



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 19 - Public Charge Bonds: Posting and Accepting 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](#).

A. Permission to Post Bond

A public charge bond may only be submitted by the alien or on the alien's behalf after USCIS notifies the alien and the alien's representative (if any) that a public charge bond may be submitted. USCIS does not accept requests to submit a public charge bond or unsolicited public charge bonds that are submitted together with an Application to Register Permanent Residence or Adjust Status (Form I-485) or otherwise.

Because public charge bonds are only made available to applicants in USCIS' discretion^[1] if the alien is inadmissible on account of the public charge ground,^[2] the officer should adjudicate all aspects of the adjustment of status application before considering whether the alien should be offered the possibility to post a public charge bond.

If the applicant is inadmissible only on account of the public charge ground, but is otherwise admissible and eligible for adjustment of status, then USCIS will make a discretionary determination as to whether the applicant may be offered the opportunity to post a public charge bond.

B. USCIS Discretion to Offer a Bond

Providing the applicant with the opportunity to post a public charge bond is wholly within the discretion of the Secretary of Homeland Security. USCIS, therefore, determines whether to provide an adjustment of status applicant with the opportunity to post a public charge bond on a case-by-case basis and based on the facts of each individual case.^[3]

Because USCIS has already determined that the alien is likely at any time to become a public charge, offering the opportunity to post a public charge bond in the adjustment of status context is generally only warranted in limited circumstances.^[4]

USCIS does not offer the opportunity to post a public charge bond if the adjustment application would be denied on any other basis, including discretionary grounds. Additionally, USCIS generally does not favorably exercise its discretion to allow submission of a public charge bond^[5] if an applicant has one or more heavily weighted negative factors^[6] present in his or her case.

USCIS only offers the opportunity to post a public charge bond to an adjustment of status applicant if, after weighing the positive and negative factors in the applicant's case, USCIS determines that the posting of a public charge bond would minimize the likelihood of the alien becoming a public charge.

The following non-exhaustive lists provide an outline of what USCIS considers positive and negative factors when determining whether an applicant should be given the opportunity to post a public charge bond.

Positive Factors

- Having two or more positive factors;
- Having heavily weighted positive factors present in the applicant's case;
- Exceptional humanitarian considerations.^[7] (Such factors are unusual, rare, and compelling.) General "family unity," such as unity with the relative who petitioned on the applicant's behalf, is not an exceptional consideration in the context of the public charge bond and should not be used as a basis for determining which applicants are offered the opportunity to post a bond. Family unity could be considered a positive factor in the case of an immediate, nuclear family (spouse and minor children) where all but one family member has been found admissible on public charge grounds; and
- The applicant's admission on bond would serve national security or is otherwise in the public interest.^[8]

Negative Factors

- Having multiple negative factors in the public charge determination; and
- Having heavily weighted negative factors present in the applicant's case.^[9]

After identifying the positive and negative factors present in the applicant's case, USCIS assesses the weight given to these factors according to the following guidelines and determines whether the opportunity to post a public charge bond should be offered as a matter of discretion:

- If an applicant has one or more heavily weighted negative factors^[10] present in his or her case, USCIS generally does not favorably exercise its discretion to allow posting of a public charge bond.^[11]
- If an applicant has one or more heavily weighted positive factors^[12] present in his or her case, USCIS weighs them heavily in determining whether to offer the applicant the opportunity to post a public charge bond.
- In general, factors that promote national security or that are otherwise in the public interest carry more weight in the discretionary determination.

If the applicant's negative factors outweigh the applicant's positive factors, USCIS generally does not offer the applicant the opportunity to post a public charge bond.

If the positive factors in the applicant's case outweigh the negative factors, USCIS generally offers the applicant the opportunity to post a public charge bond after having determined the appropriate bond amount.

Example

USCIS determines an adjustment applicant to be likely at any time to become a public charge due to a weak financial status because he or she received public benefits 40 months before applying for immigration status, and has a Class B medical condition which affects his or her ability to currently work. The applicant is under treatment, however, and has provided evidence of having private medical insurance, and has a spouse and two children who have already been admitted to the United States as lawful permanent residents (LPRs). Although the applicant's negative factors outweigh the positive factors, USCIS could favorably exercise its discretion to permit the applicant to post a public charge bond due to the interest of family unity.

Example

USCIS determines that a 68-year-old applicant is likely at any time to become a public charge because of a prior public charge finding and because the applicant's assets and resources are less than 125 percent of the most recent [Federal Poverty Guidelines](#) (FPG) based on the applicant's household size. The applicant has, however, demonstrated a consistent work history, and is generally admissible and eligible for adjustment of status, including having an Affidavit of Support Under Section 213A of the INA ([Form I-864](#)) from a sponsor with clearly sufficient income to assist the applicant. In addition, the applicant has been a witness in a high-profile criminal case in the past, and the applicant's presence would greatly assist in additional prosecutions in the United States. The applicant's admission could be determined to be in the national interest and a favorable exercise of discretion could be warranted in this scenario.

Determining Public Charge Bond Amount

The purpose of the public charge bond is to hold the U.S. government harmless if an alien becomes a public charge after adjusting to LPR status while the bond is in effect.^[13] The public charge bond amount represents liquidated damages to compensate the government for possible harms and other costs caused by the breach of the bond.^[14]

A public charge bond must be at least \$8,100, annually adjusted for inflation based on the Consumer Price Index for Urban Consumers (CPI-U).^[15] Given the discretionary nature of DHS's public charge bond authority,^[16] the bond amount cannot be appealed by the applicant, the obligor, the agent/co-obligor, or their representatives (if any).^[17]

The same factors considered as part of the public charge inadmissibility determination that rendered the applicant more likely than not to become a public charge at any time in the future should guide the determination of the public charge bond amount.

Bond Amount	
Minimum Bond Amount	\$ 8,100 (annually adjusted for inflation based on the Consumer Price Index for Urban Consumers (CPI-U)) ^[18]

C. Additional Bond Conditions

The regulations permit an officer to impose additional bond conditions.^[19]

If imposing additional conditions to the public charge bond are necessary, such as, a condition that the applicant attend school or obtain health insurance, the officer should elevate the case through his or her supervisory channels and consult with the Office of Chief Counsel (OCC).

D. Requesting Bond

If USCIS determines that giving the adjustment of status applicant the opportunity to submit a public charge bond is warranted as a matter of discretion, USCIS will request the Public Charge Bond ([Form I-945](#)) by issuing a Notice of Intent to Deny (NOID). The NOID should discuss, at a minimum, all of the following items:

- That the alien has been found inadmissible on the public charge ground and the reason(s) why;
- That USCIS decided to favorably exercise its discretion to allow the alien to have a public charge bond submitted, which would permit, if accepted, the alien to adjust status to that of an LPR;
- The type of bond. In general, the officer should give the alien the choice between a cash or surety bond. Only in extraordinary circumstances, and after consulting with the officer's supervisory chain, should the officer require a specific type of bond in the NOID. In addition, the notice should also state that, in case of a surety bond, the bond must be submitted by an acceptable surety company that is listed on the Department of the Treasury's Circular 570;^[20]
- The public charge bond amount;

- That the bond must be posted by submitting Form I-945 completed in accordance with the form instructions and with the appropriate fee;
- The due date, that is, by when Form I-945 must be submitted to USCIS (postmark date);
- The consequences for failure to respond to the notice and for the failure to submit Form I-945, in accordance with the form instructions and with the appropriate fee. In particular, the NOID should specify that the public charge bond will be rejected or deemed insufficient and that the adjustment of status will be denied, if the bond is not properly submitted in accordance with the instructions and with the appropriate fee; and
- Any additional information required to properly post the bond.

E. Assessing the Sufficiency of Posted Public Charge Bond

Once the public charge bond is posted, USCIS should determine whether the bond was properly completed as outlined in the form's instructions^[21] and the NOID, and that the appropriate fee has been paid. The bond is, however, not effective until USCIS accepts the bond.

A public charge bond is a contract between the U.S. government (USCIS) and the obligor.^[22] A contract is generally not effective until both parties accept the contract. USCIS accepts a bond when the designated USCIS authority signs the public charge bond on behalf of the U.S. government.^[23]

In general, before a public charge bond can be endorsed with the signature of the authorized designated authority, USCIS must ensure that the public charge bond meets the regulatory requirements,^[24] is submitted in accordance with instructions outlined in the form's instructions and the NOID, and that the appropriate fee has been paid. Otherwise, the bond may be rejected upon submission or ultimately deemed insufficient.

Additionally, the conditions of the public charge bond are outlined in Form I-945 and in the NOID issued by USCIS. The obligor submitting the Form I-945 may not alter these terms in any way. Therefore, USCIS will not accept a public charge bond as sufficient and acceptable if:

- The obligor or an alien submits the Form I-945 with an attachment or rider that contains additional conditions or otherwise alters the terms of the public charge bond,^[25]
- The obligor physically alters the terms contained on Form I-945,^[26] or
- The obligor submits the bond on a contract other than Form I-945.^[27]

1. Accepting the Bond

If USCIS determines that the public charge bond meets the regulatory requirements, the requirements outlined in the form instructions, and in the NOID, USCIS may forward the public charge bond documentation to the designated USCIS authority for signature and acceptance of the public charge bond.

Once the bond is signed and accepted, USCIS must issue a receipt.^[28]

2. Issuing a Receipt for Accepted Bonds

Once the bond is signed by the designated USCIS authority, and therefore accepted, the obligor, the authorized agent (in the case of a surety bond), any representative, and the alien and the alien's representative, if any, are notified that the bond has been accepted. The officer should also provide a receipt to the obligor and a copy of the receipt to the applicant and his or her representative (if any).

Because USCIS accepted the public charge bond, the officer adjudicating the adjustment of status application should proceed with the final adjudication of the adjustment. If the applicant is otherwise eligible for adjustment of status at the time the public charge bond is accepted by USCIS, then the adjustment of status application may be approved.^[29]

3. Bond Not Accepted

If the public charge bond is not suitable and proper because the public charge bond does not meet the regulatory requirements, the requirements outlined in the form instructions, or in the NOID, USCIS cannot accept the public charge bond and denies the adjustment of status application.

Footnotes

[^1] See [INA 213](#).

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

[^3] See [INA 213](#). See [8 CFR 213.1](#).

[^4] See [83 FR 51114, 51221 \(PDF\)](#) (Oct. 10, 2018) (proposed rule).

[^5] See [8 CFR 213.1\(b\)](#). Because the existence of a heavily weighted negative factor is indicative of the applicant's likelihood of becoming a public charge, USCIS would not ordinarily exercise its discretion favorably.

[^6] See [8 CFR 212.22\(c\)](#).

[^7] See [83 FR 51114, 51221 \(PDF\)](#) (Oct. 10, 2018) (proposed rule). See [84 FR 41292, 41454 \(PDF\)](#) (Aug. 14, 2019) (final rule), as amended by [84 FR 52357 \(PDF\)](#) (Oct. 2, 2019) (final rule; correction).

[^8] See [83 FR 51114, 51221 \(PDF\)](#) (Oct. 10, 2018) (proposed rule). See [84 FR 41292, 41454 \(PDF\)](#) (Aug. 14, 2019) (final rule), as amended by [84 FR 52357 \(PDF\)](#) (Oct. 2, 2019) (final rule; correction).

[^9] See [8 CFR 212.22\(c\)](#).

[^10] See [8 CFR 212.22\(c\)](#).

[^11] See [8 CFR 213.1\(b\)](#). Because the existence of a heavily weighted negative factor is indicative of the applicant's likelihood of becoming a public charge, USCIS generally does not exercise its discretion favorably.

[^12] See [8 CFR 212.22\(c\)](#).

[^13] See [8 CFR 212.21\(d\)](#).

[^14] See [83 FR 51114, 51226 \(PDF\)](#) (Oct. 10, 2018) (proposed rule). See [94 FR 41292, 414754 \(PDF\)](#) (Aug. 14, 2019) (final rule), as amended by [84 FR 52357 \(PDF\)](#) (Oct. 2, 2019) (final rule; correction).

[^15] 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).

[^16] See [INA 213](#).

[^17] Because it is within the Secretary's discretion to permit the posting of a public charge bond, the bond amount is not administratively appealable, neither to the Administrative Appeals Office (AAO) nor the Board of Immigration Appeals (BIA). Neither the AAO nor the BIA has jurisdiction over this discretionary determination. See *United States ex rel. Chanin v. Williams*, 177 F. 689, 690 (2nd Cir. 1910) ("The matter of admission under bond of a person once found to be likely to become a public charge is by the statute confided to the Secretary, and we do not see why his refusal to admit is not an adverse exercise of such discretion in any particular case. His reasons for refusal may or may not seem persuasive to a court; but it is to him, not to the court, that Congress has confided the discretion."). See *In re Obligor*, 2007 WL 5326596, at *1 (AAO June 6, 2007) (sustained appeal that public charge bond was not breached). The BIA lacks jurisdiction. See [8 CFR 1003.1\(b\)](#).

[^18] This base amount was established in 2019. See [84 FR 41292 \(PDF\)](#) (Aug. 14, 2019) (final rule), as amended by [84 FR 52357 \(PDF\)](#) (Oct. 2, 2019) (final rule; correction). 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).

[^19] See [8 CFR 213.1\(c\)](#). See [8 CFR 103.6](#).

[^20] See [8 CFR 103.6](#). Circular 570 is available at the [Department of the Treasury's Listing of Certified Companies](#).

[^21] The Form I-945 must be submitted in accordance with the form instructions, and must be submitted in accordance with the appropriate USCIS fee. The fee is not the bond amount but rather the USCIS processing fee. The officer does not have to determine whether the alien submitted the appropriate fee as this is part of the USCIS determination whether the form can be accepted or should be rejected.

[^22] For more information on the nature of the public charge bond, see Chapter 2, Public Charge Inadmissibility Ground [\[8 USCIS-PM G.2\]](#).

[^23] Officers tasked with evaluating the public charge bond should consult with his or her supervisory chain to determine to whom to forward a public charge bond so that it can be signed by the designated USCIS authority.

[^24] See [8 CFR 213.1](#).

[^25] This is the case even if the obligor generally agrees with the Form I-945 terms but suggests that the contract covers additional conditions. USCIS cannot accept a bond other than under the conditions outlined in Form I-945 and the NOID.

[^26] For example, the obligor may not strike any of the text on Form I-945 or the obligor may not add any text in writing to the Form I-945. In particular, the obligor may not use the overflow section in Form I-945 to add terms or alter the obligation imposed with Form I-945.

[^27] This is the case even if the document that is submitted by the obligor contains the same text as Form I-945 and the terms as outlined in the NOID but are on a document other than the Form I-945.

[^28] See Subsection 2, Issuing a Receipt for Accepted Bonds [[8 USCIS-PM G.19\(E\)\(2\)](#)].

[^29] For more information about adjustment of status, see Volume 7, Adjustment of Status [[7 USCIS-PM](#)].

Current as of February 10, 2021
