the PHAs and HUD-subsidized projects in its service area.
- **Preservation Database** - The National Law Income Housing Coalition (NLIHC) has an accessible database of affordable housing that you can sign up for online: <http://preservationdatabase.org/> To use the Preservation Database, you must create an account and then go to the tab labeled “login” and press “full data access.” This will populate a searchable database. You can then search your client’s address, city (recommended only if it’s a smaller municipality), or name of the apartment complex. For large, scattered site developments, it is recommended that you search the name of the apartment complex. Of the three housing programs subject to public charge, this address search may help you to determine whether your client lives in public housing or project-based Section 8 housing; it will not show you whether your client has a Housing Choice Voucher. A search of the Preservation Database is not always comprehensive, so if you can’t find what you need here, try the Recorder of Deeds approach described below.
 - The Preservation Database searches all forms of housing assistance that are attached to units and collected by HUD. **Not all of these programs are subject to public charge.** Subsidy types included in the database that are not subject to public charge include: Section 202 Direct Loans; State HFA 236; HUD-insured; Low Income Housing Tax Credit (LIHTC); HOME; Rural Development 515; and Rural Development 538. Only Public Housing and HUD Project Based Section 8 are considered under the public charge rule. You must determine what forms of subsidy are at the building and whether it’s a qualifying subsidy. Many buildings have multiple subsidies that are listed numerous times in the database, so make sure you do a comprehensive search. Additionally, sometimes there are partial subsidies at buildings, which means that not every unit receives a housing subsidy.

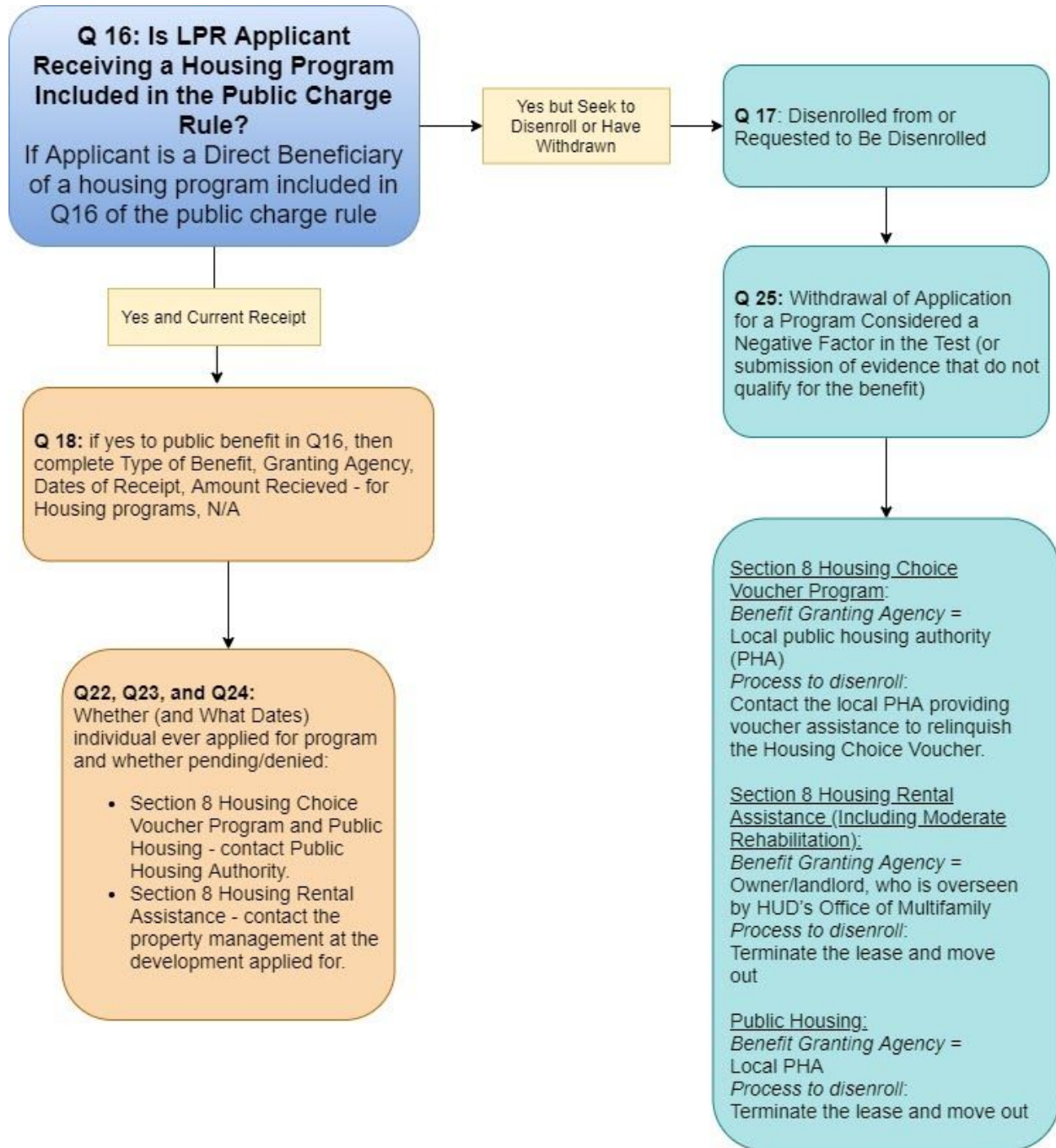
Enter text to search...																	
#	NHPD Property ID	Property Name	Property Address	City	State	Zip Code	Total Units	Total Active Subsidies	Property Status	Earliest Start Date	Latest End Date	Latitude	Longitude	County	Congressional District	Owner Name	Owner Type
Clear																chicago ho	
	1023628	GWENDOLYN PLACE	109 E 43rd St	Chicago	IL	60653-3108	30	1	Active			41.816253	-87.622365	Cook	07	CHICAGO HOUSING AUTHORITY	Public Entity
Active Inconclusive Inactive REAC																	
HUD Property ID	HUD Subsidy ID	Subsidy Status	Subsidy Name	Subsidy Subname	Start Date	End Date	Assisted Units	Owner Name	Owner Type	Manager Name	Manager Type	Rent to FMR Ratio	Inactive Status Description	Unpaid Principi	Balance		
	IL002163000	Active	Public Housing	Public Housing			30	Chicago Housing Authority	Public Entity	Chicago Housing Authority	Public Entity						

Example: The boxes at the top allow you to fill it in to search. The arrow on the left side of the row allows you to see more about the subsidy at an identified development. Here, you see that this is a public housing development that has 30 subsidized units and all units at the building are subsidized.

- **Recorder of deeds:** You may also be able to search your county's recorder of deeds to search the title of the property and see if there is any use restriction on the property. Use restrictions can signal that the property is subsidized through project-based Section 8, project-based vouchers, or the public housing program. This method will not show you whether your client has a Housing Choice Voucher.
 - Example: The Cook County Recorder of Deeds (<https://cookrecorder.com/tag/ccrd/>) has an online portal where you generally have to pay for official versions of the document, but you can view a preview of all documents for free.
 - You can search an address through the ROD's search function. With large, scattered site developments, it can be tricky to find the right address, so make sure you are searching both your client's address and the address for the on site management office.

NOTE: Property searches will not indicate whether or not your client has a Housing Choice "Section 8" Voucher. For example, your client may be living in a Low Income Housing Tax Credit (LIHTC) building (which is not counted in a public charge determination), but may also be receiving a Section 8 HCV. A property search would show that the building is funded by the LIHTC program, but not that your client has the housing choice voucher. To confirm whether your client has a Housing Choice Voucher, therefore, you need to obtain your client's lease.

Flowchart for completion of I-944 form questions related to housing benefits received (Effective 2/24/2020)



Endnotes

¹ Remember, not every green card applicant is subject to the public charge rule; many paths to immigration status do not have a public charge test. Individuals applying for a green card are subject to public charge unless they fall under certain statutorily exempted categories; generally, public charge mostly impacts those seeking their green card through a family-based immigrant petition. For a detailed list of exempted categories see 8 CFR §212.23 and this resource from the Immigration Legal Resource Center:

<https://www.ilrc.org/overview-public-charge-and-benefits-march-2020>

² The Immigration Legal Resource Center (ILRC) issued two practice advisories on the new I-944 Form:

1. [Guide to Filling out the New USCIS Public Charge Form I-944](#) covers who needs to submit the I-944, tips and strategies for completing the application form and a discussion how the information reported on the I-944 will be used by immigration officials to assess public charge, based on the new public charge rule and guidance.
2. [Guide to Gathering Supporting Evidence for the New USCIS Public Charge Form I-944](#), covers what documentation to submit in support of the I-944.

Also, Protecting Immigrant Families created a [sample form](#) and [letter](#) highlighting the needed information and best practices for benefit-granting agencies to use in responding to requests for information for the I-944; these forms can be modified to reflect a particular geographic area.

³ Section 8 assistance can take the form of a ‘housing choice voucher’ used with community landlords, or project-based subsidies received by affordable housing developers.

⁴ There are some exceptions to this if your client has so little income that they pay the minimum rent (typically \$25 or \$50) or if they pay a “ceiling rent” because they are higher income (and 30% of their income would mean they pay more than the market rent). Additionally, in the Housing Choice “Section 8” Voucher program, some tenants will pay more than 30% of their income if the housing authority’s payment standard is below the amount that the landlord charges. Remember as well that some mixed status households will pay “pro-rated” rent, so it would be 30% of the *recipients* income, not the entire household.

⁵ Many public housing units are converting under a program known as the Rental Assistance Demonstration. This means that public housing is converting to Section 8 housing. The leases may look slightly different as a result of this program, but these units remain within the housing programs that are subject to the public charge test.

Sometimes these leases include the public housing authority, and sometimes the leases follow the HUD Model Lease linked to in paragraph 3. Here is an example of a RAD lease from the Chicago Housing Authority:

https://cha-assets.s3.us-east-2.amazonaws.com/s3fs-public/fy_2015_rad_residential_lease.pdf