



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 20 - Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds

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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. Maintaining Bonds

Once an alien has adjusted his or her status to that of a lawful permanent resident (LPR), USCIS must ensure that the bond continues to be enforceable during the bond's validity. Additionally, an obligor, agent/co-obligor, or the alien may experience a change of address, or the obligor or the alien may wish to substitute the bond.

According to the regulation^[1] and the Public Charge Bond ([Form I-945](#)), USCIS must send a copy of any communication with the obligor, the obligor's representative (if any), the agent/co-obligor, and the agent/co-obligor's representative (if any), to the alien, and the alien's representative (if any). For that reason, any communication relating to the review of the bond should ordinarily be in writing. If the officer has to communicate with any of the parties involved in the bond orally, USCIS will generally transcribe the communication, and send a copy of the transcribed communication to all parties involved. USCIS will also retain a copy of the communication in the alien's file.

B. Substituting a Bond^[2]

An alien or an obligor may have an interest in having the bond substituted at any time. For example, an alien may have found a different obligor who provides the alien better financial terms and conditions for purposes of a public charge bond submission. Or, the obligor would like to be released from the public charge bond obligation and therefore, asks the alien to seek a new obligor.

Acceptance of the Substitute Bond

A public charge bond on file with USCIS may be substituted at any time and for any reason. A substitute bond may either be submitted by the original obligor or a new obligor on behalf of the alien. A substitute bond is submitted on Form I-945 and must be completed in accordance with the form's instructions and with the required fee.^[3]

When USCIS is reviewing the sufficiency of the substitute bond, USCIS will ensure that the following requirements are met before presenting the public charge bond to the designated USCIS authority for signature and acceptance of the bond. Therefore, when USCIS is reviewing the public charge bond for sufficiency, USCIS follows the steps outlined in this Part,^[4] addressing the acceptance of a public charge bond. In addition to the requirements outlined in Chapter 19, the following must also be met:

- The bond must meet all of the requirements applicable to the initial bond;^[5] and
- The bond must cover all liabilities that the initial obligor incurred, including any breach of the bond conditions, which occurred before USCIS accepts the substitute bond.^[6]

When USCIS is verifying the sufficiency of the substitute public charge bond, USCIS must ensure that no text on the Form I-945 has been altered before USCIS accepts the form by having it signed by the designated USCIS authority.

If USCIS determines that the substitute bond is sufficient, the officer should forward the public charge bond for acceptance by the designated USCIS authority for signature. The substitute bond will be effective on the day it is signed by the designated USCIS authority. The officer should proceed with issuing the receipt as outlined in this Part.^[7]

As part of the acceptance of the new public charge bond, USCIS cancels the bond being substituted, releases any prior obligors from liability, and accepts the substitute bond. A copy of the communication must be sent to all parties involved. If the bond that is returned to the obligor was a cash bond, USCIS must return the bond sum and any interest accrued to the obligor of the bond being substituted.

If the substitute bond submitted is insufficient, USCIS generally notifies the obligor of the substitute bond so that the obligor may correct the deficiency or deficiencies within the timeframe stipulated in USCIS' notice.^[8] This notice should not only be sent to the new obligor, but all parties involved, including the

obligor and agent/co-obligor (if any) on file (the bond to be substituted), the agent/co-obligor of the substitute bond, the alien, and any representative of any of the parties involved. If the deficiency is not corrected within the timeframe specified, the bond currently on file remains in effect.

C. Breach of Bond

A condition of the bond is that an alien does not receive public benefits, as defined in the regulation,^[9] for more than 12 months in the aggregate, within any 36-month period (such that, for instance receipt of two benefits in 1 month counts as 2 months), after the alien has adjusted his or her status to that of an LPR and until USCIS cancels^[10] the bond. A bond may also be breached for non-compliance with any other condition imposed on the public charge bond.^[11]

1. Investigation

USCIS may learn of a potential bond breach from various sources. For example, USCIS may learn of a potential bond breach from:

- A public benefits granting agency; and
- The alien requesting that the public charge bond be cancelled, when indicating as part of the cancellation request, that he or she has received public benefits.

Regardless of the source of the information, USCIS investigates the allegation of the public charge bond breach.

Handling Information Prohibited from Disclosure to the Obligor

When investigating the information received about public benefits receipt, USCIS is required to send all communications relating to the bond to all parties involved, including the obligor and all parties' representatives, if any. Before sending any communication regarding the bond breach to the alien, the obligor, the agent/co-obligor, and their authorized representatives, the Office of Chief Counsel (OCC) is consulted to determine whether any information USCIS has on the alien's use and receipt of public benefits would be protected by law from disclosure to the obligor. If the information may not be disclosed by law, USCIS may not address it in the communication and use it for purposes of the public charge breach determination. Information that is not prohibited from disclosure should be included in the communication to all parties.

2. Adjudication

A bond breach exists because the alien did not comply with the conditions of the bond; however, the bond must be declared breached by notifying the obligor. Before the bond can be declared breached, the following must happen:

- USCIS must determine whether the information supports a finding that the alien has used more than 12 months, in the aggregate, of public benefits,^[12] within any 36-month period (so that, for instance, the receipt of two public benefits in 1 month counts as 2 months) since the alien has become an LPR;
- If other conditions were imposed as part of the bond, USCIS must also determine whether the information supports a finding that any other conditions imposed by the bond were breached. Other

bond conditions outside of the receipt of public benefits will be rare. If there are conditions outside of the receipt of public benefits that have been breached, the issue should be raised through the supervisory chain; and

- USCIS must issue a Notice of Intent to Declare the Public Charge Bond Breached, and provide the obligor an opportunity to respond.

Alien's Benefit(s)'s Receipt

To determine whether the alien breached the condition of not using public benefits, USCIS must determine whether the alien used public benefits and whether their use exceeded the limits defined by regulation.^[13] When determining whether the alien has used public benefits, the officer should not consider the following public benefits received by the alien as they do not count toward a breach determination:

- Public benefits received during periods while an alien is present in the United States in a status exempt from the public charge ground of inadmissibility, as listed in 8 CFR 212.23, following the initial grant of LPR status;
- Any public benefits received by an alien enlisted in the U.S. armed forces,^[14] serving in active duty or in the Ready Reserve component of the U.S. armed forces at the time of the receipt of public benefits, or at the time of the bond breach determination. USCIS does count any public benefits received by such a person after he or she separates from the U.S. armed forces;
- Any public benefits received at any time (regardless of when the receipt of public benefits occurred) by the spouse or the child^[15] of a person enlisted in the U.S. armed forces,^[16] serving in active duty or in the Ready Reserve component of the U.S. armed forces at the time of the receipt of public benefits by the spouse or the child, or at the time of the bond breach determination. USCIS does count any public benefits received by such an alien spouse or an alien child after the enlistee separates from the U.S. armed forces; or
- Public benefits received after the alien who is the subject of the public charge bond obtains U.S. citizenship.^[17]

If USCIS finds that there is insufficient information to determine whether a breach occurred, USCIS should request additional information from the benefits granting agency, the alien, or the obligor.^[18]

If the evidence USCIS possesses supports a finding of a breach, then USCIS should inform the obligor and an agent/co-obligor of USCIS' intention to declare the bond breached by issuing a Notice of Intent to Declare the Public Charge Bond Breached. The notice must, at a minimum, comply with the following guidelines:

- Be sufficiently specific to give the obligor or the agent/co-obligor the opportunity to respond and submit rebuttal evidence;
- Include all documentation received that supports the breach determination and is by law, permitted to be disclosed to the obligor or agent/co-obligor. Any information that is prohibited, by law, from being disclosed should be redacted and may not be used to support the bond breach. OCC should be consulted before sending the notice to avoid inadvertent disclosure; and
- Include a date by when the obligor must respond and submit rebuttal evidence.

A copy of any notification to the obligor or co-obligor regarding the breach must also be sent to the alien and the alien's representative (if any).

3. Determination

After receiving the obligor's response to the Notice of Intent to Declare the Public Charge Bond Breached, USCIS will determine whether the obligor's response and any evidence submitted to rebut the initial breach determination is sufficient to overcome USCIS' initial determination the bond was breached.

If the obligor or agent/co-obligor has not provided sufficient evidence to rebut USCIS' determination that the public charge bond was breached or if the obligor did not respond by the date required in the Notice of Intent to Declare the Public Charge Bond Breached, USCIS declares the bond breached, and informs the obligor and agent/co-obligor (if any) of the right to appeal the bond breach determination (of the cash or surety bond).^[19] USCIS must provide a copy of the determination to all parties involved in the bond.

If the information reveals that the alien has not breached the public charge bond conditions, the public charge bond remains in place. USCIS must provide a copy of the determination to all parties involved of in the bond.

4. Motion and Appeal of Determination^[20]

Motion to Reopen or Reconsider a Breach Determination^[21]

An obligor or an agent/co-obligor on behalf of the obligor may file a Notice of Appeal or Motion ([Form I-290B](#)) to reopen or reconsider the bond breach determination either at the time of the breach determination or an unfavorable decision on appeal.^[22] The alien or the alien's representative may not file a motion to reopen or reconsider.^[23]

Appeals^[24]

An obligor^[25] may appeal a breach determination to USCIS' Administrative Appeals Office (AAO) by filing Form I-290B together with the appropriate fee and required evidence.^[26] If the obligor fails to appeal the bond breach determination within the requisite appeals period, or if the appeal is filed untimely, the bond breach determination becomes administratively final unless a motion is granted to reopen or reconsider the proceedings, if permitted under the regulations.

In general, the alien may only appeal the bond breach determination if the alien is the obligor of a cash bond^[27] or if the alien would otherwise have the right to appeal.^[28]

If the obligor appeals the bond breach determination in a timely fashion, USCIS reviews the decision before the appeal is forwarded to the AAO.^[29] If an appeal is warranted, USCIS may treat the appeal as a motion and then take favorable action, which would resolve the appeal. USCIS may reopen a proceeding or reconsider a decision on a service motion.^[30]

If the officer is not inclined to take a favorable action, the appeal should be forwarded to the AAO for a decision on the obligor's appeal. If the AAO decides unfavorably in the obligor's case, the obligor may file a motion of the AAO's decision asking the AAO to reconsider.^[31] Upon expiration of the motion period, the AAO decision becomes administratively final.

5. Collecting Bond Amount

An administratively final determination that a bond has been breached creates a claim in favor of the United States. Such claim may not be released or discharged by an immigration officer. A breach determination is administratively final when the time to file an appeal with the AAO has expired or when the appeal is dismissed or rejected.^[32]

Cash Bonds

In a cash bond, the actual face value of the bond is deposited with USCIS to be held in case of a bond breach. Upon an administratively final decision that the bond has been breached, the money that was deposited for purposes of the bond becomes the means to satisfy the claim that the bond breach created in favor of the U.S. government. At that time, the entire bond amount is forfeited by the obligor. However, USCIS must return the interest accrued on the deposited amount. After all business is concluded, the obligor is released from the public charge bond.

Surety Bonds

In a surety bond, no cash is exchanged as part of the bond contract when the bond is posted.^[33] Only if the bond is breached will the surety company be required to pay the company the promised amount of money to the U.S. government. A surety company (or the obligor) must carry out its contracts and comply with statutory requirements, including prompt payment of demands arising from an administratively final determination that the bond had been breached.^[34]

D. Canceling a Bond^[35]

In general, a public charge bond has to remain in place until the bond can be cancelled and USCIS determines that the bond has not been breached.

1. Request to Cancel

USCIS can generally only cancel the bond upon request by the applicant or the obligor, followed by a USCIS determination that the conditions of the bond have been met and the bond has not been breached.^[36] In general, until either the obligor or the alien has filed a request to cancel the bond and USCIS has favorably adjudicated it, the bond remains in effect. USCIS may, however, at its own discretion, cancel the public charge bond if USCIS determines that the alien otherwise meets the requirement for cancellation.^[37]

The request to cancel the public charge bond must be submitted on a Request for Cancellation of the Public Charge Bond ([Form I-356](#)). The request must be completed and submitted in accordance with the form's instructions and accompanied by the appropriate fee.^[38]

Because the form may be submitted either by the obligor or the alien, Form I-356 has several parts that must be completed either by the obligor (the person who has posted the bond) or by the obligor's authorized agent (co-obligor, for surety companies only) who posted the bond on behalf of the alien, or by the alien. If the alien is deceased, the executor of the alien's estate may complete the alien's part on behalf of the alien.

Therefore, it is possible a cancellation request is submitted without the obligor or any agent/co-obligor, or the alien (or the alien's executor) knowing about it. In the form instructions, USCIS encourages completion of the entire form by all parties before it is submitted. However, it is possible that only parts are completed upon submission. Particularly when one party has requested cancellation of the bond without informing or including the other parties in the cancellation request.

Missing Information from Alien

If the obligor (or the agent/co-obligor) submits the cancellation request but the request does not contain the information necessary from the alien to cancel the bond, the officer should do the following:

- Copy the request for cancellation of the public charge bond form for all parties involved;
- Send the original request received from the obligor to the alien for completion of his or her parts of the bond cancellation request form, including signature parts;
- Specify the date of when the alien's response is due (for purposes of calculating the response due date, the officer should follow USCIS guidance on the issuance of a Request for Evidence (RFE)); and
- Send a copy of the communication to the obligor and the agent/co-obligor and any representative, even though the request originated from the obligor or agent/co-obligor.

If the alien fails to respond to the communication within the timeframe stipulated, the officer should deny the request to cancel the public charge bond. This denial is without prejudice to the filing of another cancellation request.

Missing Information from Obligor

If the request to cancel the bond is submitted by the alien without involvement of the obligor, USCIS officers should evaluate the information contained in the request to cancel the bond and proceed with the cancellation adjudication. If the alien's information reveals that the bond may have been breached, the officer is required to notify the obligor through a Notice of Intent to Declare the Public Charge Bond Breached and share the information provided by the alien, to the extent permissible by law. This will provide sufficient notice to the obligor of the alien's request to cancel the bond, and the opportunity to rebut any derogatory information regarding a possible bond breach.

2. Adjudicating the Request

An alien or obligor may request that USCIS cancel the public charge bond if the alien:

- Naturalized or otherwise obtained U.S. citizenship;
- Permanently departed the United States;
- Died;
- Reached his or her 5-year anniversary since becoming an LPR. For purposes of this determination, the alien or the obligor must establish that the public charge bond has not been breached during the 5-year period preceding the alien's fifth anniversary of becoming an LPR; or

- Obtained a different immigration status not subject to public charge inadmissibility,^[39] following the grant of LPR status associated with the public charge bond.

In addition to having to demonstrate that the above requirements are met, the obligor and the alien must demonstrate that the bond has not been breached before the cancellation of the public charge bond by USCIS. That is, USCIS will cancel the public charge bond if the alien has not received, since becoming an LPR public benefits in excess of 12 months, in the aggregate, within any 36 month period and that the above listed requirements have been met.^[40]

Form I-356 lists the pertinent information that the alien has to provide to establish that the bond be cancelled.

If there is insufficient information to determine whether a breach occurred, or whether the cancellation requirements are met, additional information may be requested from the benefits granting agency, the alien, or the obligor.^[41]

3. Special Considerations Related to Permanent Departure^[42]

USCIS must approve the request to cancel the public charge bond if the alien has not breached the public charge bond and permanently departed the United States.^[43]

An alien is considered to have permanently departed if the alien has:

- Lost or abandoned LPR status, whether involuntary by operation of law or voluntarily; and
- Is physically outside the United States.^[44]

An alien must establish that both elements have been met before USCIS will cancel the bond.

An alien is deemed to have involuntarily lost LPR status, if the alien lost his or her status:

- In removal proceedings with the entry of a final order of removal; or
- Through rescission of adjustment of status.

An alien may be found to have abandoned LPR status even if the assessment is made outside of removal proceedings and if the alien's actions were unintentional.^[45] If an alien loses his or her LPR status through operation of law, the alien would be required to provide evidence of the loss of status by submitting evidence of the official determination of loss of LPR status before USCIS can cancel the bond.^[46]

Generally, determining whether an alien has abandoned his or her LPR status voluntarily is highly fact specific and courts consider factors such as the length of an alien's absence from the United States, family and employment ties, property holdings, residence, and the alien's intent or actions.^[47] Any alien may intentionally relinquish LPR status through his or her voluntary actions, such as by submitting a declaration of intent to abandon LPR status. Neither the INA nor DHS regulations direct how aliens may formally inform the U.S. government of their abandoning their LPR status.

To simplify the process, USCIS has in the past developed the Record of Abandonment of Lawful Permanent Resident Status ([Form I-407](#)) as a means by which an alien may formally record that they have abandoned LPR status. The purpose of the form is to create a record and to ensure that the alien acts voluntarily and

willingly, and is informed of the right to a hearing before an immigration judge and has knowingly, willingly, and affirmatively waived that right.^[48]

Therefore, the DHS regulations specify that an alien may demonstrate voluntary relinquishment of the LPR status for purposes of bond cancellation only by showing proof that he or she has submitted Form I-407 to the U.S. government from outside the United States.^[49]

4. Decision

If USCIS determines that the obligor or the alien met the burden of proof to establish that the bond has not been breached since the alien became an LPR and that the conditions for the cancellation of the bond are met, USCIS may cancel the public charge bond. The decision to cancel the bond must be sent to all parties involved. When the public charge bond is cancelled, the obligor is released from liability.^[50]

USCIS must notify the obligor and all parties involved of the cancellation of the bond and retain a copy of the communication in the file. If the public charge bond has been secured by a cash deposit or a cash equivalent, USCIS must refund the cash deposit and any interest earned to the obligor along with the communication.^[51]

If USCIS determines that the alien does not meet the requirements for cancellation, other than a bond breach, then USCIS issues a Notice of Intent to Deny (NOID) to the obligor and any agent/co-obligor and any representative, in order to extend the opportunity to rebut any information. The notice must include the information provided by the alien in Form I-356, unless protected by law, and any other documentation. The officer must also send a notice of the communication to the alien and the alien's representative. If the obligor's timely response to the NOID reveals that the alien does meet the cancellation requirements, then, the officer should cancel the public charge bond. If the obligor's response cannot overcome the adverse information, then USCIS issues the decision, informing the obligor (and the agent/co-obligor and any representative) and the alien (and the alien's executor, if any, and the alien's representative, if any) that the bond cannot be cancelled and that it remains in effect. The obligor may file an appeal to challenge this determination.^[52]

An obligor may only file a motion^[53] after an unfavorable decision on an appeal.

If USCIS determines that the alien has breached the public charge bond, USCIS initiates bond breach proceedings.^[54] As part of the notification to the obligor of USCIS' intent to declare the bond breached, the officer should explain why the bond cannot be cancelled.

Footnotes

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

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

^[^3] See [8 CFR 103.7](#).

^[^4] See Chapter 19, Public Charge Bonds: Posting and Accepting Bonds [[8 USCIS-PM G.19](#)].

^[5] See [8 CFR 213.1\(f\)](#).

[^6] See [8 CFR 213.1\(f\)](#). The reason for this requirement is that USCIS may not learn of a breach until after the expiration or cancellation of the bond previously submitted to USCIS. Form I-945 includes this requirement as a term of the condition.

[^7] See Chapter 19, Public Charge Bonds: Posting and Accepting Bonds, Section E, Assessing the Sufficiency of Posted Public Charge Bond, Subsection 2, Issuing a Receipt for Accepted Bonds [[8 USCIS-PM G.19\(E\)\(2\)](#)].

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

[^9] See [8 CFR 212.21\(b\)](#).

[^10] See [8 CFR 213.1\(h\)\(2\)\(i\)](#).

[^11] See [8 CFR 213.1\(h\)\(2\)\(ii\)](#).

[^12] As defined in [8 CFR 212.21\(b\)](#). For more information on which public benefits satisfy the regulatory definition of public benefits, see Chapter 10, Public Benefits [[8 USCIS-PM G.10](#)].

[^13] See [8 CFR 212.21\(b\)](#). See [8 CFR 213.1\(h\)](#).

[^14] Under the authority of [10 U.S.C. 504\(b\)\(1\)\(B\)](#) or [10 U.S.C. 504\(b\)\(2\)](#).

[^15] As defined in [INA 101\(b\)](#).

[^16] Under the authority of [10 U.S.C. 504\(b\)\(1\)\(B\)](#) or [10 U.S.C. 504\(b\)\(2\)](#).

[^17] U.S. citizens are not subject to the public charge ground of inadmissibility, and therefore, the term of the public charge bond no longer applies after the alien has become a U.S. citizen. An obligor, however, is not released from the public charge bond until either the alien or the obligor has requested, and USCIS has favorably adjudicated, a public charge bond cancellation request filed on Form I-356.

[^18] See [8 CFR 103](#). See [8 CFR 213.1\(h\)\(3\)](#).

[^19] See [8 CFR 103](#), subpart A.

[^20] See [8 CFR 213.1\(h\)\(4\)](#).

[^21] See [8 CFR 103.5](#). See [8 CFR 213.1\(h\)](#).

[^22] See [8 CFR 213.1\(h\)\(4\)](#).

[^23] See [8 CFR 213.1\(h\)\(4\)](#).

[^24] See [8 CFR 103.3](#). See [8 CFR 213.1\(h\)\(4\)](#).

[^25] The obligor includes the term agent/co-obligor.

[^26] See [8 CFR 103.3](#).

[^27] See [8 CFR 213.1\(h\)\(5\)](#). See, for example, *Matter of Ins. Co. of N. Am.*, 17 I&N Dec. 251, 251 (BIA 1978) (An immigration bond is a contract between the Service and the obligor; the obligor and his or her attorney-in-fact is the proper party to appeal the service's decision).

[^28] As outlined in [8 CFR 103.3](#).

[^29] See [8 CFR 103.3\(a\)\(2\)](#).

[^30] See [8 CFR 103.5\(a\)\(5\)\(i\)](#).

[^31] In accordance with [8 CFR 103.5](#).

[^32] See [8 CFR 103](#), subpart A. See [8 CFR 213.1\(h\)\(1\)](#).

[^33] See Chapter 18, Public Charge Bonds, Section A, Type of Bonds [[8 USCIS-PM G.18\(A\)](#)].

[^34] See [31 U.S.C. 9305\(b\)\(3\)](#).

[^35] See [8 CFR 213.1\(g\)](#).

[^36] See [8 CFR 213.1\(g\)](#).

[^37] See [8 CFR 213.1\(g\)\(1\)](#).

[^38] See [8 CFR 103.5](#).

[^39] See [8 CFR 212.23](#).

[^40] For purposes of determining whether the alien has breached the bond refer to Section C, Breach of Bond [[8 USCIS-PM G.20\(C\)](#)].

[^41] As outlined in [8 CFR 103](#). See [8 CFR 213.1\(h\)\(3\)](#). See [8 CFR 213.1\(g\)\(4\)](#).

[^42] See [8 CFR 213.1\(g\)\(2\)](#).

[^43] See [INA 213](#). When codifying INA 213, Congress did not define “permanent” and the concept of permanent departure does not exist in other areas of immigration law. However, “permanent” is defined in [INA 101\(a\)\(31\)](#) as “a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.” “Departing” or “departure” is not defined in the INA, but DHS believed it to be reasonable to conclude that permanent departure for the purposes of canceling a public charge bond means that the alien has left the United States on a lasting, non-temporary basis after losing the LPR status either voluntarily or involuntarily, and is physically outside the United States. See [83 FR 51114, 51223 \(PDF\)](#) (Oct. 10, 2018) (proposed rule).

[^44] See [8 CFR 213.1\(g\)\(2\)](#).

[^45] See [83 FR 51114, 51223 \(PDF\)](#) (Oct. 10, 2018) (proposed rule).

[^46] See [83 FR 51114, 51224 \(PDF\)](#) (Oct. 10, 2018) (proposed rule).

[^47] See, for example, *Matter of Huang*, 19 I&N Dec. 749, 755-57 (BIA 1988) (considering the alien’s absence from the United States because of her husband’s work and study abroad, as well as her own employment abroad, to find that her absence was not temporary in nature and that she had abandoned her LPR status); *Matter of Kane*, 15 I&N Dec. 258, 265 (BIA 1975) (alien who spent 11 months per year living in her native country operating a lodging house abandoned her LPR status; her desire to retain her status,

without more, was not sufficient); *Matter of Quijencio*, 15 I&N Dec. 95, 97-98 (BIA 1974) (alien's LPR status considered abandoned after 12 year absence); *Matter of Castro*, 14 I&N Dec. 492, 494 (BIA 1973) (alien who severed his ties to the United States for 6 years, moved abroad, acquired land, built a house and obtained steady employment, but made brief business trips to the United States was not a returning resident and had abandoned his status); *Matter of Montero*, 14 I&N Dec. 399, 400-01 (BIA 1973) (alien who returned to her native country to join her husband, children, home, employment and financial resources without fixed intent to return within a fixed period had abandoned her LPR status). See, however, *Khoshfahm v. Holder*, 655 F.3d 1147, 1154 (9th Cir. 2011) (alien child who was out of the country for 6 years and prevented from returning due to the father's heart condition and the events of September 11 did not abandon his LPR status).

[⁴⁸] See [83 FR 51114, 51223 \(PDF\)](#) (Oct. 10, 2018) (proposed rule).

[⁴⁹] See [8 CFR 213.1\(g\)\(2\)](#).

[⁵⁰] See [8 CFR 213.1\(g\)\(5\)](#).

[⁵¹] See [8 CFR 213.1\(g\)\(5\)](#). See [8 U.S.C. 1363](#). See [8 CFR 293.1](#).

[⁵²] See [8 CFR 213.1\(g\)\(5\)](#). See generally [8 CFR 103](#), subpart A.

[⁵³] See [8 CFR 103.5](#).

[⁵⁴] See Section C, Breach of Bond [[8 USCIS-PM G.20\(C\)](#)].

Current as of February 10, 2021
