



## 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  
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# Chapter 17 - Adjudicating Public Charge Inadmissibility

## Guidance

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### **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](#).

Officers determine whether in the totality of the circumstances after reviewing all the factors and evidence, the alien is likely at any time to become a public charge in the future.<sup>[1]</sup>

## A. Summary: Step by Step Determination of Public Charge Inadmissibility

The officer should examine all facts and circumstances of the alien’s case when evaluating inadmissibility for public charge.<sup>[2]</sup> The officer should follow the steps in the table below to determine inadmissibility.

### Step-By-Step Determination of Public Charge Inadmissibility

Step	If Yes, then ...	If No, then ...	For More Information
Step 1: Is the applicant subject the public charge ground of inadmissibility?	Go to Step 2.	Not inadmissible based on the public charge ground.	See Chapter 3, Applicability [ <a href="#">8 USCIS-PM G.3</a> ] and Appendices <sup>[3]</sup>
Step 2: Does the applicant need to submit an Affidavit of Support Under Section 213A (Form I-864 or Form I-864EZ)?	Go to Step 3.	Go to Step 5.	Chapter 13, Additional Support through Sponsorship [ <a href="#">8 USCIS-PM G.13</a> ]
Step 3: Was the Form I-864 (or the Form I-864EZ) submitted and determined sufficient by the officer?	Go to Step 4.	Inadmissible based on the public charge ground.	
Step 4: Was the application postmarked (or, if applicable, submitted electronically) on or after February 24, 2020?	Go to Step 5.	See the 1999 Interim Field Guidance for adjudication.	Chapter 1, Purpose and Background, Section C, Scope [ <a href="#">8 USCIS-PM G.1(C)</a> ]
Step 5: After reviewing the applicable forms <sup>[4]</sup> and documentation is the applicant likely at any time to become a public charge based on the totality of the circumstances?	Go to Step 6.	Not inadmissible based on the public charge ground.	Chapter 5, Factors [ <a href="#">8 USCIS-PM G.5</a> ] through Chapter 16, Waivers of Inadmissibility Based on Public Charge Ground [ <a href="#">8 USCIS-PM G.16</a> ]; and <a href="#">Appendix: Eligibility for Public Benefits</a>

Step	If Yes, then ...	If No, then ...	For More Information
Step 6: Is a waiver of inadmissibility available?	The officer should issue a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) to the applicant to provide an opportunity to request a waiver.	Inadmissible based on public charge ground. Go to Step 7.	Chapter 17, Adjudicating Public Charge Inadmissibility [ <a href="#">8 USCIS-PM G.17</a> ]  Chapter 16, Waivers of Inadmissibility Based on Public Charge Ground [ <a href="#">8 USCIS-PM G.16</a> ]
Step 7: Does USCIS offer the applicant for adjustment of status, who is inadmissible only on account of public charge, the opportunity to post a public charge bond?	The officer issues a NOID, notifying the applicant that he or she may submit a public charge bond. Proceed to Step 8.	The applicant is inadmissible on the public charge ground. The officer may issue a NOID or deny the application in accordance with USCIS policy.	Chapter 18, Public Charge Bonds [ <a href="#">8 USCIS-PM G.18</a> ]
Step 8: Was a proper and suitable bond posted on behalf of the alien?	The alien may be admitted despite the public charge ground of inadmissibility. The officer should continue with the adjudication of the application.	The applicant is inadmissible on the public charge ground of inadmissibility. The officer should deny the application.	Chapter 18, Public Charge Bonds [ <a href="#">8 USCIS-PM G.18</a> ]

## B. Decision

### 1. Request for Evidence or Notice of Intent to Deny

If the required initial evidence submitted by the applicant does not establish eligibility or ineligibility, USCIS may request more information or evidence from the applicant in accordance with USCIS policy. <sup>[5]</sup> If a NOID is issued, the officer must explain why the negative factors outweigh the positive factors such that the applicant more likely than not to receive one or more public benefits above the designated threshold at any time in the future. If an officer is basing a decision in whole or in part on information of which the applicant is unaware or could not reasonably be expected to be aware, the officer must issue a NOID. <sup>[6]</sup>

## 2. Not Inadmissible Based on Public Charge Ground of Inadmissibility

If, after reviewing the application and supporting evidence, the officer finds that the applicant's positive factors outweigh the negative factors, such that the applicant is not more likely than not to receive one or more public benefits above the designated threshold at any time in the future, then the officer should determine that the applicant is not inadmissible based on the public charge ground. The officer should continue with the adjudication of the immigration benefit request.

## 3. Inadmissible Based on Public Charge Ground of Inadmissibility

If the officer finds that the applicant's negative factors outweigh the positive factors, such that the applicant is more likely than not to receive one or more public benefits above the designated threshold at any time in the future, then the officer should determine that the applicant is inadmissible as likely at any time to become a public charge.

In this case, the officer should determine whether the applicant may be eligible to apply for a waiver or whether to offer the applicant the opportunity to post a public charge bond.<sup>[7]</sup>

If the applicant is ineligible to apply for a waiver and USCIS has decided not to offer the applicant an opportunity to post a public charge bond, then the applicant is inadmissible on public charge grounds and therefore, ineligible for the immigration benefit and the officer may issue a NOID or deny the benefit request in accordance with USCIS policy.<sup>[8]</sup>

### *Waiver*

If the applicant is eligible to apply for a waiver, the officer should inform the applicant through the issuance of an RFE or NOID in accordance with USCIS policy.<sup>[9]</sup> If the applicant submits a waiver and the waiver is approved, the applicant is no longer inadmissible on the public charge ground and the officer should continue with the adjudication of the immigration benefit request, in accordance with the guidance applicable to the immigration benefit.

### *Bond*

If an applicant for adjustment of status is inadmissible based on the public charge ground, and USCIS offers, as a matter of discretion, the applicant an opportunity to post a public charge bond,<sup>[10]</sup> the officer must issue a NOID in accordance with USCIS policy.<sup>[11]</sup>

If the applicant posts the public charge bond as instructed in the NOID, the officer should continue with adjudication of the immigration benefit request, in accordance with the guidance applicable to the immigration benefit.

## Footnotes

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<sup>[^ 1]</sup> See [INA 212\(a\)\(4\)](#) and [8 CFR 212.22](#).

<sup>[^ 2]</sup> See [INA 212\(a\)\(4\)](#).

<sup>[^ 3]</sup> See [Appendix: Applicability of INA 212\(a\)\(4\) to Family-Based Adjustment of Status Applications](#); [Appendix: Applicability of INA 212\(a\)\(4\) to Employment-Based Adjustment of Status](#)

[Applications; Appendix: Applicability of INA 212\(a\)\(4\) to Special Immigrant Adjustment of Status Applications; Appendix: Applicability of INA 212\(a\)\(4\) to Refugee, Asylee, and Parolee Adjustment of Status Applications; and Appendix: Applicability of INA 212\(a\)\(4\) to Other Applicants.](#)

[[^4](#)] Including Form I-944, Form I-485, Forms I-864, and Form I-693.

[[^5](#)] USCIS may also deny the benefit request for ineligibility or issue a NOID. See [8 CFR 103.2\(b\)\(8\)\(iii\)](#) and [Adjudicator's Field Manual \(AFM\) Chapter 10.5, Requesting Additional Information \(PDF, 2.87 MB\)](#) for more information.

[[^6](#)] See [8 CFR 103.2\(b\)\(8\)\(i\)](#).

[[^7](#)] For more information, see Chapter 16, Waivers of Inadmissibility Based on Public Charge Ground [[8 USCIS-PM G.16](#)] and Chapter 18, Public Charge Bonds [[8 USCIS-PM G.18](#)].

[[^8](#)] See [8 CFR 103.2\(b\)\(8\)\(iii\)](#) and [Adjudicator's Field Manual \(AFM\) Chapter 10.5, Requesting Additional Information \(PDF, 2.87 MB\)](#) for more information.

[[^9](#)] See [Adjudicator's Field Manual \(AFM\) Chapter 10.5, Requesting Additional Information \(PDF, 2.87 MB\)](#) for more information.

[[^10](#)] In accordance with [8 CFR 213.1](#).

[[^11](#)] See [8 CFR 103.2\(b\)\(8\)\(iii\)](#) and [Adjudicator's Field Manual \(AFM\) Chapter 10.5, Requesting Additional Information \(PDF, 2.87 MB\)](#) for more information.

Current as of February 10, 2021

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