



Featured Issue: Public Charge Changes at USCIS, DOJ, and DOS

AILA Doc. No. 19050634 | Dated March 10, 2021

Current State of Play

March 9, 2021 - Consistent with Executive Order 14012 directing the review of the Public Charge Rule, [DHS announced that it will no longer pursue appellate review](#) of judicial decisions invalidating or enjoining enforcement of the 2019 Public Charge Final Rule. As a result, DOJ filed a joint motion to dismiss the petition for certiorari in the Supreme Court, as well as joint motions to dismiss appeals in various Circuit Courts (including the 2nd, 7th, and 9th Circuits), all of which have been granted. As such, the district courts either enjoining the rule or permanently vacating the rule per the Cook County case, will become the law of the land. **DHS announced that once the rule is permanently vacated that it will follow the [1999 interim field guidance on the public charge inadmissibility provision](#), at which time the Form I-944 will no longer be required. AILA will continue to monitor and provide updates on the latest developments.**

[Posted on the USCIS website today](#): Alert: On Nov. 2, 2020, the U.S. District Court for the Northern District of Illinois vacated the Inadmissibility on Public Charge Grounds final rule (84 Fed. Reg. 41,292 (Aug. 14, 2019)), as amended by Inadmissibility on Public Charge Grounds; Correction, 84 Fed. Reg. 52,357 (Oct. 2, 2019)) (Public Charge Final Rule) nationwide. That decision was stayed by the U.S. Court of Appeals for the Seventh Circuit. On March 9, 2021, the Seventh Circuit lifted its stay, and the U.S. District Court for the Northern District of Illinois' order vacating the Public Charge Final Rule went into effect.

We immediately stopped applying the Public Charge Final Rule to all pending applications and petitions that would have been subject to the rule. USCIS continues to apply the public charge inadmissibility statute, including consideration of the statutory minimum factors in the totality of the circumstances, in accordance with the 1999 Interim Field Guidance, which was in place before the Public Charge Final Rule was implemented on Feb. 24, 2020, to the adjudication of any application for adjustment of status. In addition, USCIS will no longer apply the separate, but related, "public benefits condition" to applications or petitions for extension of nonimmigrant stay and change of nonimmigrant status.

On or after March 9, 2021, applicants and petitioners should not provide information required solely by the Public Charge Final Rule. That means that applicants for adjustment of status should not provide the Form I-944, Declaration of Self-Sufficiency, or any evidence or documentation required on that form with their Form I-485. Applicants and petitioners for extension of nonimmigrant stay and change of nonimmigrant status should not provide information related to the receipt of public

benefits on Form I-129 (Part 6), Form I-129CW (Part 6), Form I-539 (Part 5), and Form I-539A (Part 3).

If an applicant or petitioner has already provided such information, and USCIS adjudicates the application or petition on or after March 9, 2021, we will not consider any information provided that relates solely to the Public Charge Final Rule, including, for example, information provided on the Form I-944, evidence or documentation submitted with Form I-944, and information on the receipt of public benefits on Form I-129 (Part 6), Form I-129CW (Part 6), Form I-539 (Part 5), and Form I-539A (Part 3).

If you received a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) requesting information that is solely required by the Public Charge Final Rule, including but not limited to Form I-944, and your response is due on or after March 9, 2021, you do not need to provide the information solely required by the Public Charge Final Rule. However, you need to respond to the aspects of the RFE or NOID that otherwise pertain to the eligibility for the immigration benefit you are seeking. If USCIS requires additional information or evidence to make a public charge inadmissibility determination under the statute and consistent with the 1999 Interim Field Guidance, we will send you another RFE or NOID. For information about the relevant court decisions, please see the litigation summary.

We will issue additional guidance regarding the use of affected forms. Until then, USCIS will not reject any Form I-485 based on the inclusion or exclusion of Form I-944. We also will not reject Form I-129, Form I-129CW, Form I-539, or Form I-539A based on whether the public benefits questions (Form I-129 (Part 6), Form I-129CW (Part 6), Form I-539 (Part 5), and Form I-539A (Part 3)) have been completed or left blank.

Learn More

[Impact of Biden's February 2, 2021, Executive Order](#)

[Impact of November 2020 Order to Vacate](#)

[Impact of July 2020 Injunction](#)

[USCIS Efforts to Change Public Charge Rules](#)

[USCIS Forms Table](#)

[DOS Efforts to Change Public Charge Rules](#)

[DOJ Efforts to Change Public Charge Rules](#)

Impact of Biden's February 2, 2021, Executive Order

AILA's USCIS HQ (Benefits Policy) Committee provides a practice pointer addressing the current state of play regarding the public charge grounds of inadmissibility in light of President Biden's February 2, 2021, Executive Order, "[Restoring Faith in our Legal Immigration System and Strengthening Integration and Inclusion Efforts for New Americans](#)."

[Practice Pointer: Biden Administration Announces Limited Immediate Change to Public Charge Rule](#) – February 10, 2021

Impact of the November 2, 2020, U.S. District Court in Cook County, Illinois Decision to Vacate DHS Public Charge Rule

On November 3, 2020, the **[Seventh Circuit has issued an administrative stay](#)** of the N.D. of Illinois decision to vacate the DHS Public Charge Final rule pending an appeal which is effective immediately. On November 19, 2020, **[the Seventh Circuit granted a motion for stay pending appeal](#)** and request for immediate administrative stay filed by the government. Accordingly, adjustment of status applications must be filed with the Form I-944. AILA will continue to monitor the situation and provide any updates.

On November 2, 2020, the district court in *Cook County, Illinois, et al v. Wolf et. al.*, (19-cv-6334), granted summary judgment in favor of Plaintiffs on their claim that DHS's Public Charge Rule, 84 Fed. Reg. 41,292 (Aug. 14, 2019) violates the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et. seq.* The district court specifically ruled that (1) the public charge exceeds DHS's authority under the public charge provision of the INA, 8 U.S.C. § 1182(a)(4)(A); (2) is not in accordance with law; and (3) is arbitrary and capricious. Therefore, the court immediately set aside the DHS Public Charge Rule nationwide without staying its decision pending appeal.

Impact of the July 29, 2020, Injunction from the U.S. District Court for the Southern District of New York

On September 11, 2020, the **[Second Circuit Court of Appeals stayed a district court's nationwide injunction](#)** on the DHS public charge rule. This means that USCIS is now free to require the Form I-944 in all jurisdictions. At this time USCIS has not updated its webpage related to the Public Charge injunction.

On August 12, 2020, the **[Second Circuit Court of Appeals limited a lower court nationwide injunction](#)** on the DHS public charge rule; the rule is now barred only in Vermont, Connecticut, and New York. The August 12, 2020, decision did not impact the July 29, 2020, district court order granting an injunction that enjoins the government from implementing, or taking any actions to enforce or apply, the 2018 FAM Revisions, **[the DOS public charge rule](#)**, or the **[President's October 4, 2019 healthcare proclamation](#)** during the COVID-19 pandemic.

On July 29, 2020, **[the U.S. District Court for the Southern District of New York enjoined the government](#)** from enforcing, applying, implementing, or treating as effective, the **[USCIS Final Rule on Inadmissibility on Public Charge Grounds \(84 FR 41292, 8/14/19\)](#)** during the COVID-19 pandemic.

The court also issued a separate order granting an injunction that enjoins the government from implementing, or taking any actions to enforce or apply, the 2018 FAM Revisions, the **[DOS Interim Final Rule on Visa Ineligibility on Public Charge Grounds \(84 FR 54996, 10/11/19\)](#)**, or the President's October 4, 2019 Proclamation, **[Suspension of Entry of Immigrants Who Will](#)**

[Financially Burden the United States Healthcare System in Order to Protect the Availability of Healthcare Benefits for Americans \(84 FR 53991, 10/9/19\)](#) during the COVID-19 pandemic.

On July 31, 2020, **[USCIS posted guidance](#)**, stating that "As long as the July 29, 2020, SDNY decision is in effect, USCIS will apply the 1999 public charge guidance that was in place before the Public Charge Rule was implemented on Feb. 24, 2020 to the adjudication of any application for adjustment of status on or after July 29, 2020. In addition, USCIS will adjudicate any application or petition for extension of nonimmigrant stay or change of nonimmigrant status on or after July 29, 2020, consistent with regulations in place before the Public Charge Rule was implemented; in other words, we will not apply the public benefit condition."

On August 7, 2020, **[DOS provided an update](#)** in which it stated that it is complying with the **[nationwide injunction](#)** and is in the process of updating its guidance to consular officers on how to proceed. In the interim, visa applications that appear to be ineligible under INA 212(a)(4) will be refused for administrative processing to allow for consultation with the DOS, including legal review to ensure compliance with applicable court orders. Visa applicants are not required to complete nor should they present the DS-5540, Public Charge Questionnaire.

[Practice Alert: Impact of Recent Court Decisions on the DHS and DOS Public Charge Rules](#)

– August 17, 2020

[DOS Provides Update on Public Charge Following Nationwide Injunction](#) – August 7, 2020

[USCIS Provides Information on Injunction of the Public Charge Grounds Final Rule](#) – August 4, 2020

[District Court Issues Nationwide Injunction on Both DOS and DHS Public Charge Regulations Due to COVID-19](#) – July 29, 2020

USCIS Efforts to Change Public Charge Rules

On August 14, 2019, **[USCIS published a final rule](#)** amending the regulations related to the public charge ground of inadmissibility. The rule was to take effect on October 15, 2019. Before the regulation took effect, several nationwide injunctions halted its implementation. On January 27, 2020, the U.S. Supreme Court granted the administration's request for a stay of the nationwide injunction against DHS's public charge rule, allowing DHS to implement the public charge rule nationwide, except for Illinois, which has gained a statewide injunction of its own. On February 5, 2020, USCIS issued policy guidance, effective February 24, 2020, to address the implementation of the public charge final Rule, including guidance specific to Illinois.

These policies apply to immigrants applying for visas or green cards processed inside the United States, including immigrants that leave for 180 days or more and apply to reenter.

AILA Resources

Call for Examples

[Call for Plaintiffs: Individual-Based Challenge to the Policy Manual on Public Charge](#) – March 13, 2020

[Call for Plaintiffs for Lawsuit Challenging USCIS Implementation of Public Charge Rule](#)

Client Resources

[How Does the New Public Charge Rule Affect Your Clients](#)

Overview of Public Charge

[Public Charge and Affidavits of Support: A Practitioners Guide](#), 2d Ed. (Print)

Special member pricing of \$59: [New Public Charge Rule: USCIS and DOS Guidance and Forms](#) - Recording (.MP3)

Free recording: [Public Charge Updates: Hot Topics from the USCIS HQ Committee](#) - Recording (.MP3) – March 18, 2020

Free recording: [Public Charge Updates: Preparing for Public Charge Implementation](#) – February 26, 2020

[2020 Comprehensive Public Charge Update and Strategies](#) - Recording (.MP3) – January 30, 2020

[Practice Alert: USCIS Implementation of the Public Charge Regulation](#) – January 28, 2020

[Practice Alert: DHS Publishes Correction to the Public Charge Final Rule in the Federal Register](#) - October 2, 2019

Comprehensive Summary of Public Charge Rule

[Practice Advisory: 2020 Comprehensive Public Charge Update and Strategies](#) – January 30, 2020

[Practice Pointer: Understanding the New DHS Rule on Public Charge Inadmissibility](#) – October 10, 2019

Impact of Public Charge on Request for Change or Extension of Nonimmigrant Status

[Practice Pointer: Requests for Change or Extension of Nonimmigrant Status Are Subject to Heightened Scrutiny Under DHS's Public Charge Final Rule](#)

Impact of Public Charge Rule on VAWA, U, T Applicants, Asylum Seekers, and Refugees

[Practice Pointer: Effect of the Public Charge Final Rule on U- and T-Visa/VAWA Self-Petitioners](#)

[Practice Pointer: DHS's Public Charge Final Rule Does Not Affect Asylees or Refugees](#)

[Practice Pointer: T Visa Adjustment of Status and the Public Charge Ground of Inadmissibility](#)

COVID-19 and the Public Charge Rule

[Practice Pointer: Considerations When Discussing Unemployment Insurance Benefits with Immigration Clients](#) – April 15, 2020

[Practice Alert: Is My Immigration Client Eligible for a Recovery Rebate under the CARES Act?](#) – April 6, 2020

[Practice Alert: COVID-19 and the Public Charge Rule](#) – April 2, 2020

Practice Management Tips from AILA Practice and Professionalism Center

[Public Charge: New Ethical Considerations for Adjustment Cases](#) – March 3, 2020

[Template Form I-944 Questionnaire](#)

[Preparing Your Practice for Public Charge Cases](#) – February 27, 2020

[Seven Quick Tips to Adopting Public Charge Process Changes](#) – February 13, 2020

Summary of Benefits Including for Public Charge

NOTE: The rule is not retroactive. This means that benefits -- other than cash or long-term care at government expense -- that are used before the rule is effective on February 24, 2020, will not be considered in the public charge determination.

Benefits Included for Public Charge	Benefits Excluded from Public Charge

Benefits Included for Public Charge	Benefits Excluded from Public Charge
<p>Cash Support for Income Maintenance*</p> <p>Non-Emergency Medicaid**</p> <p>Supplemental Nutrition Assistance Program (SNAP or Food Stamps)</p> <p>Housing Assistance (Public Housing or Section 8 Housing Vouchers and Rental Assistance)</p> <p><i>* Included under current policy as well;</i></p> <p><i>** Exception for coverage of children under 21, pregnant women (including 60 days post-partum)</i></p>	<p><i>ANY benefits not on the included list will not be applied toward the public charge test. Examples include:</i></p> <p>Disaster relief</p> <p>Emergency medical assistance</p> <p>Entirely state, local or tribal programs (other than cash assistance)</p> <p>Benefits received by immigrant's family members</p> <p>CHIP</p> <p>Special Supplemental Nutrition for Women Infants and Children (WIC)</p> <p>School Breakfast and Lunch</p> <p>Energy Assistance (LIHEAP)</p> <p>Transportation vouchers or non cash transportation services</p> <p>Non-cash TANF benefits</p> <p>Tax credits, including the Earned Income Tax Credit and Child Tax Credit</p> <p>Advance premium tax credits under the Affordable Care Act</p> <p>Pell grants and student Loans</p> <p>Any other program not listed in the left column</p>

Provided by Protecting Immigrant Families (<https://protectingimmigrantfamilies.org/analysis-research/>).

AILA Statements

[**AILA Disappointed in Supreme Court Stay of Injunction of Public Charge Rule**](#) – January 27, 2020

[**AILA Files Lawsuit to Halt Last-Minute Form Changes as Administration Seeks to Implement Public Charge Rule**](#) - October 7, 2019

[AILA and Partner Organizations Urge DHS to Delay Implementation of Public Charge Rule](#)

- October 3, 2019

AILA Press Release: **[DHS Rule Will Hurt Working Class Families and Restrict Legal Immigration](#)** – August 12, 2019

[How to Explain the Public Charge Rule to Clients, Reporters, and Members of the Public](#) – August 12, 2019

Government Announcements

[DHS Implements Inadmissibility on Public Charge Grounds Final Rule](#) – February 24, 2020

[DHS to Implement Inadmissibility on Public Charge Grounds Final Rule Nationwide](#) - February 22, 2020

[CIS Ombudsman’s Office Issues Alert on Implementation of Public Charge Final Rule](#) – February 18, 2020

From the USCIS Policy Manual: [Totality of the Circumstances](#)

There is no “bright-line” test in making a public charge inadmissibility determination. The mere presence of any one of the enumerated factors, alone, is not outcome determinative, except for the absence of a sufficient affidavit of support, where required. Instead, the officer must determine that the applicant's circumstances, assessed in their totality, suggest that the applicant is more likely than not to become a public charge.

Evaluating whether an applicant is inadmissible based on the totality of the applicant’s circumstances means evaluating all of the information provided by the applicant on the declaration of self-sufficiency, the adjustment of status application, and other associated forms; evidence provided and in the record; and statements by an applicant during an interview, if applicable. The totality of the circumstances analysis involves weighing all the positive and negative factors related to the factors as outlined below, as they apply to the applicant.

READ APPENDIX: TOTALITY OF THE CIRCUMSTANCES FRAMEWORK

On February 5, 2020, USCIS **[published revised forms consistent with the final rule on the public charge ground of inadmissibility](#)**. Beginning February 24, 2020, applicants and petitioners must use new editions of the following forms below (except in Illinois, where the rule remains enjoined by a federal court):

USCIS Forms Table

+

[USCIS Releases Information on Public Charge Inadmissibility Determinations in Illinois](#) – February 5, 2020

[USCIS Issues Policy Guidance on Public Charge Ground of Inadmissibility](#) – February 5, 2020

[USCIS Announces Public Charge Rule Implementation](#) – January 30, 2020

USCIS announced that it will begin implementing the Inadmissibility on Public Charge Grounds final rule ("Final Rule") on February 24, 2020.

The Final Rule will apply to applications and petitions postmarked (or submitted electronically) on or after February 24, 2020. For applications and petitions that are sent by commercial courier (e.g., UPS/FedEx/DHL), the postmark date is the date reflected on the courier receipt.

USCIS has clarified that it will not consider an individual's application for, certification or approval to receive, or receipt of certain non-cash public benefits before February 24, 2020 (instead of October 15, 2019), when deciding whether the alien is likely at any time to become a public charge under the Final Rule.

USCIS will post updated versions of Forms I-129, I-485 I-539, I-864, and I-864EZ and corresponding instructions, as well as Policy Manual guidance on www.uscis.gov during the week of February 3.

These updated forms must be used beginning February 24, 2020, otherwise applications and petitions using incorrect editions of the forms will be rejected.

USCIS plans to hold public engagement for immigration attorneys, industry representatives, and other relevant groups to discuss the final rule.

Note: The above guidance does not apply to applications or petitions filed in the State of Illinois, where the Final Rule remains enjoined as of January 30, 2020.

Posted to USCIS.gov on October 11, 2019:

[USCIS 60-Day Notice and Request for Comments on New Form G-1552, Sponsor Deeming and Agency Reimbursement](#) (84 FR 69386, 12/18/19)

[NARA Notice of Agency Records Schedules Including USCIS Records on Public Charge Bonds](#) (84 FR 51642, 9/30/19)

[USCIS Corrections to Final Rule on Inadmissibility on Public Charge Grounds](#) (84 FR 52357, 10/2/19)

[USCIS Final Rule on Inadmissibility on Public Charge Grounds](#) (84 FR 41292, 8/14/19)

See draft Form I-129, Form I-485, Form I-539, Form I-864, Form I-864 EZ, Form I-944, and Form I-945

[USCIS Announces Final Rule on Inadmissibility on Public Charge Grounds](#) – August 12, 2019

[White House Issues Memo Ordering Strict Enforcement of Sponsor-Reimbursement Laws](#) - May 23, 2019

[USCIS Notice of Proposed Rulemaking on Public Charge Ground of Inadmissibility](#) (83 FR 51114, 10/10/18)

[USCIS Provides Background Information and FAQs on Proposed Change to Public Charge Ground of Inadmissibility](#) - October 16, 2018

[DHS Announces New Proposed Immigration Rule on Public Charge](#) - September 22, 2018

[CRS Issues FAQs on "Public Charge"](#) - September 19, 2018

Litigation

[CA9 Upholds Limited Preliminary Injunctions of DHS Public Charge Rule](#) (*City and County of San Francisco, et. al. v. USCIS* 12/2/20)

[Practice Alert: Ninth Circuit Court of Appeals Upholds Limited Preliminary Injunctions of the DHS Public Charge Rule](#) – December 2, 2020

[District Court Issues Nationwide Injunction on Both DOS and DHS Public Charge Regulations Due to COVID-19](#) – July 29, 2020

[AILA and Partners File Complaint Challenging USCIS Implementation of New Public Charge Regulation](#) (*Khudheyer et al. v. Cuccinelli*, 7/13/20)

Press Release: **[LPR Applicants, Their Sponsors, and Immigrant and Civil Rights Groups Sue Over Law Violations in Implementation of Trump Administration's Public Charge "Wealth Test"](#)** – July 13, 2020

[Supreme Court Issues Stay of Nationwide Injunction Against DHS Public Charge Rule](#) (*DHS v. New York*, 1/27/20)

Letters submitted by public charge litigation teams on February 18, 2020, highlighting concerns with the USCIS Policy Manual's Guidance on Public Charge, specifically around the agency's attempts to 1) make seeking LPR status a negative factor and 2) establish a heightened burden of proof.

[Letter to Fourth Circuit in *CASA de Maryland, Inc. v. Trump*](#)

U.S. Citizenship and Immigration Services (USCIS) recently issued updated guidance concerning the Public Charge Rule in the USCIS Policy Manual in advance of the Rule's implementation on February 24, 2020. See Ex. C. In at least two respects, the Manual demonstrates that the Rule's scope is far broader than the longstanding definition of the term "public charge." Unlike the Rule, the Manual specifies that applying for lawful-permanent resident (LPR) status is itself a negative factor in the Rule's totality-of-the-circumstances test. USCIS Policy Manual vol. 8, pt. G, ch.12.A. The Manual also requires noncitizens undergoing public-charge determinations to demonstrate "clearly and beyond doubt" that they are unlikely at any point in the future to exceed the Rule's threshold for what constitutes a public charge. USCIS Policy Manual vol. 8, pt. G, ch. 2.B. Thus, every applicant for adjustment of status will have an automatic strike against them in a public-charge determination that will be difficult to overcome by countervailing positive factors. These and other aspects of the Manual reinforce the conclusion that the Rule is contrary to the Immigration and Nationality Act.

[Letter to DOJ in *MRNY v. Cuccinelli* and *New York v. Department of Homeland Security*](#)

The Supreme Court's stay of the district court's preliminary injunction does not authorize USCIS to use forms that mislead applicants and adjudicators about the effective date of the Rule or to add a new automatic negative factor to the USCIS Manual that is found nowhere in the final Rule or the NPRM. Given the time required for the agency to (a) fix the errors in the forms and the USCIS Manual, (b) either remove the automatic weight given to applying for LPR status or provide adequate notice and comment for this new element of the Rule, and (c) correct the standard of proof, the agency should defer the effective date from February 24, 2020 until such time as the agency can address these issues, and for a reasonable time thereafter to allow Plaintiffs and others to review the updated materials.

[Public Charge Litigation Tracker](#) (Center on Budget and Policy Priorities and Massachusetts Law Reform Institute)

[**District Judge Enjoins DHS Public Charge Final Rule in Illinois**](#) (*Cook County, Illinois v. McAleenan*, 10/14/19)

[**District Court Issues Narrow Preliminary Injunction on Public Charge Rule**](#) (*City and County of San Francisco, et al. v. USCIS*, 10/11/19)

[**AILA Challenges USCIS's Plan to Stop Accepting Current Editions of Certain Forms Despite Failing to Publish New Editions**](#) (*American Immigration Lawyers Association, et. al. v. Cuccinelli*, 10/7/19)

CNBC: [**States push courts to block Trump 'public charge' immigrant rule as groups warn it could harm the US economy**](#) – August 28, 2019

[**Nonprofits and Advocates File Lawsuit to Block Implementation of Public Charge Final Rule**](#) (*La Clinica de la Raza v. Trump*, 8/16/19)

[**Thirteen States File Lawsuit over Public Charge Final Rule**](#) (*State of Washington, et. al., v. DHS*, 8/14/19)

[**Two California Counties File Lawsuit over Public Charge Final Rule**](#) (*City and County of San Francisco and County of Santa Clara v. DHS*, 8/13/19)

Advocacy Resources

IRAC: [**Guide to Filling out USCIS Public Charge Form I-944**](#)

IRAC: [**Guide to Gathering Supporting Evidence for the New USCIS Public Charge Form I-944**](#)

ILRC: [**Practice Alert: State and Local COVID-19 Emergency Funds and Public Charge**](#) – June 5, 2020

Migration Policy Institute: [**The Public-Charge Rule: Broad Impacts, But Few Will Be Denied Green Cards Based on Actual Benefits Use**](#) – March 2020

TRAC: [**Public Charge Law is Rarely Used to Deport Immigrants—Is That About to Change?**](#) – February 28, 2020

Protect Immigrant Families:

[**Slides**](#) and [**recording**](#) from presentation on SCOTUS decision

[**Public Charge: Does this apply to me?**](#)

[**KNOW YOUR RIGHTS! Public Charge Messages for Community Members**](#)

[**Should I Keep My Kids Enrolled in Health & Nutrition Programs?**](#)

CLINIC: [**Resources Related to DHS' Final Rule on Public Charge**](#)

[**Trainings and Webinars**](#)

[**Legal Analysis and Practitioner Resources**](#)

[**Advocacy Tools and Talking Points**](#)

[**Outreach to the Administration**](#)

Protecting Immigrant Families Campaign: [**Changes to Public Charge: Analysis and Frequently Asked Questions**](#) – Updated September 2019

National Immigration Law Center: [**NILC Announces Intent to File Legal Challenge to Trump Public Charge Regulation**](#) - August 12, 2019

ILRC: [**Totality of the Circumstances: Assessing the Public Charge Ground of Inadmissibility**](#)

- May 3, 2019

This advisory provides an overview of how adjudicators have applied the "totality of the circumstances" test in the public charge context to help advocates best counsel their clients and prepare applications in this climate of uncertainty.

American Immigration Council's Immigration Impact: [**Proposed 'Public Charge' Regulation Draws Hundreds of Thousands of Comments**](#) - December 11, 2018

[**AILA and the Council Submit Comment Opposing the Proposed Public Charge Rule**](#) - December 10, 2018

[**CHC Members Submit Comments Opposing the Public Charge Proposed Rule**](#) - December 10, 2018

[**New York Immigration Coalition Practice Advisory: Counseling Clients on Public Charge and Public Benefits**](#) - December 1, 2018

National Immigration Forum: [**Fact Sheet - Immigrants and Public Benefits**](#) - August 21, 2018

[**Think Immigration: Proposed Public Charge Rule Spreads Panic, But Would Fail at Cutting Costs**](#) - October 11, 2018

[**AILA Quicktake #252: The Trump Administration's Proposed Public Charge Rule**](#) - September 24, 2018

AILA Press Release: [**New Rule Would Impose Class-Based Limits on Immigration, Bringing Harm to Hardworking Families**](#) - September 24, 2018

CATO Institute: [**New Rule to Deny Status to Immigrants Up to 95% Self-Sufficient**](#) - September 24, 2018

CLINIC: [**USCIS Proposes Vast Changes to Public Charge Definition**](#) - September 23, 2018

Media Resources

CNN: [**Judge Blocks Administration from Implementing 'Public Charge' Rule for Immigrants During Pandemic**](#) - July 29, 2020

Forbes: [**Supreme Court Approves Most Consequential Economic Policy Of Trump Era**](#) - January 28, 2020

CNN: [**Trump asks Supreme Court to allow public charge rule to go into effect**](#) - January 13, 2020

NPR: [**The History Of 'Public Charge' Requirements In U.S. Immigration Law**](#) - August 13, 2019

The Hill: [**California counties file first lawsuit over Trump 'public charge' rule**](#) - August 13, 2019

Vox: [**Why the Trump administration is going after low-income immigrants, explained by an expert**](#) - August 12, 2019

The Washington Post: [**Trump officials move to deny green cards, path to citizenship for poor immigrants**](#) - August 12, 2019

Associated Press: [**New rules to deny green cards to many legal immigrants**](#) - August 12, 2019

DOS Efforts to Change Public Charge Rules

In January 2018, DOS revised the Foreign Affairs Manual (FAM) to instruct consular officers to consider a wider range of public benefits when determining whether visa applicants who have received or are currently receiving benefits are inadmissible on public charge grounds. In August, 2019, [Politico reported on immigrant visa denials](#) because the individual might become dependent on government benefits, finding that, "The number of public charge denials for applicants from all nations also rose during the past year. Preliminary data obtained by POLITICO shows 12,179 visa rejections on public charge grounds through July 29 — which puts the department on pace to surpass last year's total. The State Department disqualified only 1,033 people on public charge grounds in fiscal 2016. Public charge denials have increased in recent years as the State Department has issued fewer immigrant visas overall."

On October 15, 2019, [DOS issued an interim final rule](#) to align DOS's public charge standards with those of DHS. The interim final rule was to take effect at 12:00 am (ET) on October 15, 2019. But, DOS announced that it will not implement the interim final rule until the use of a new form for information collection is approved by OMB.

On October 24, 2019, DOS published in the *Federal Register* the [DS-5540, Public Charge Questionnaire for public comment](#). Due to litigation related to the DHS final rule on public charge, DOS halted implementation. On February 12, 2020, DOS published in the *Federal Register*, [DOS Notice of Intent to Seek Emergency OMB Approval of Public Charge Questionnaire](#), seeking emergency Office of Management and Budget (OMB) approval of proposed form DS-5540, Public Charge Questionnaire, by February 24, 2020, so that DOS can implement its interim final rule on the public charge ground of visa ineligibility on this date.

On 2/20/20, [OMB approved](#) the new [Form DS-5540, Public Charge Questionnaire](#), with changes from the draft form that DOS [published for public comment on 10/24/19](#). On 2/21/20, DOS also published [revisions to the Foreign Affairs Manual](#) on Public Charge, with an effective date of 2/24/20.

Government Announcements

[DOS 30-Day Notice and Request for Comments on Form DS-5540](#) (85 FR 33772, 6/2/20)

[DOS Updates Its Information on Public Charge for Visa Applicants](#) – March 13, 2020

[DOS Notice of OMB Emergency Approval of Form DS-5540](#) (85 FR 13694, 3/9/20)

[Form DS-5540, Public Charge Questionnaire](#)

[9 FAM 302.8 – Public Charge – INA 212\(A\)\(4\)](#)

[DOS Notice of Intent to Seek Emergency OMB Approval of Public Charge Questionnaire](#) (85 FR 8087, 2/12/20)

[DOS 60-Day Notice of Proposed Information Collection on a Public Charge Questionnaire](#) (84 FR 57142, 10/24/19)

[Draft Form DS-5540, Public Charge Questionnaire](#)

[DOS Announcement on Interim Final Rule on Public Charge](#) – October 15, 2019

[DOS Interim Final Rule on Visa Ineligibility on Public Charge Grounds](#) (84 FR 54996, 10/11/19)

[AILA Submits Comment Opposing the DOS Interim Final Rule on Public Charge](#) – November 12, 2019

[DOS Issued Cable on Update to 9 FAM 302.8 Public Charge](#) - January 4, 2018

Attorney Resources

[Practice Pointer: Understanding the DOS Interim Final Rule on Public Charge Grounds](#)

[AILA DOS Liaison Q&As \(10/3/19\)](#)

[Friday FAM on Public Charge Grounds of Inadmissibility](#)

[AILA, CLINIC, and NILC Provides Update on FAM Changes to Public Charge](#) - September 12, 2018

[Practice Alert: Public Charge Denials in Ciudad Juarez](#) - June 25, 2018

Advocacy Resources

[AILA, CLINIC, and NILC Express Concerns Over Improper Public Charge Determinations and I-601A Revocations](#) - August 28, 2018

[The National Immigration Law Center Provides Fact Sheet on Changes to "Public Charge" Instructions in the DOS FAM](#)

Litigation Resources

[District Court Issues Nationwide Injunction on Both DOS and DHS Public Charge Regulations Due to COVID-19](#) – July 29, 2020

[City of Baltimore Files Lawsuit Challenging DOS Change to Foreign Affairs Manual on Public Charge Ground of Inadmissibility](#) (*Baltimore v. Trump*, 11/28/18)

Media Resources

Politico: [Exclusive: Visa denials to poor Mexicans skyrocket under Trump's State Department](#) - August 6, 2019

"Between Oct. 1 and July 29, the State Department denied 5,343 immigrant visa applications for Mexican nationals on the grounds that the applicants were so poor or infirm that they risked becoming a "public charge," according to the statistics. That's up from just seven denials for Mexican applicants in fiscal year 2016, the last full year under former President Barack Obama."

DOJ Efforts to Change Public Charge Rules

In December 2020, DOJ withdrew its public charge rule, "Inadmissibility and Deportability on Public Charge Grounds" from OIRA.

A new public charge rule for DOJ is expected to be published in the *Federal Register*, according to the Unified Agenda of the Office of Management and Budget (OMB). The rule has been at OMB

since July 3, 2019.

This policy would apply to immigrants who have already been admitted to the United States.

Protecting Immigrant Families: [Public Charge & Deportation – FAQ for Advocates and Community Members](#) – July 10, 2019

Reuters: [Exclusive: Trump administration proposal would make it easier to deport immigrants who use public benefits](#) - May 3, 2019

Politico reports that the Justice Department plans to propose a regulation detailing when legal immigrants could be deported for receiving certain government benefits, according to new background info from DHS. The proposal deals with immigrants already admitted to the U.S., including legal immigrants with green cards - September 26, 2018

Cite as AILA Doc. No. 19050634.

American Immigration Lawyers Association 1331 G Street NW, Suite 300 Washington, DC 20005

Copyright © 1993-2021 American Immigration Lawyers Association.

[AILA.org](#) should not be relied upon as the exclusive source for your legal research. Nothing on [AILA.org](#) constitutes legal advice, and information on [AILA.org](#) is not a substitute for independent legal advice based on a thorough review and analysis of the facts of each individual case, and independent research based on statutory and regulatory authorities, case law, policy guidance, and for procedural issues, federal government websites.