



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 Mar. 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.

USCIS 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](#) that 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 Mar. 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 Mar. 9, 2021, USCIS 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, or 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 Mar. 9, 2021, you need not provide the information solely required by the Public Charge Final Rule. You do, however, need to respond to the aspects of the RFE or NOID that otherwise pertain to the eligibility for the immigration benefit sought. 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](#), it will issue a subsequent RFE or NOID. or information about the relevant court decisions, please see the [litigation summary](#).

USCIS will issue additional guidance regarding the use of affected forms. In the interim, USCIS will not reject any Form I-485 on the basis of the inclusion or exclusion of Form I-944, and 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.



U.S. Citizenship
and Immigration
Services

[Home](#) > [Policy Manual](#)

Chapter 4 - Extension of Stay and Change of Status

[Guidance](#)

[Resources \(3\)](#)

[Appendices \(1\)](#)

[Updates \(5\)](#)

i Alert

On Sept. 11, 2020, the U.S. Court of Appeals for the Second Circuit issued a decision that allows DHS to resume implementing the [Public Charge Ground of Inadmissibility final rule](#) nationwide, including in New York, Connecticut and Vermont. The decision stays the July 29, 2020, [injunction](#), issued during the coronavirus (COVID-19) pandemic, that prevented DHS from enforcing the public charge final rule during a national health emergency.

Therefore, we will apply the public charge final rule and [related guidance](#) in the USCIS Policy Manual, Volumes [2](#), [8](#) and [12](#), to all applications and petitions postmarked (or submitted electronically) on or after Feb. 24, 2020. If you send your application or petition by commercial courier (for example, UPS, FedEx, or DHL), we will use the date on the courier receipt as the postmark date.

For information about the relevant court decisions, please see the public charge injunction [webpage](#).

A. Nonimmigrants Seeking Extension of Stay or Change of Status

Generally, certain nonimmigrants present in the United States admitted for a specified period of time may request an extension of their admission period in order to continue to engage in those activities permitted under the nonimmigrant classification in which they were admitted. ^[1]

Also, certain nonimmigrants present in the United States may seek to change their status to another nonimmigrant classification if certain requirements are met.^[2]

An application for an extension of stay (EOS) or change of status (COS) is generally filed on a Petition for a Nonimmigrant Worker ([Form I-129](#)) or Application to Extend/Change Nonimmigrant Status ([Form I-539](#)),^[3] depending upon the nonimmigrant classification the applicant seeks to extend or change.^[4]

B. Public Benefits Condition^[5]

The public charge ground of inadmissibility does not apply to nonimmigrants seeking either an EOS^[6] or a COS^[7] in the United States.^[8]

However, to ensure that nonimmigrants remain self-sufficient while present in the United States,^[9] applicants seeking EOS and COS are subject to the public benefits condition, unless the status the applicant seeks to extend or to which they seek to change, is statutorily exempt from the public charge ground of inadmissibility.^[10]

The public benefits condition requires an applicant seeking EOS or COS on or after February 24, 2020 (postmarked or if applicable, submitted electronically on or after that date) to demonstrate that he or she has not received, since obtaining the nonimmigrant status he or she is seeking to extend or from which he or she seeks to change, one or more public benefits,^[11] for more than 12 months in the aggregate within any 36-month period (where, for instance, receipt of two public benefits in 1 month counts as 2 months). USCIS only considers public benefits received on or after February 24, 2020 for petitions or applications postmarked (or, if applicable, submitted electronically) on or after that date.^[12]

The officer should review the information provided with the application or petition, as well as the information contained in the file and systems, to determine whether there is any indication that the alien has received, since obtaining the nonimmigrant status he or she seeks to extend or change from, any of the listed public benefits. An officer may issue a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) as needed, in accordance with current USCIS policy.

1. Exemption^[13]

This public benefits condition does not apply if:

- The nonimmigrant classification the alien seeks to apply for, extend, or change to, is exempt from the public charge inadmissibility ground by law or regulation;^[14]
- The public charge ground of inadmissibility has been waived for purposes of the nonimmigrant status that the alien seeks to extend or from which the alien seeks to change; or
- The applicant filed the request for EOS or COS before February 24, 2020 (postmarked date).

For a list of aliens subject to the public charge condition at the time of the application or petition for EOS or COS, refer to [Appendix: Summary of Nonimmigrant Categories Subject to Public Benefits Condition](#).

2. Evidence

If the public charge condition applies, the applicant must demonstrate that he or she has not received, since obtaining the nonimmigrant status he or she is seeking to extend or from which he or she seeks to change, one or more public benefits, for more than 12 months in the aggregate within any 36-month period.^[15] If the applicant has received, since having obtained the nonimmigrant status, one or more public benefits for more than 12 months, in the aggregate, within any 36 month period, USCIS must deny EOS or COS, even if the applicant otherwise meets the requirements of the nonimmigrant classification.^[16]

The officer should review the statements and documentation provided in the Form I-539 or Form I-129 to determine whether the alien has received public benefits in excess of the regulatory threshold.^[17] If the applicant has been certified to receive public benefits in excess of the threshold at the time of filing of the application or petition but had not yet received the benefits, the officer must review whether the applicant has received more than 12 months of public benefits at the time the application or petition is adjudicated and finalized.

3. Decision

Denial

If the alien seeking COS or EOS has received public benefits at the time of adjudication exceeding the threshold limitation, the officer should deny the EOS or COS request for lack of eligibility based on not meeting the public benefits condition.

Approval

If the alien seeking EOS or COS has not received public benefits exceeding the threshold, the officer must continue to review all other requirements to determine whether the applicant is eligible for the nonimmigrant classification requested or the EOS or COS request.

C. Step-by-Step Overview: Determining Whether Applicant Meets Public Benefits Condition

The following is an overview of the steps an officer should take to determine whether the alien meets the public benefits condition.^[18]

Step-by-Step Overview: Determining How to Apply Public Benefits Condition

Step	If yes, then...	If no, then...
Step 1: Determine whether the application or petition was postmarked on or after February 24, 2020.	Proceed to Step 2.	The public benefits condition does not apply – proceed with the EOS or COS adjudication.

Step	If yes, then...	If no, then...
<p>Step 2: Determine whether the nonimmigrant classification the alien seeks to extend or change to, is exempt from the public charge ground of inadmissibility or whether the alien received a waiver of the public charge ground of inadmissibility for the nonimmigrant classification.</p>	<p>The public benefits condition does not apply – proceed with adjudication of the EOS or COS request.</p>	<p>Proceed to Step 3.</p>
<p>Step 3: Determine whether the alien seeking EOS or COS received public benefits on or after February 24, 2020 in excess of 12 months, in the aggregate, within any 36-month period after the alien obtained the nonimmigrant status he or she seeks to extend or change from:</p> <ul style="list-style-type: none"> • Review the responses to the public benefit receipt questions on Form I-539/I-539A or Form I-129/I-129CW; and • Review the file and available systems. 	<p>Deny the EOS or COS request for lack of eligibility based on the public benefits condition.</p>	<p>Proceed with the EOS or COS adjudication.</p>

Footnotes

[^1] See [8 CFR 214.1\(a\)](#). See [8 CFR 214.1\(c\)](#) for general requirements, such as those relating to passport validity and waivers of inadmissibility for an EOS.

[^2] See [INA 248](#). See [8 CFR 248](#).

[^3] See [8 CFR 214.1\(c\)](#). The application should be filed in accordance with the form instructions.

[^4] See [Appendix: Summary of Nonimmigrant Categories Subject to Public Benefits Condition](#) for a full list. The instructions for [Form I-539](#) and [Form I-129](#) provide detailed information regarding who may file each form. Supplemental Information for Application to Extend/Change Nonimmigrant Status ([Form I-539A](#)) or Petition for a CNMI-Only Nonimmigrant Transitional Worker ([Form I-129CW](#)) may also be filed where applicable.

[^5] See [8 CFR 214.1\(a\)\(3\)\(iv\)](#). See [8 CFR 248.1\(a\)](#). See [8 CFR 248.1\(c\)](#).

[^6] See [8 CFR 214.1](#).

[^7] See [INA 248](#). See [8 CFR 248](#).

[^8] See [INA 212\(a\)\(4\)](#).

[^9] See [83 FR 51114 \(PDF\)](#) (Oct. 10, 2018) (proposed rule). See [84 FR 41292 \(PDF\)](#) (Aug. 14, 2019) (final rule), as amended by [84 FR 52357 \(PDF\)](#) (Oct. 2, 2019) (final rule; correction). See [8 CFR 213.1\(a\)\(3\)\(iv\)](#). See [8 CFR 248.1\(a\)](#). See [8 CFR 248.1\(c\)](#).

[^10] See [8 CFR 212.23](#).

[^11] As described in [8 CFR 212.21\(b\)](#). For a list of what public benefits USCIS considers, see Volume 8, Admissibility, Part G, Public Charge, Chapter 10, Public Benefits [[8 USCIS-PM G.10](#)]. For more on when an alien is deemed to have received public benefits, see Volume 8, Admissibility, Part G, Public Charge, Chapter 9, Assets, Resources and Financial Status, Section A, Standard, Subsection 8, Application for, Certified to Receive, and Receipt of Public Benefits [[8 USCIS-PM G.9\(A\)\(8\)](#)].

[^12] See [8 CFR 214.1\(a\)\(3\)\(iv\)](#) and [8 CFR 248.1\(a\)](#).

[^13] See [Appendix: Summary of Nonimmigrant Categories Subject to Public Benefits Condition](#).

[^14] See [8 CFR 212.23](#).

[^15] For example, the receipt of two public benefits in 1 month counts as 2 months.

[^16] If the EOS or COS application or petition is denied, the alien must depart the United States and process the visa abroad where he or she will be assessed for public charge grounds of inadmissibility as part of the Department of State visa application process and upon entry into the United States.

[^17] For more information on receipt of public benefits, see Volume 8, Admissibility, Part G, Public Charge, Chapter 9, Assets, Resources and Financial Status, Section A, Standard, Subsection 8, Application for, Certified to Receive, and Receipt of Public Benefits [[8 USCIS-PM G.9\(A\)\(8\)](#)].

[^18] See [8 CFR 214.1\(a\)\(3\)\(iv\)](#) (EOS). See [8 CFR 248.1\(a\)](#) and [248.1\(c\)\(4\)](#) (COS).

Current as of February 10, 2021
