What is Public Charge?
Some people who apply for a green card (lawful permanent residence) or a visa to enter the U.S. must pass a “public charge” test – which looks at whether the person is likely to use certain government services in the future. In making this determination, immigration officials review all of a person’s circumstances, including their age, income, health, education or skills (including English language skills), and their sponsor’s affidavit of support or contract. They can also consider whether a person has used certain public programs since February 24, 2020.

Only 3 types of Federal Housing are included in the public charge test:

- Section 8 Housing Choice Voucher Program
- Project-Based Section 8 Rental Assistance (including Section 8 Moderate Rehabilitation)
- Public Housing

Many immigrants don’t have to worry about “public charge.” For example:

- Lawful Permanent Residents (green card holders) applying for US citizenship or applying to renew their expired cards
  - Only those Lawful Permanent Residents (green card holders) who leave the U.S. for 180 days or more may be subject to a “public charge” test when they return.
- Refugees and asylees, including people applying for asylum
- People applying for or re-registering for Temporary Protected Status (TPS)
- Violence Against Women Act (VAWA) self-petitioners, Victims of crime or trafficking who hold a U or T visa, or People with Special Immigrant Juvenile Status, including people applying for this status

Few people subject to public charge are eligible for the programs included in the test.

- Only the immigrant applying for a green card is subject to the public charge test.
- Most immigrants are not eligible for the 3 listed Federal housing programs before they have a green card.
- The test will not consider whether an applicant’s family members, including both non-citizen and U.S. citizen children, have ever sought, received, or used public benefits. The test only looks at the applicant’s personal use of these benefits—children’s use of these benefits will not be counted against their parents.
  - However, if a child is applying for status themselves, any subsidy they receive would be weighed against them in a public charge test.
Mixed-Status families may live in Federally subsidized housing through eligible family members.

- Mixed status households include at least one household member who has an immigration status that makes them eligible for housing assistance. These households will pay a pro-rated rent, which means all family members with qualifying immigration status will pay 30% of their income towards rent while the family members without qualifying immigration status will pay a pro-rated share of market rent.
- In mixed status households, it is possible for an immigrant to be two things at once: a resident of a unit that receives some public housing or Section 8 assistance and a non-recipient of that financial assistance to help them pay for housing. For such immigrants, the housing financial assistance does not factor into their public charge determination.

How to determine whether a client’s housing assistance could be included in a public charge determination:

1. Determine whether the client is the person receiving the assistance (i.e., they are on the lease for the housing unit in which they reside)
2. Review a lease, and determine who the client’s landlord is
   a. If the landlord is a Public Housing Authority (PHA), the person is likely living in Public Housing
   b. The client is likely living in federal housing that falls under one of the Section 8 categories if:
      i. the lease mentions the PHA or HUD paying a portion of the rental directly to the landlord;
      ii. the lease mentions the landlord’s duty to tell the PHA that the landlord will terminate the tenancy; or
3. Review a lease and determine whether they are paying rent based on their income
   a. Public housing and Section 8 participants typically pay 30% of their income towards rent and utilities
   b. If the lease does not mention a PHA or looks like the HUD model lease for subsidized properties, the client is unlikely receiving housing assistance from a program included in the public charge test

Residents should not disenroll / move out of housing programs without consulting an expert.

- Every situation is different, and many people are exempted under the rule. Individuals should consult with an immigration attorney to determine what the best option is for their family. Many federal, state and local housing assistance programs are not included in a public charge determination.
- This online directory can help you search for local nonprofits that provide legal help and advice: https://www.immigrationadvocates.org/nonprofit/legaldirectory/

FOR MORE RESOURCES, GO TO WWW.PROTECTINGIMMIGRANTFAMILIES.ORG
Created by the State Policy Subcommittee of the Protecting Immigrant Families Campaign