



## Global Mobility & Migration

### Top Questions Employers Need to Know How to Answer about the Public Charge Rule Affecting Their Visa Holders

The administration's new "public charge" rule went into nationwide effect last week, following a US Supreme Court ruling lifting the last remaining injunction, which previously insulated Illinois residents from the rule. As of February 24, 2020, recipients of certain government cash and non-cash benefits may not be able to extend or change their nonimmigrant status in the United States. The receipt of such public benefits similarly will count heavily against an applicant's eligibility for US permanent residency (the "green card"). The new rule is expected to affect millions of noncitizens and their US citizen family members.<sup>1</sup>

The [rule](#), which United States Citizenship and Immigration Services ("USCIS") is responsible for implementing, was published in the *Federal Register* in August 2019. As a result, USCIS has published new forms across multiple categories of applications and petitions, including, Forms I-129, I-130, I-140, I-485, and I-539. In addition, USCIS has developed a new form titled, "Declaration of Self-Sufficiency" (Form I-944), which requires comprehensive information about the beneficiary and their family's assets, resources, and financial status, including liabilities, debts, credit report and credit score, health insurance, and public benefits. Form I-944 also requires information about the beneficiary's educational history and skill level.

Incomplete or inaccurate information on the newly-issued government forms or other immigration-related submissions creates novel risks for visa and green card applicants, including:

1. Findings of inadmissibility and denial of visa benefits or green card applications, including for those who are in the final stages of the sponsorship process.
2. Close scrutiny by the government of the representations made by affected applicants, which, if not accurate or complete, may be deemed to be a misrepresentation, leading to a separate ground of inadmissibility and/or investigation, prosecution, or denial of other government benefits.

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<sup>1</sup> The Migration Policy Institute ("MPI") reported that 29 percent of noncitizens in the United States received at least one of the four means-tested benefits, i.e., Temporary Assistance for Needy Families ("TANF"), Supplemental Security Income ("SSI"), Supplemental Nutrition Assistance Program ("SNAP") and Medicaid, that will be considered in assessing. Forty-seven percent live in a family in which one or more members receive such benefits. MPI's study indicates that more than 10.3 million noncitizen adults and children live in families in which at least one person receives either cash or noncash benefits. When their US-citizen family members—including 7.6 million children and 4.7 million adults—are counted, the number rises to 22.7 million, the population expected to feel the chilling effects of the new rule. See <https://www.migrationpolicy.org/news/chilling-effects-us-public-charge-rule-commentary>.

As the employer community adjusts to the impact of the new rule, *relying on accurate information about the requirements, implementing fluid and reliable procedures to incorporate the new requirements, and ensuring employees have support*, are essential. *Secure sharing of data* to comply with data protection policies and conventions is similarly important. Additionally, because the new rule requires use of new forms, analysis of data, and collection of extensive documentation, *tracking deadlines* for applications for visas and green cards requires close attention

## Top Questions about the Public Charge Rule

### 1. What is the public charge rule?

Under Section 212(a)(4) of the Immigration and Nationality Act (“INA”), a noncitizen seeking admission to the United States, an immigrant or nonimmigrant visa, extension or change of nonimmigrant status, or adjustment of status to lawful permanent residence (“green card”) is inadmissible if the individual, at the time of the application is likely at any time to become a public charge. As noted on its [Public Charge informational site](#), USCIS has clarified that “likely at any time to become a public charge” will be interpreted as “more likely than not at any time in the future to become a public charge.” An applicant deemed likely to become a public charge under the new rule will be denied admission to the United States or adjustment of status.

The public charge rule requires applicants to report certain information related to their receipt of certain public benefits to determine if they are presently or are likely to become a public charge.

The final rule also requires nonimmigrants who seek to extend their stay in the same nonimmigrant classification or to change their status to a different nonimmigrant classification to demonstrate, as a condition of approval, that they have not received, since obtaining the status they seek to extend or change, public benefits for more than 12 months, in total, within any 36-month period.

### 2. What is a public charge?

The definition of “public charge” is any noncitizen who is likely to need certain specified financial assistance from the government at any level—local, state, or federal.

### 3. Who does this rule affect?

The public charge rule impacts a significant volume of nonimmigrant and immigrant visa applicants. The four major categories presently identified by the immigration agencies are:

- Most employment-sponsored nonimmigrants and their dependents. Certain employers seeking extensions of stay or changes of status on behalf of their employees who are in nonimmigrant (temporary worker) status. This applies to employers filing [Form I-129](#) with USCIS for their employees requesting H-1B, L-1, E-1, E-2, E-3, TN, and other nonimmigrant statuses. This also applies to the employees’ dependents who are filing [Form I-539](#) with USCIS requesting H-4, L-2, E-3D, TD, and other nonimmigrant statuses.

- “Green card” applicants for adjustment of status. With certain exceptions listed in the rule, most applicants, whether sponsored by a relative or an employer, for adjustment of status who file [Form I-485](#) with USCIS are subject to the public charge ground of inadmissibility.
- According to a Data Collection Notice published in the Federal Register on October 24, 2019, and revisions to the Foreign Affairs Manual (FAM), posted on February 24, 2020, non-exempt immigrant visa applicants applying abroad at US consulates **will** need to file a new form entitled “Public Charge Questionnaire” and supporting documentation, in addition to the standard immigrant visa application, Form DS-260.
- In addition, nonexempt nonimmigrant visa applicants applying abroad at US consulates **will** need to file [Form DS-5540](#) and supporting documentation, in addition to the standard nonimmigrant visa application, Form DS-160.

#### 4. Who is exempt from the public charge rule?

Certain foreign nationals are exempt from the public charge ground of inadmissibility, including refugees, asylees, Special Immigrant Juveniles, certain VAWA self-petitioners, U petitioners, T visa applicants, applicants for Temporary Protected Status (TPS), and applicants under the Cuban Adjustment Act.

The public charge rule also does not affect eligibility for naturalization proceedings.

#### 5. How does USCIS determine whether an applicant for admission or adjustment of status is inadmissible as likely to become a public charge?

USCIS will consider the totality of the circumstances when making a determination of whether one is likely to become a public charge and therefore inadmissible. When making a public charge determination, USCIS will consider whether one is likely to become primarily dependent on the government for subsistence. USCIS will determine this in part by considering past and present receipt of, or likelihood to receive, public cash assistance for income maintenance or institutionalization for long-term care at government expense.

USCIS will consider the noncitizen’s age, health, family status, assets, resources, financial status, education, skills, prospective immigration status, and expected period of admission to the United States in assessing admissibility under the rule.

In family-based green card cases, USCIS may also consider any affidavit of support filed on behalf of a sponsored relative under Section 213A of the INA and the beneficiary’s receipt of certain publicly funded benefits (described below). USCIS will also decide how much weight to give each negative factor based on the dollar amount of the public benefit received and the length of time it was received.

#### 6. What publicly funded benefits may be an issue or may cause USCIS to determine that one is inadmissible?

If an applicant receives one or more public benefits for more than 12 months in the aggregate within any 36-month period, the applicant may be considered a public charge and ineligible for admission to the United States, permanent residence, or extension or change of nonimmigrant status. If receipt of two benefits occurs in one month, it will be counted as two months toward the total count.

USCIS considers prior use of public benefits a “heavily weighted negative factor” in this determination and may also find the recipient to be inadmissible.

Below is a chart listing some of the common publicly funded benefits that are included in public charge determinations, as well as benefits that are not considered.

<b>BENEFITS INCLUDED FOR PUBLIC CHARGE</b>	<b>BENEFITS NOT INCLUDED FOR PUBLIC CHARGE</b>
Any cash assistance for income maintenance (includes Temporary Assistance for Needy Families (TANF); Supplemental Security Income (SSI); and federal, state, local, or tribal assistance programs)	Tax credits, including the Earned Income Tax Credit and Child Tax Credit
Supplemental Nutrition Assistance Program (SNAP) or food stamps	Special Supplemental Nutrition Program for Women, Infants and Children (WIC); National School Lunch and School Breakfast Program; and emergency food assistance programs
Section 8 Housing Assistance and Section 8 Project-Based Rental Assistance	Disaster relief or emergency medical assistance
Public Housing under Section 9 of the US Housing Act of 1937	Worker’s compensation, unemployment benefits, or job training programs
Most forms of Medicaid (with exceptions listed to the right →)	Medicaid received by (1) children under 21, (2) during pregnancy or within 60 days of pregnancy, or (3) under the Individuals with Disabilities Education Act (IDEA)
	Educational assistance (such as attending public school), including benefits under the Head Start Act, Pell Grants, and student loans
	Health insurance under the Affordable Care Act (ACA) or the Children's Health Insurance Program (CHIP)
	Energy assistance such as that under the Low Income Home Energy Assistance Program (LIHEAP)
	Benefits received by US Armed Forces service members
	Child care services, foster care, and adoption assistance
	Community-based programs or assistance (such as short-term shelter or meals provided by soup kitchens)

This is not an exhaustive list of the types of cash benefits that could lead to a determination of inadmissibility as a public charge. Also, receiving any of these cash-assistance benefits will be considered in assessing admissibility based on the totality of one's circumstances. Generally, non-cash or special-purpose cash benefits will likely not be considered and should not impact a public charge determination.

## 7. When does this rule take effect?

The public charge rule became effective February 24, 2020.

## 8. What if one has received publicly funded benefits in the past but does not receive them now?

The public charge rule is **not** retroactive. Benefits (**other than cash assistance or long-term care at government expense**) that were received before February 24, 2020, will **not** be considered in the public charge admissibility determination.

USCIS will not consider (and applicants need not report) the application for, certification or approval to receive, or receipt of certain previously excluded non-cash public benefits (such as SNAP benefits, public housing, and most forms of Medicaid) before February 24, 2020.

## 9. What if an individual applied to receive but did not actually receive or move forward with claiming publicly funded benefits?

An applicant need not report the application for or certification or approval to receive **non-cash** public benefits applied for or received before February 24, 2020, on the Form I-944.

## 10. What should an applicant for admission or one of the covered immigration benefits do if they have received publicly funded benefits?

The individual should contact competent immigration counsel immediately to discuss the benefits they have received or have been certified to receive and to assess the impact of the certification or receipt of those public benefits on an application for admission or to change/extend status or to adjust status.

## 11. What if someone else in the family receives public benefits?

Public benefits that are received by a family member are not attributed to other family members for public charge purposes unless the cash benefits serve as the sole financial support of the family or you are also a listed beneficiary of the public benefit. USCIS will not, however, consider public benefits one has received on behalf of another as a legal guardian or underpower of attorney for someone.

## 12. Does the public charge rule affect an individual who has not received any publicly funded benefits?

In general, all applicants who submit Form I-485, Application to Register Permanent Residence or Adjust Status, must submit their own Form I-944, Declaration of Self-Sufficiency, if the applicant is not exempt from the public charge rule (see Question 4 above for list of those exempt).

An applicant for an immigrant visa or adjustment of status:

- As an immediate relative of a US citizen (including orphans);
- Under a family-based preference category; or
- As an employment-based immigrant who will work for a relative or for a firm in which a US citizen or a permanent resident relative holds a 5-percent-or-more ownership interest may also be required to submit Form I-864, Affidavit of Support, completed by the sponsoring family member.

### 13. What is the new Form I-944?

Under the public charge rule, applicants for adjustment of status to permanent residence who are not exempt from the rule must complete and file the [new Form I-944, Declaration of Self-Sufficiency](#) to report and submit information about applications for certification or approval to receive (even if you did not actually receive) or receipt of certain non-cash public benefits on or after February 24, 2020.

### 14. What documents are needed to complete Form I-944, Declaration of Self-Sufficiency?

Below is a chart of documents needed for each major item of Form I-944:

FORM SECTION	WHAT DOCUMENTS MUST BE PROVIDED	USCIS RECOMMENDATION OF HOW TO OBTAIN THE DOCUMENTS
<b>Household Income</b> (Part 3, Item 1)	An IRS transcript(s) of the applicant’s Federal income tax returns for the most recent tax year and the IRS transcript(s) of the household members whose income they are including.	For information on obtaining federal income tax transcripts without a fee, see <a href="https://www.irs.gov/individuals/get-transcript">https://www.irs.gov/individuals/get-transcript</a>  IRS Form 4506-T may also be used to request tax transcripts from the IRS.
<b>Additional Income</b> (Part 3, Item 6)	If the applicant’s household members received additional income on a continuing weekly, monthly, or annual basis for the most recent tax year (for example, child support, unemployment benefits) and the income was not included in the recipient’s household member’s tax return transcript, provide the amount of additional income and all information requested.	For information on non-taxable income, see <a href="https://www.irs.gov/pub/irs-pdf/p525.pdf">https://www.irs.gov/pub/irs-pdf/p525.pdf</a>

<p><b>Assets and Resources</b> <b>(Part 3, Item 9)</b></p>	<ul style="list-style-type: none"> <li>• Checking and savings account statements from the bank for the past 12 months</li> </ul> <p><i>Statements for:</i></p> <ul style="list-style-type: none"> <li>• Annuities</li> <li>• Stocks and bonds (cash value)/certificates of deposit</li> <li>• Retirement accounts and educational accounts</li> <li>• Net cash value of real estate holdings</li> </ul> <p><i>Statements showing:</i></p> <ul style="list-style-type: none"> <li>• Any other evidence of substantial assets that can be easily converted into cash</li> </ul>	<p>For additional information, see <a href="http://www.uscis.gov/greencard/public-charge">http://www.uscis.gov/greencard/public-charge</a></p>
<p><b>Liabilities/ Debts</b> <b>(Part 3, Item 10)</b></p>	<p>Provide a list of all liabilities or debts. Examples of liabilities and debts include:</p> <ul style="list-style-type: none"> <li>• Mortgages</li> <li>• Car loans</li> <li>• Unpaid child or spousal support</li> <li>• Unpaid taxes</li> <li>• Credit card debt</li> </ul> <p>Provide documentation for each liability or debt.</p>	
<p><b>Credit Card Score and Report</b> <b>(Part 3, Items 11 – 12)</b></p>	<p>US credit score and one credit report from any of the three nationwide credit reporting agencies (Equifax, Experian, and TransUnion).</p> <p>Applicants with no credit report or credit score, show that a credit report or score with a credit bureau does not exist.</p>	<p>One can obtain a free credit report once a year under the Fair Credit Reporting Act from each one of the three credit reporting agencies. See <a href="https://www.usa.gov/credit-reports">https://www.usa.gov/credit-reports</a> for more information.</p>

<p><b>Health Insurance</b> <b>(Part 3, Item 15)</b></p>	<p>Applicants with health insurance must provide:</p> <ol style="list-style-type: none"> <li>1. A copy of each policy page showing the terms and type of coverage and individuals covered for each policy;</li> <li>2. A letter on the health insurance company's letterhead stating the applicant is currently enrolled in health insurance and listing the terms and type of coverage; <b>or</b></li> <li>3. The latest Form 1095-B, Health Coverage; or Form 1095-C, Employer-Provided Health Insurance Offer and Coverage (if available) with evidence of renewal of coverage for the current year.</li> </ol>	<p>For the latest information on Forms 1095-B and 1095-C, see <a href="https://www.irs.gov/forms-pubs/about-form-1095-b">https://www.irs.gov/forms-pubs/about-form-1095-b</a> and <a href="https://www.irs.gov/forms-pubs/about-form-1095-c">https://www.irs.gov/forms-pubs/about-form-1095-c</a></p>
<p><b>Application, Receipt or Certification of Public Benefits</b> <b>(Part 3, Item 16)</b></p>	<p>Applicants who have previously received, are currently receiving, have applied for, or are certified to receive in the future any of the public benefits listed in the chart in Question 6, will need to provide evidence in the form of a letter, notice, certification, or other agency document that contains the following information:</p> <ol style="list-style-type: none"> <li>1. Name;</li> <li>2. Name and contact information for the agency granting the public benefit;</li> <li>3. Type of public benefit;</li> <li>4. Date coverage started or date the applicant was authorized to start receiving the benefit; and</li> <li>5. Date coverage or benefit ended or expires.</li> </ol>	
<p><b>Disenrollment from Public Benefits</b> <b>(Part 3, Item 17)</b></p>	<p>Applicants disenrolled from a public benefit will need to provide evidence of disenrollment or of request to disenroll if the public benefit granting agency has not yet processed the request.</p>	

<p><b>Withdrawing a Public Benefit Application</b> (Part 3, Item 25)</p>	<p>Applicants who have requested to withdraw from a public benefit must provide documentation showing that the public benefit granting agency received the withdrawal request.</p>	
<p><b>Education</b> (Part 4, Items 2 – 3)</p>	<ul style="list-style-type: none"> <li>• Transcripts;</li> <li>• Diplomas;</li> <li>• Degrees;</li> <li>• Trade profession certificates; and/or</li> <li>• Equivalent educational documentation.</li> </ul> <p>If this evidence is <b>not</b> available, provide an explanation and a letter from the issuing institution showing the evidence is not available.</p> <ul style="list-style-type: none"> <li>• Foreign educational documents should also include an evaluation of equivalency to education or degrees acquired at accredited educational institutions in the United States.</li> </ul>	<p>For a list of organizations that provide educational equivalency evaluations, see the National Association of Credential Evaluation Services (“NACES”), at <a href="http://www.naces.org/members">http://www.naces.org/members</a></p>
<p><b>Occupational Skills</b> (Part 4, Item 4)</p>	<p>Training, licenses for specific occupations or professions, and certificates documenting mastery or apprenticeships in skilled trades or professions.</p> <p>If this evidence is <i>not</i> available, one should provide an explanation and a letter from the issuing institution showing the evidence is not available.</p>	
<p><b>English and Other Language Skills</b> (Part 4, Item 5)</p>	<p>Language certifications, including any language/literacy classes, or other evidence of proficiency.</p> <p>Native English speakers (or native speakers of another language, if applicable) must provide evidence of language proficiency.</p> <p>Certifications may include high school diplomas and college degrees showing that the native language was studied for credit.</p>	

Please note that the above chart does **not** include all the information from the instructions and that you should carefully review the [Form I-944 instructions from USCIS](#).

## 15. Other than receiving public benefits, are there any other heavily weighted negative factors?

The following are other heavily weighted negative factors. If any of these apply, USCIS will likely find the applicant to be inadmissible.

- If one is not a full-time student and is authorized to work but cannot show current employment, a recent employment history, or a reasonable prospect of employment in the future
- If one has been diagnosed with a medical condition that will likely to require extensive medical treatment or that will interfere with their ability to provide for themselves (or attend school full-time) **and** is uninsured **and** will not have private health insurance or the financial resources to pay for their medical expenses
- If an immigration judge or the Board of Immigration Appeals has previously found the applicant to be inadmissible or deportable based on public charge grounds

## 16. What are heavily weighted positive factors that would make USCIS less likely to find an individual inadmissible under the public charge rule?

The following factors would weigh heavily against USCIS determining that one is likely to become a public charge at any time in the future:

- Household income, assets, or resources and support from a sponsor of at least 250 percent of the Federal Poverty Guidelines for the household's size. Household income cannot include the public benefits (see Question 6 above) or income from illegal activities.
- Work authorization and currently employed performing legal activities with an annual income of at least 250 percent of the Federal Poverty Guidelines for household size.
- Private health insurance for expected period of admission, and the applicant does not receive subsidies to pay for health insurance such as premium tax credits under the Patient Protection and Affordable Care Act.

## 17. What if one is found to be inadmissible under the public charge rule?

Noncitizens found to be inadmissible should seek competent legal counsel. Among other options, in some limited cases, one may be permitted to post a bond to overcome the finding of inadmissibility. [Form I-945, Public Charge Bond](#) is used for this purpose.

We invite you to review our previous In Brief updates on the topic:

[USCIS to Implement Public Charge Rule Nationwide](#)

(February 24, 2020)

[US Supreme Court Opens Door for Public Charge Rule](#)

(January 28, 2020)

[Federal Court Blocks Public Charge Rule from Taking Effect](#)

(October 14, 2019)

[DHS Publishes Final Rule on Public Charge](#)

(August 14, 2019)

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