



## 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 18 - Public Charge Bonds

### Guidance

[Resources \(75\)](#)

[Appendices \(7\)](#)

[Updates \(4\)](#)

### **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](#).

If an alien is determined to be inadmissible based on the public charge ground,<sup>[1]</sup> but is otherwise admissible, he or she may be admitted in the discretion of the Secretary of Homeland Security upon the giving of a suitable and proper bond.<sup>[2]</sup> USCIS will only exercise this authority in the context of adjustment of status applications in cases where adjustment would otherwise be granted but for the public charge inadmissibility.<sup>[3]</sup>

A public charge bond is a type of immigration bond.<sup>[4]</sup> A bond, including a public charge bond, is a contract between the United States (the obligee) and a natural person or a company (the obligor) who pledges a sum of money to guarantee a set of conditions imposed by the U.S. government concerning the

alien (also called the principal).<sup>[5]</sup> In the case of the public charge bond, the obligor pledges a sum of money to guarantee that the applicant will not become a public charge, as defined in the regulations.<sup>[6]</sup>

Public charge bonds are intended to hold the United States and all states, territories, counties, towns, municipalities, and districts harmless against aliens becoming public charges.<sup>[7]</sup> A public charge bond is issued on the condition that the alien does not become a public charge after the bond is issued. If the U.S. government permits the alien to post a public charge bond, and the bond posted is the amount specified by USCIS, and complies with all other requirements as provided in the form and form instructions, USCIS will accept the public charge bond and will adjust the applicant's status to that of a lawful permanent resident (LPR) despite the alien's inadmissibility. If the LPR receives public benefits above the threshold while the bond is in effect, and therefore has become a public charge, the LPR will have breached the conditions of the bond and the U.S. government will require payment on the bond.<sup>[8]</sup> A breach does not affect the alien's LPR status.

## A. Type of Bonds

Public charge bonds may generally be posted as:<sup>[9]</sup>

- A cash bond – This type of bond is posted as cash equivalent as specified by USCIS,<sup>[10]</sup> or
- A surety bond – This type of bond is posted through a surety company certified by the U.S. Department of the Treasury.<sup>[11]</sup>

Regardless of the type of public charge bond, the bond must be posted with USCIS by submitting a Public Charge Bond ([Form I-945](#)) in accordance with its instructions and the appropriate fee.<sup>[12]</sup>

### *Cash Bonds*

A cash bond is secured by a deposit of the full face value of the bond. It can be posted by a company or a natural person. If an applicant is given the opportunity to post a public charge bond, the bond should be paid in accordance with the Form I-945 instructions. Once USCIS receives the funds, the money is held in a U.S. Treasury account until it is either forfeited due to breach or the bond is canceled. Funds used to secure a bond accrue interest at the rate set by the Treasury Department on the date the funds are received.<sup>[13]</sup>

### *Surety Bonds*

A surety bond is a bond that is submitted on the alien's behalf by a company, which guarantees the payment of a certain amount of money if the alien fails to comply with the conditions set by the government as part of the bond. In the case of a surety bond, no cash is exchanged as part of the bond contract; only if and when the alien breaches the conditions of the bond will the surety company pay the promised amount of money to the government.

Before a surety company can do business with any government entity, it must be certified by the Treasury Department.<sup>[14]</sup> All certified companies are listed in a document entitled "Circular 570".<sup>[15]</sup> USCIS will only accept surety bonds from companies certified by the Treasury Department to post bonds.<sup>[16]</sup>

A surety company can execute a bond on its own or it can do so through authorized agents.<sup>[17]</sup> To establish that an agent is an authorized agent who may act on behalf of the surety company, the agent must provide evidence of the authorization through a Power of Attorney that must comply with the state

laws governing the jurisdiction in which it is executed. This Power of Attorney is not the same as the Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28). Therefore, when submitting a public charge bond on behalf of a certified surety company, the agent must attach either an original Power of Attorney, or a true copy (as defined under applicable state law), to Form I-945.

If the agent<sup>[18]</sup> also seeks to act in the capacity of an attorney or accredited representative of the surety company, the agent must also submit Form G-28.<sup>[19]</sup>

If the surety company posts bonds through an agent, the agent becomes a co-obligor. This means that the agent is jointly and severally liable for the bond amount. If the alien breaches the condition of the bond by receiving public benefits above the threshold, as defined in the regulation,<sup>[20]</sup> either the surety company or the agent or both can be held liable for and up to the amount of the bond.

*Example*

Immigration Bonds, Inc. provides public charge bond services on behalf of Bank B, a Treasury Department-certified surety company. When submitting a public charge bond, Immigration Bonds, Inc. must submit Form I-945 and also an original or a true copy (as defined under applicable state law) of the Power of Attorney that complies with the state laws governing the jurisdiction in which the Power of Attorney was executed. The Power of Attorney demonstrates that Immigration Bonds, Inc. is authorized to submit the bond on behalf of Bank B.

By completing the Form I-945, the agent must sign as a co-obligor on the bond. If Immigration Bonds, Inc. also acts as Bank B’s attorney or accredited representative, Immigration Bond, Inc., would also have to submit a properly completed Form G-28. If the public charge bond is accepted, the Immigration Bonds, Inc. and Bank B become co-obligors on the public charge bond. If the public charge bond is breached because the alien does not comply with the bond conditions, the U.S. government may collect from either Immigration Bonds, Inc. or the Bank B. or both to obtain the full face value of the public charge bond.

The following table illustrates the differences between the public charge cash and surety bonds.

**Differences Between Cash and Surety Bonds**

	Cash Bond	Surety Bond
Who can post it?	<ul style="list-style-type: none"> <li>Natural person, including the alien; or</li> <li>Company or other entity</li> </ul>	<ul style="list-style-type: none"> <li>Certified surety company; or</li> <li>The certified surety company’s authorized agent</li> </ul>

	Cash Bond	Surety Bond
The bond is posted by submitting what documents?	<ul style="list-style-type: none"> <li>Form I-945, completed in accordance with the form instructions;</li> <li>Payment submitted according to the form instructions; and</li> <li>Form G-28, if necessary</li> </ul>	<ul style="list-style-type: none"> <li>Form I-945, completed in accordance with the form instructions;</li> <li>If submitted by an authorized agent of an acceptable surety company: Power of Attorney complying with state laws of governing jurisdiction in which the Power of Attorney was executed; and</li> <li>Form G-28, if the agent is also acting in the capacity of an attorney or accredited representative.</li> </ul>
Is a payment submitted with the bond?	<ul style="list-style-type: none"> <li>Yes, payment is submitted in accordance with Form I-945's instructions</li> </ul>	<ul style="list-style-type: none"> <li>No, no payment accompanies the bond submission</li> </ul>
Can the bond have a co-obligor?	No	<ul style="list-style-type: none"> <li>Yes, if the bond is submitted by an authorized agent of an acceptable surety company, the authorized agent becomes a co-obligor</li> </ul>

## B. Bond Amount

A public charge bond must be at least \$8,100.<sup>[21]</sup> The minimum amount will be adjusted annually for inflation based on the Consumer Price Index for All Urban Consumers (CPI-U).<sup>[22]</sup> However, USCIS determines the appropriate bond amount for each applicant on a case-by-case basis. The amount cannot be appealed by the alien, the obligor, agent/co-obligor, or their representative(s)(if any).

## C. Bond Duration

USCIS only accepts public charge bonds of unlimited duration.<sup>[23]</sup> This means that the bond will not expire, but instead remains in effect until one of the following:

- USCIS approves a substitute bond that replaces the bond originally posted;<sup>[24]</sup>

- USCIS cancels the bond;<sup>[25]</sup> or
- USCIS determines that the bond is breached.<sup>[26]</sup>

## D. Bond Stages

The decision to allow an alien only inadmissible on the public charge ground to submit a public charge bond is within DHS’s discretion. The posting of a public charge bond by an alien found to be inadmissible only on account of the public charge ground authorizes USCIS, upon accepting the bond, to adjust the status of an alien to that of an LPR.

The public charge bond is posted on the condition that the alien does not become a public charge after adjusting status.<sup>[27]</sup> If the alien does become a public charge because he or she has received public benefits above the threshold,<sup>[28]</sup> the bond is breached and the U.S. government will request payment on the bond. If the alien does not become a public charge while the bond is in effect, then USCIS will cancel the bond upon the request from either the obligor or agent/co-obligor (the one who posted the bond), or the alien.<sup>[29]</sup>

The following table summarizes the various stages of a public charge bond.

**Public Charge Bond Stages**

Stage	For More Information
Posting and acceptance of a public charge bond	Chapter 19, Public Charge Bonds: Posting and Accepting Bonds [ <a href="#">8 USCIS-PM G.19</a> ]
Maintenance of a public charge bond, including substitution	Chapter 20, Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds, Section A, Maintaining Bonds [ <a href="#">8 USCIS-PM G.20(A)</a> ]  Chapter 20, Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds, Section B, Substituting a Bond [ <a href="#">8 USCIS-PM G.20(B)</a> ]
Breach of the public charge bond	Chapter 20, Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds, Section C, Breach of Bond [ <a href="#">8 USCIS-PM G.20(C)</a> ]
Cancellation of the public charge bond	Chapter 20, Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds, Section D, Canceling a Bond [ <a href="#">8 USCIS-PM G.20(D)</a> ]

## Footnotes

[^1] See [INA 212\(a\)\(4\)](#).

[^2] See [INA 213](#). See [8 CFR 103.6](#) and [8 CFR 213.1](#).

[^3] See [8 CFR 213.1\(a\)](#).

[^4] There are many types of immigration bonds prescribed in the Immigration and Nationality Act (INA). Most immigration bonds are currently administered by Immigration and Customs Enforcement (ICE), and not USCIS. For example, ICE administers the voluntary departure bonds, detention bonds, or appearance bonds. For more information on other immigration bonds, see [ICE's website](#).

[^5] See, for example, [Matter of Allied Fid. Ins. Co. \(PDF\)](#), 19 I&N Dec. 124, 125-26 (BIA 1984) (discussing the contractual nature of delivery bonds submitted under [8 CFR 103.6](#)).

[^6] See [8 CFR 212.21\(a\)](#) and [8 CFR 212.21\(b\)](#). See [8 CFR 213.1\(d\)](#).

[^7] See [INA 213](#). See [Matter of Viado \(PDF\)](#), 19 I&N Dec. 252 (BIA 1985). See [83 FR 51114, 51218 \(PDF\)](#) (Oct. 10, 2018) (proposed rule).

[^8] For more information, see Chapter 18, Public Charge Bonds, Section D, Bond Stages [[8 USCIS-PM G.18\(D\)](#)].

[^9] See [8 CFR 103.6](#).

[^10] See [8 CFR 213.1\(c\)\(1\)](#).

[^11] See [8 CFR 103.6](#).

[^12] See [8 CFR 103.2](#). See [8 CFR 103.7](#).

[^13] See [8 CFR 293.1](#)

[^14] See [31 U.S.C. 9304-9308](#). As part of the certification process, the Department of the Treasury ascertains the company's credit worthiness.

[^15] Circular 570 is available at the [Department of the Treasury's Listing of Certified Companies](#).

[^16] The Treasury Department certifies companies only after having evaluated a surety company's qualifications to underwrite federal bonds, including whether those sureties meet the specified corporate and financial standards. Under [31 U.S.C. 9305\(b\)\(3\)](#), a surety (or the obligor) must be able to carry out its contracts and must comply with statutory requirements, including prompt payment of demands arising from an administratively final determination that the bond has been breached. By using Treasury-certified surety companies, DHS ensures that the necessary safeguards are in place to reduce the risk that aliens will be exploited. See [84 FR 41292, 41453 \(PDF\)](#) (Aug. 14, 2019) (final rule), as amended by [84 FR 52357 \(PDF\)](#) (Oct. 2, 2019) (final rule; correction).

[^17] However, a surety bond cannot be posted by a person who is not an authorized agent for a certified company. For example, if an alien is offered the opportunity to post a public charge bond, the alien cannot submit a surety bond on his or her own behalf.

[^18] An agent/co-obligor may also act through his or her authorized representative, as defined in [8 CFR 1.2](#) and [8 CFR 292](#). Such a representative must submit Form G-28 on behalf of the agent/co-obligor.

[^19] If Form G-28 is missing, but should have been submitted, USCIS should request the Form G-28 before proceeding.

[^20] If the alien receives more than 12 months, in the aggregate, of public benefits in any 36-month period since adjusting status to that of an LPR.

[^21] See [8 CFR 213.1\(c\)\(2\)](#). For the year 2020, the minimum bond amount is \$8,240 based on the CPI-U update as of December 2019. See <https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-201912.pdf> (PDF).

[^22] See [8 CFR 213.1\(c\)\(2\)](#).

[^23] See [8 CFR 213.1\(d\)](#).

[^24] For more information on bond substitution, see Chapter 20, Section B, Substituting a Bond [[8 USCIS-PM G.20\(B\)](#)].

[^25] For more information on bond cancellation, see Chapter 20, Section D, Cancelling a Bond [[8 USCIS-PM G.20\(D\)](#)].

[^26] See [8 CFR 213.1\(h\)](#).

[^27] As defined in [8 CFR 212.21\(a\)](#) and [8 CFR 212.21\(b\)](#). See [8 CFR 213.1\(d\)](#).

[^28] As defined in [8 CFR 212.21\(b\)](#).

[^29] See [8 CFR 213.1\(g\)](#).

Current as of February 10, 2021

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