

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CITY OF NEW YORK, CITY OF
CHICAGO, CITY AND COUNTY OF
SAN FRANCISCO, COUNTY OF
SANTA CLARA, CITY OF
SEATTLE, and MARTIN LUTHER
KING JR. COUNTY,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF HOMELAND SECURITY;
MARKWAYNE MULLIN, *in his
official capacity as Secretary of
Homeland Security*; UNITED
STATES CITIZENSHIP AND
IMMIGRATION SERVICES; and
JOSEPH B. EDLOW, *in his official
capacity as Director of United States
Citizenship and Immigration Services*,

Defendants.

CIVIL ACTION NO. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs City of New York, City of Chicago, City and County of San Francisco, County of Santa Clara, City of Seattle, and Martin Luther King, Jr. County (“King County”) (collectively, “Plaintiffs”) file this Complaint against Defendants United States Department of Homeland Security (“DHS”), Secretary of Homeland Security Markwayne Mullin in his official capacity, United States Citizenship and Immigration Services (“USCIS”), and Director of USCIS Joseph B. Edlow in his official capacity (collectively, “Defendants”) to vacate and enjoin the unlawful federal rule on the public charge ground of inadmissibility issued July 20, 2026 (“Final Rule”) and equally unlawful policy guidance relating to the Final Rule issued on August 18, 2026, through a “Policy Alert,” in the USCIS Policy Manual (the “Policy Alert”). In support of this Complaint, Plaintiffs allege as follows:

INTRODUCTION

1. Through the Final Rule¹ and Policy Alert², Defendants seek to radically and unilaterally change the meaning of the statutory term “public charge” and upend the legal and regulatory regime surrounding public charge determinations. The Immigration and Nationality Act (“INA”) established the public charge ground of inadmissibility, which provides that a noncitizen who is “likely at any time to become a public charge” is inadmissible. Although the INA does not expressly define the term “public charge,” the statutory term’s meaning has been consistent over more than a century of case law and administrative practice: the public charge ground of

¹ Public Charge Ground of Inadmissibility, 91 Fed. Reg. 45,324 (July 20, 2026), <https://www.federalregister.gov/documents/2026/07/20/2026-14539/public-charge-ground-of-inadmissibility> [archived at <https://perma.cc/S3AY-VN83>].

² U.S. Citizenship and Immigration Servs., PA-2026-09, Policy Alert on the Public Charge Ground of Inadmissibility (Aug. 18, 2026), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20260818-PublicChargeFinalRule.pdf> [archived at <https://perma.cc/5ZAE-RJ2Z>] (hereinafter, “Policy Alert”) (attached as Exhibit A).

inadmissibility bars persons who are likely to become primarily dependent on government assistance for subsistence, meaning persons who rely on government cash assistance for income maintenance or require long-term institutionalization at government expense. DHS codified this long-established standard in a 2022 final rule (“2022 Rule”). The 2022 Rule and the history it codifies reflect an understanding that the use of supplemental public benefits can provide support on the journey to a better life and is not a reliable predictor of future dependence. DHS now seeks to sweep away over a century of settled law and regulation and replace it with an illegal “governance by ambiguity” regime that allows any use of means-tested public benefits to label a person a public charge.

2. The Final Rule rejects and rescinds all prior regulatory specificity about the definition of public charge, scrapping more than a hundred years of law and history and decades of federal guidance. In a drastic departure from the settled meaning of public charge, under which a public charge is someone whose survival is “primarily dependent” on government for subsistence—reflected through reliance on public cash benefits for income maintenance or long-term institutionalization at government expense—DHS³ adopts an overly broad framework with no meaningful limitations. This is made all the more apparent in the so-called subregulatory guidance that the Final Rule promised. A month after promulgating the Final Rule, DHS promulgated a totally rewritten version of its Policy Manual section on the public charge ground of inadmissibility, the Policy Alert, which purports to implement the Final Rule. The Policy Alert directs that “an alien is likely *at any time* to become a public charge,” if they are “likely at any time to depend on means-tested public benefits”—entirely excising the settled understanding that

³ DHS and USCIS (a component of DHS) issued the Final Rule and Policy Alert. Accordingly, references to “DHS” in this Complaint in connection with the Final Rule and Policy Alert include USCIS.

public charge requires primary dependence and reliance on benefits for subsistence. The Final Rule and Policy Alert make plain Defendants’ plan and expectation to hold many more individuals inadmissible on public charge grounds than under the statute or any prior application of it would allow. The Final Rule and Policy Alert are thus contrary to law, broadly sweeping in people Congress never considered or intended to be public charges under the INA.

3. The Final Rule and Policy Alert are also contrary to law because they ascribe a meaning to “public charge” inconsistent with the well-settled definition of the term. The Final Rule and Policy Alert unlawfully direct consideration of *any and all* means-tested public benefits without clear and transparent guardrails on how such consideration is consistent with the settled understanding of public charge. The Final Rule and Policy Alert adopt an interpretation of public charge that strays from reliance on public benefits for subsistence, which is evident from the fact that Defendants target programs that have never been part of the public charge analysis and are well-recognized as only providing temporary and supplemental supports on the path to self-sufficiency, such as the Special Supplemental Nutrition Program for Women, Infants, and Children (“WIC”). Under the Final Rule and Policy Alert, an officer could hold a person inadmissible on even *de minimis* anticipated use of such programs. This is contrary to history, case precedent, and congressional intent.

4. The Final Rule and Policy Alert are not, as Defendants incorrectly claim, consistent with Congress’s intent in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”), which limits noncitizens’ eligibility to receive some means-tested public benefits. Defendants misinterpret congressional intent in PRWORA and unlawfully conflate this erroneous understanding with the INA’s public charge provision. This is legal error, not in accordance with law, and will chill immigrants from using public benefits to which they are

entitled—resulting in grave public health, safety, and economic consequences for Plaintiffs and the country.

5. The Final Rule stated that “nonbinding” subregulatory guidance would be forthcoming to further explain the rule and how Defendants would implement it. Defendants then issued the Policy Alert on August 18, 2026. Contrary to what is stated in the Final Rule, the Policy Alert is binding on immigration officers; indeed, DHS itself asserts that its entire Policy Manual is binding. *See, e.g.*, Policy Alert at 1 (“The guidance contained in the Policy Manual is controlling”). Neither the Policy Alert nor the Final Rule, of which the Policy Alert is a part, imposes any material limit on how immigration officers define public charge.

6. The Final Rule and Policy Alert are arbitrary and capricious. They eschew a clear, decades-old standard and are based on a misinterpretation and misuse of PRWORA. Defendants fail to reasonably explain their drastic change in position, speculating without any supporting evidence that the 2022 Final Rule had unduly constrained immigration officers and thus prevented them from identifying and holding inadmissible anyone who was, in fact, likely to become a public charge. The Final Rule and Policy Alert are also arbitrary and capricious because they will broadly sweep in people Congress never considered to be public charges under the INA. The Final Rule purports to be prospective but Defendants fail to consider its retroactive impacts. DHS dismisses the severe public health and economic harms the Final Rule will cause through engendering widespread fear and confusion—leading to reduced use of health and education services with community-wide benefits—in immigrant communities within Plaintiffs’ jurisdictions. The Final Rule irrationally demands that officers—without training, information, or guidance—serve as de facto economists to research and apply “empirical data” as well as “relevant statistics” regarding “long-term outcomes for [benefits] program participants and impacts on health, employment, and

employability” in reaching their determinations. The Policy Alert provides no such guidance. The Final Rule and Policy Alert also provide no meaningful limits or explainable standards. Instead, the Policy Alert (incorrectly) states that public charge is “typically demonstrated through the use of means-tested public benefits,” yet both the Final Rule and the Policy Alert fail to commit to a meaningful definition of means-tested public benefits, leaving it confusingly open-ended. The Final Rule and Policy Alert are untethered to the reality on the ground and invite arbitrary, inconsistent, and discriminatory decision-making.

7. John Adams described a republic as “an Empire of Laws, and not of Men.” Our nation’s founding is grounded in this core value. With the new public charge “rule,” Defendants eviscerate this principle. The Final Rule deletes a historically grounded definition and instead, along with the Policy Alert, leaves ambiguity without limits. The Final Rule and Policy Alert chip away at the integrity of our system, such that the rule of law, equality, and fairness give way to the vagaries of individuals with power. This is a system where the Empire is not of Laws, but of Men.

8. The Final Rule and Policy Alert have caused and will cause affected populations to forgo nurturing supplemental benefits out of fear that being enrolled—or, indeed, even *applying*—for such programs will adversely affect their and their loved ones’ immigration statuses. Yet these are precisely the programs that Congress has said expressly are supplemental—designed to promote stability and upward mobility, but impossible to subsist on—and for which Congress has preserved noncitizen eligibility. And by directing consideration of means-tested public benefits used by a noncitizen’s family members, such as U.S. citizen children in mixed-status

households⁴—who the noncitizen is legally obligated to support⁵—the Final Rule and companion Policy Alert will cause U.S. citizen family members to withdraw from or forgo benefit programs as well. Defendants themselves agree it is likely—indeed, inevitable—that huge swaths of the population will forgo these benefit programs. Plaintiffs will directly face the economic, public health, and other harms that result. The increase in undiagnosed and untreated medical issues, homelessness, food insecurity, and educational challenges resulting from the broad chilling effect on public benefits will harm Plaintiffs. Plaintiffs and other local governments will necessarily incur the financial, administrative, and other costs of responding to and mitigating these harms because Plaintiffs are responsible for protecting the health and welfare of their residents and responding to the threats posed by diminished public health.

9. The wounds from the devastating global COVID-19 pandemic are still fresh. Over a million lives were lost in the United States, and Plaintiffs suffered a combined loss of over 50,000 lives. The Final Rule and Policy Alert will severely hinder Plaintiffs’ current and ongoing efforts to combat viruses and diseases, with potentially devastating public health consequences. By deterring immigrants and their families, including U.S. citizen family members, from accessing healthcare and other benefits they are eligible to receive, such as testing and treatment of diseases, the Final Rule and Policy Alert will result in increased communicable disease transmission, severe illness, long-term health consequences, and deaths, including among children. The Final Rule and Policy Alert also compromise our nation’s preparedness against disease outbreaks.

⁴ Mixed-status households, as used in this Complaint, are households in which members have at least two different citizen statuses (*e.g.*, where at least one family member is a U.S. Citizen and at least one family member is a noncitizen).

⁵ *See, e.g.*, Policy Alert at 33 (The receipt of means-tested public benefits by members of the applicant’s household is “relevant to the public charge inadmissibility determination if: [1] The means-tested public benefits received by the alien’s household member are the alien’s source of financial support; or [2] The alien is legally obligated to support the household member who is receiving the means-tested public benefits.”).

10. Defendants’ radical departure from longstanding precedent, practice and policy violates the Administrative Procedure Act (“APA”). First, the Final Rule and Policy Alert are contrary to law and exceed Defendants’ statutory authority, imposing a dramatic change to the well-established understanding of “public charge” in a manner that conflicts with the term’s plain meaning, congressional intent, statutory context, longstanding administrative interpretation, and case law. Second, the Final Rule and Policy Alert are arbitrary and capricious. Defendants fail to reasonably justify their deviation from decades of settled practice, instead offering explanations that run counter to the evidence before them. The Final Rule is replete with failures to adequately consider the evidence before the agency. Defendants also fail to adequately consider important aspects of the problem, including the extensive and varied harms the Final Rule and Policy Alert will cause to Plaintiffs and their residents, and the serious reliance interests that past practice and policy engendered. The Final Rule and Policy Alert, which the Final Rule incorporates and which articulate Defendants’ understanding and interpretation of the Final Rule, are also arbitrary and capricious in that they provide no meaningful limits or objective standards, and will lead to arbitrary, inconsistent, and discriminatory decision making.

11. In the alternative, the Policy Alert is also a separate final agency action that itself violates the APA because it is contrary to law, arbitrary and capricious, and the product of a deficient process that required but lacked notice and comment rulemaking procedures. An agency cannot evade notice and comment merely by labeling a substantive rule a “policy alert” or “guidance.” Through the Policy Alert—a 99-page update to the USCIS Policy Manual—that carries out the Final Rule, DHS makes significant changes to the public charge regime. To the extent the Policy Alert imposes new obligations separate from the Final Rule, these provisions have real practical and legal consequences for the regulated public and adjudicators. To the extent

the Policy Alert functions as a legislative rule, DHS was required to comply with the notice and comment procedures prescribed by 5 U.S.C. § 553 of the APA. Having failed to do so, DHS promulgated the Policy Alert “without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

12. Plaintiffs the City of New York, City of Chicago, City and County of San Francisco, County of Santa Clara, City of Seattle, and King County bring this action to vacate and set aside the Final Rule and Policy Alert and enjoin their implementation under the APA because they are not in accordance with law, 5 U.S.C. § 706(2)(A); exceed Defendants’ statutory jurisdiction, authority, and limitations, *id.* § 706(2)(C); and are arbitrary, capricious, and an abuse of discretion, *id.* § 706(2)(A), and because when promulgating the Policy Alert, Defendants failed to observe procedure required by law, *id.* § 706(2)(D).

JURISDICTION AND VENUE

13. This action is brought pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 701–706. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 702.

14. This Court has the authority to grant the requested declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201–2202 and 5 U.S.C. § 706.

15. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. §§ 1391(b) and (e)(1) because Defendants are United States agencies or officers sued in their official capacities, Plaintiff the City of New York is a resident of this judicial district, and a substantial part of the events or omissions giving rise to this action occurred and are continuing to occur in this district.

PARTIES

16. Plaintiff the City of New York is a municipal corporation organized pursuant to the laws of the State of New York. New York City is a political subdivision of the State and derives its powers through, *inter alia*, the New York State Constitution, New York State laws, and the New York City Charter. New York City is the largest city in the United States by population, and more than 3.1 million of its residents are foreign born—approximately 38 percent of New York City’s population. One out of six children—more than 250,000—in New York City live in a mixed-status household, and one in two children in New York City has at least one immigrant parent.

17. Plaintiff the City of Chicago is a municipal corporation and home-rule unit organized and existing under the constitution and laws of the State of Illinois. Chicago is the largest city in Illinois and the third largest city in the United States by population. Over half a million—or about 21 percent—of Chicago’s population is foreign-born.

18. Plaintiff the City and County of San Francisco (“San Francisco”) is a municipal corporation organized and existing under and by virtue of the laws of the State of California, and is a charter city and county. San Francisco is the fourth largest city in California, and approximately a third of San Francisco’s population is foreign born.

19. Plaintiff the County of Santa Clara (“Santa Clara”) is a charter county and political subdivision of the State of California. Santa Clara County’s nearly 2 million residents make it the most populous county in Northern California. Santa Clara’s foreign-born population exceeds 750,000 people, approximately 40 percent of its population. More than 60 percent of children in Santa Clara County have at least one foreign-born parent. That is the highest percentage in California and one of the highest percentages of any county in the United States.

20. Plaintiff the City of Seattle (“Seattle”) is a municipal corporation organized pursuant to the constitution and laws of the State of Washington. Seattle is the largest city by population in the State of Washington, and in King County, with over 737,000 residents. Approximately 143,000 Seattle residents—or 19 percent—are foreign-born. Immigrants are essential to Seattle’s economy and to the region’s growth, with 91.7 percent of recent population growth attributable to immigrants—the highest percentage in the country.

21. Plaintiff Martin Luther King, Jr. County (“King County”) is a home rule charter county organized and existing under and by virtue of the constitution and laws of the State of Washington. King County has more than 2.3 million residents and is Washington State’s most populous county. The County’s foreign-born population exceeds 600,000 people, approximately 26 percent of its population. In the Seattle-Tacoma-Bellevue Metropolitan Statistical Area, in which the County is the largest jurisdiction, there are 340,200 U.S.-born children with at least one foreign born parent. In King County, there are 243,000 individuals living in mixed-status families, of which 104,000 of them are U.S. citizens. Between 2010 and 2024, the County’s immigrant population grew by an extraordinary 58 percent. This is more than twice the rate of the County’s overall population growth.

22. Immigrant communities are a critical driver of Plaintiffs’ economic and population growth. Plaintiffs pride themselves on their ethnic and cultural diversity.

23. Plaintiffs are primary safety-net providers for their residents. Plaintiffs operate and fund a variety of programs and services, including emergency shelter and housing assistance, food and nutrition assistance, general assistance, and vital healthcare services.

24. Plaintiffs administer numerous benefit programs and public social services within their jurisdictions.

25. Plaintiffs are aggrieved by Defendants’ actions because the Final Rule and Policy Alert will harm the public health of Plaintiffs’ communities, Plaintiffs’ public health efforts, and impose significant financial costs and economic harms to Plaintiffs. Plaintiffs therefore have standing to bring this action and will continue to suffer injury unless and until the Final Rule and the Policy Alert are vacated and set aside.

26. Defendant United States Department of Homeland Security (“DHS”) is a cabinet agency of the United States government and is an agency within the meaning of 5 U.S.C. § 552(f).

27. Defendant Markwayne Mullin is the Secretary of Homeland Security and is sued in his official capacity.

28. Defendant United States Citizenship and Immigration Services (“USCIS”) is a component agency of DHS and an agency within the meaning of 5 U.S.C. § 552(f).

29. Defendant Joseph B. Edlow is the Director of USCIS and is sued in his official capacity.

LEGAL AND FACTUAL BACKGROUND

A. **Federal Immigration Statutes Incorporated the Common Law Understanding of “Public Charge” as Primary Dependency.**

30. For generations, the United States of America has welcomed immigrants seeking opportunity, offering a pathway for economic advancement and upward mobility. *See, e.g.*, John F. Kennedy, *Nation of Immigrants* (1958); *see also* Emma Lazarus, *The New Colossus* (1883) (welcoming “your tired, your poor, your huddled masses”). The nation’s federal immigration law has reflected this history, excluding immigrants as a “public charge” only under narrow circumstances.

31. For over 140 years, the term “public charge” has been understood to mean a person who is primarily dependent on the federal government for cash-based, governmental assistance,

i.e., for subsistence. The term has never been understood to include individuals who receive temporary, supplemental, or non-cash benefits (excluding long-term institutionalization at government expense). Since the 19th century, federal immigration statutes have incorporated this established and narrow common law meaning of “public charge.” And over subsequent decades, Congress has repeatedly rejected numerous attempts to expand public charge beyond this meaning.

32. Congress first adopted the concept of “public charge,” which had been used in several local and state statutes, with its enactment of the Immigration Act of 1882.⁶ Like those early state and local statutes, the federal statute excluded those who could not work on a sustained basis, including, using the terminology of that time, “convicts, lunatics, idiots, and any person unable to take care of himself without becoming a public charge.” Immigration Act of 1882, Pub. L. No. 47–376, 22 Stat. 214, 214 (1882).⁷ And like the early state and local statutes on which it was based, the federal statute did not include as public charges individuals who may have needed temporary public assistance but were able to work. Indeed, while seeking to bar anyone likely to become a public charge, *id.* § 2, the Act simultaneously established an “immigration fund,” which was to be used, *inter alia*, “for the care of immigrants arriving in the United States [and] for the relief of such as are in distress,” *id.* § 1. Through those provisions, the federal statute differentiated between those arriving immigrants who were “unable to take care of [themselves],” from those who were merely “in distress.” The former were to be excluded; the latter, admitted and provided with financial support. *Id.* §§ 1–2.

⁶ See Gerald L. Neuman, *The Lost Century of American Immigration Law (1776-1875)*, 93 Colum. L. Rev. 1833, 1849 (1993) (citing Act of Feb. 26, 1794, ch. 32, § 15, 1794 Mass. Acts & Laws 375, 385.).

⁷ Legislative debate on the 1882 Act shows that at least one member of Congress sought to prevent foreign nations from “send[ing] to this country blind, crippled, lunatic, and other infirm paupers, who ultimately become life-long dependents on our public charities.” 13 Cong. Rec. 5108-10 (June 19, 1882) (statement of Rep. Van Voorhis).

33. In 1907, Congress again made modest revisions to the grounds for exclusion, which it further amended in 1910.⁸ Immigration Act of 1907, ch. 1134, § 2, 34 Stat. 898, 898–899 (1907); Act of Mar. 26, ch. 128, § 1, 36 Stat. 263, 263 (1910). Both the 1907 law and the amendment retained the grounds of exclusion for paupers, persons likely to become a public charge, professional beggars, persons with contagious illnesses, and individuals with permanent “defects”—individuals unable to support themselves and who would require ongoing government support. In view of the categories Congress included, these federal statutes thus reflected the preexisting meaning of public charge as limited to those who rely primarily on the government for subsistence.

1. Common Law Defines Public Charge as an Individual Primarily Dependent on the Government For Subsistence.

34. Courts and the Board of Immigration Appeals (“BIA”)⁹ have consistently interpreted “public charge” to mean individuals who primarily depend upon the government for subsistence. In 1915, the Supreme Court affirmed this understanding. In *Gegiow v. Uhl*,¹⁰ the Court held that the public charge ground of exclusion did not cover the poor or the temporarily unemployed, but was intended to reach individuals permanently unable to support themselves.¹¹ The Court explained that temporary factors such as local labor conditions were irrelevant to a public charge finding and that such a determination must be based on “permanent personal

⁸ Congress amended the immigration laws in 1891 and 1903, making slight revisions to the public charge ground of exclusion that affirm the interpretation of the 1882 Act that the term “public charge” was not used at the time to include short-term or temporary relief from the government. *See* Immigration Act of 1891, Pub. L. No. 51–551, §§ 1, 11, 26 Stat. 1084, 1084, 1086 (1891); An Act to Regulate the Immigration of Aliens Into the United States, Pub. L. No. 57–162, ch. 1012, § 2, 32 Stat. 1213, 1214 (1903).

⁹ The BIA is an administrative appellate body within the Department of Justice that hears appeals from certain decisions rendered by immigration judges and by district directors of DHS.

¹⁰ 239 U.S. 3 (1915).

¹¹ *Id.* at 9–10.

objections.”¹² A “likely public charge” determination under the common law thus required a permanent and unalterable condition of dependence, rather than a condition of temporary hardship or low-income status.

35. In the decades following *Uhl*, courts rejected a broad “latitudinarian construction” of public charge and held that the term encompassed only “those persons who are likely to become occupants of almshouses for want of means with which to support themselves in the future.”¹³ From the 1940s to the present, the BIA and circuit courts have continued to adhere to this narrow definition, overturning public charge exclusions of employable immigrants found inadmissible for having low incomes or using some public benefits.¹⁴ Interpreting decades of common law on public charge, the BIA found that the INA “requires more than a showing of a possibility that the alien will require public support.”¹⁵

36. For applicants who arrived in the United States without financial resources but were willing and able to work in the long term, the public charge exclusion did not apply; public charge determinations were thus the exception, not the rule.

2. The Immigration and Nationality Act of 1952 Incorporated the Common Law Definition of Public Charge.

37. As originally enacted in 1952, and still today, the INA provides that “[a]ny alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of

¹² These permanent personal objections included: long-term poverty (“paupers and professional beggars”), disability (“idiots” and those with “a mental or physical defect”), a history of criminality (“convicted felons, prostitutes”), or “persons dangerously diseased.” *Id.* at 10.

¹³ *See, e.g. Ex parte Mitchell*, 256 F. 229, 232 (N.D.N.Y. 1919) (citations omitted); *see also Howe v. United States*, 247 F. 292, 294 (2d Cir. 1917); *U.S. ex rel. Mantler v. Comm’r of Immigration*, 3 F.2d 234, 235 (2d Cir. 1924).

¹⁴ *See, e.g., infra* at ¶ 40 (referencing administrative case law holding that a noncitizen “has been on welfare does not, by itself, establish that he or she is likely to become a public charge”).

¹⁵ *Matter of Martinez-Lopez*, 10 I. & N. Dec. 409, 421 (BIA 1962); *see also, e.g., Matter of A-*, 19 I. & N. Dec. 867, 869 (Comm. 1988).

the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge, is inadmissible.” 8 U.S.C. § 1182(a)(4).

38. The INA requires that most applicants seeking to adjust their status to become permanent residents be subject to public charge determinations. Defendant USCIS is a component of DHS and has authority to make public charge determinations for adjustment of status applications. 8 U.S.C. § 1201(a). Prior to March 1, 2003, this function was performed by the Immigration and Naturalization Service (“INS”), under the purview of the United States Department of Justice (“DOJ”). After 2003, this authority was assigned to DHS.¹⁶

39. Congress incorporated the common law definition of public charge into the INA. Congress enacted the INA’s public charge provision against the backdrop of decades of clear and consistent court and agency decisions defining a public charge as an individual primarily dependent on governmental assistance. Congress gave no indication that it intended to change that prevailing common law interpretation.

40. The United States Attorney General issued a decision in 1964, noting that the term “public charge” had been the subject of “extensive judicial interpretation” and that the “general tenor” of the case law understood the term to require “[s]ome specific circumstance, such as mental or physical disability, advanced age, or other fact reasonably tending to show that the burden of supporting the alien is likely to be cast on the public[.]” *Matter of Martinez Lopez*, 10 I. & N. Dec. 409, 421 (A.G. 1964); *see also Matter of Vindman*, 16 I. & N. Dec. 131, 132 (R.C. 1977). And in *Matter of Perez*, the BIA explicitly held that “[t]he fact that an alien has been on welfare does not,

¹⁶ The statute also requires that applicants for U.S. visas —such as people applying for family- or employment-based visas—be subject to public charge determinations, but those determinations are made by the Department of State, not DHS. *See* State Dep’t Foreign Affairs Manual, 9 FAM 302.8–2.

by itself, establish that he or she is likely to become a public charge.” 15 I. & N. Dec. 136, 137 (B.I.A. 1974).

3. Congress Repeatedly Rejected Efforts to Expand Public Charge Beyond the Common Law Definition.

41. Since the passage of the INA, Congress has consistently resisted expansion of the public charge definition to reach immigrant applicants who receive supplemental non-cash benefits, even as it has created and then adjusted such benefit programs over the subsequent years.

42. With welfare and immigration reform in the 1990s, Congress again considered the public charge ground of inadmissibility, and it ultimately rejected every proposal to change the meaning of the term “public charge.” While the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”) and PRWORA imposed restrictions on immigration, the bills also set baseline protections for immigrants’ use of public benefits that DHS now seeks to replace.

43. In early 1996, Congress considered the Immigration Control and Financial Responsibility Act (“ICFRA”), which would have expressly altered the well-established meaning of “public charge” to encompass a noncitizen who used almost any public benefit program for more than one year,¹⁷ with limited exceptions for certain emergency medical and childhood nutrition services.¹⁸ After months of debates and amendments, the Senate rejected the bill.

¹⁷ The ICFRA would have defined “public charge” to encompass “any alien who receives benefits . . . for an aggregate period of more than 12 months” from: (i) the aid to families with dependent children program, (ii) Medicaid, (iii) the food stamp program, (iv) the supplemental security income (“SSI”) program, (v) any state general assistance program, or (vi) “any other program of assistance funded, in whole or in part, by the Federal Government or any State or local government entity, for which eligibility for benefits is based on need.” H.R. 2202 104th Cong. § 202(a)(5) (1996).

¹⁸ The Act would have excluded the following services from public charge determinations: (i) emergency medical services under title XIX of the Social Security Act; (ii) prenatal and postpartum services under title XIX of the Social Security Act; (iii) short-term emergency disaster relief; (iv) assistance or benefits under (I) the National School Lunch Act (42 U.S.C. 1751 et seq.), (II) the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), (III) section 4 of the Agriculture and Consumer Protection Act of 1973 (Pub. L. No. 93–86; 7 U.S.C. 612c note), (IV) the

Discussing the proposed change, Senator Leahy objected that “the definition of public charge goes too far in including a vast array of programs none of us think of as welfare. . . . The bill would affect the working poor who are striving against difficult odds to become self-sufficient. . . . The bill is unnecessarily uncertain and will yield harsh and idiosyncratic results that no one should intend.” S. Rep. No. 104–249, at 64 (1996).

44. Later that year, Congress passed PRWORA, Pub. L. No. 104–193, 110 Stat. 2105 (1996). Although PRWORA provided limitations on eligibility for noncitizens for certain benefits, 8 U.S.C. §§ 1611(a), 1621(a), Congress did not modify the definition of public charge. PRWORA also ensured that noncitizens would remain eligible for numerous non-cash benefits, including emergency medical assistance, disaster relief, immunization services, and certain public housing benefits. 8 U.S.C. §§ 1611(b), 1621(b). And Congress acknowledged states’ authority to offer state and locally funded public benefits to noncitizens pursuant to different eligibility requirements than PRWORA establishes for federal benefits. 8 U.S.C. § 1621(d). While promoting concepts of self-sufficiency and personal responsibility, PRWORA also recognized the need for a safety net. 8 U.S.C. §§ 1611(b), 1621(b), (d); 142 Cong. Rec. S9395 (Aug. 1, 1996) (Statements of Sen. Pressler).

45. A little over a month after enacting PRWORA, Congress passed IIRIRA, which modified certain aspects of the public charge analysis, but again did not modify the meaning of “public charge” as primarily dependent on the government for subsistence, or expand it to include receipt or reliance on supplemental benefits. Instead, IIRIRA amended the INA to list factors for

Emergency Food Assistance Act of 1983 (Pub. L. No. 98–8; 7 U.S.C. 612c note), (V) section 110 of the Hunger Prevention Act of 1988 (Pub. L. No. 100–435; 7 U.S.C. 612c note), and (VI) the food distribution program on Indian reservations established under section 4(b) of Public Law 88–525 (7 U.S.C. 2013(b)); or (v) any student assistance received or approved for receipt under title IV, V, IX, or X of the Higher Education Act of 1965 in an academic year which ends or begins in the calendar year in which the Act is enacted until the matriculation of their education. *Id.* §§ 201–02.

officers to consider when determining which applicants were likely to become a public charge, including the applicant's age, health, family status, financial status, and education and skills. Pub. L. No. 104–208, § 531(a), 110 Stat. 3009–546, 3009–674–75 (1996).

46. In 2002, Congress passed the Farm Security and Rural Investment Act that rolled back some of PRWORA's restrictions to restore access to supplemental nutrition benefits for many noncitizen children and noncitizens receiving disability benefits. Pub. L. No. 107–171, § 4401, 116 Stat. 134 (2002). That Act also provided that noncitizens who had been present in the country for more than five years would be eligible for supplemental nutrition benefits. *Id.* at 116 Stat. 334.

47. The 2009 Children's Health Insurance Program ("CHIP") Reauthorization Act further expanded access to benefits for noncitizens, allowing states to provide Medicaid¹⁹ and CHIP coverage to lawfully residing noncitizen children and pregnant women during their first five years in the country. Pub. L. No. 111–3, § 214, 123 Stat. 8, 56 (2009).

48. In 2013, Congress rejected yet another attempt to broaden the definition of public charge in a proposed amendment to the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, S. 744, 113th Cong. (2013) ("Border Security Bill"). The amendment would have expanded the public charge ground of inadmissibility to bar applicants for admission if they were likely "to qualify even for non-cash employment supports" such as Medicaid and the Supplemental Nutrition and Assistance Program ("SNAP"). S. Rep. No. 113–40, at 42 (2013). The Judiciary Committee noted that senators who opposed the amendment "cited the strict benefit restrictions and requirements." *Id.*

¹⁹ The Complaint refers to Medicaid for consistency and to avoid confusion. However, with respect to several states, including New York and California, allegations concerning "Medicaid" refer to all components—both federal and state components.

49. H.R. 1, which was signed into law in 2025, restricted federal benefit access for noncitizens yet retained eligibility for certain federal benefits, including Medicaid, Medicare, the Children’s Health Insurance Program, SNAP, and Affordable Care Act Market place subsidies, for various categories of noncitizens. Congress thus expressly preserved access to these federal benefit programs under the circumstances specified by statute. Yet, despite directly adjusting noncitizen benefit eligibility in H.R.1, Congress still chose not to amend the public charge ground of inadmissibility to make the receipt of those preserved benefits a basis for a public charge determination. Had Congress intended to impose such a consequence, it would have done so explicitly.

B. The 1999 Guidance on Public Charge Codified the Primary Dependence Standard.

50. In 1999, INS published guidance on the definition of public charge, which reflected the well-established common law meaning of “public charge” recognized by courts, agencies, and Congress: an individual primarily dependent on cash-based governmental assistance over the long term. U.S. Dep’t of Justice, Immigration and Naturalization Serv., *Field Policy Alert on Deportability and Inadmissibility on Public Charge Grounds*, 64 Fed. Reg. 28,689–93 (Mar. 26, 1999) (“1999 Guidance”).

51. Articulating this longstanding meaning, the 1999 Guidance said a public charge is a noncitizen “who is likely to become (for admission/adjustment purposes) primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense.” 64 Fed. Reg. at 28,689. Immigrant applicants who received non-cash benefits or who received less than 50 percent of their income from the government were not considered to fall within the definition of public charge. *Id.*

52. Before issuing the 1999 Guidance, the INS consulted with agencies that administer public benefit programs and thus have expertise in the nature and use of public benefits, including the Social Security Administration (“SSA”), the Department of Health and Human Services (“HHS”), and the Department of Agriculture (“USDA”). Those agencies opined that cash benefits—rather than non-cash benefits like SNAP, Medicaid, or housing assistance—and long-term institutionalization, were the best indicators of whether an individual is relying primarily on the government. After that consultation, the INS determined in the 1999 Guidance that only cash benefits, and not non-cash supplemental benefits, should be considered when assessing the likelihood that an individual would become a public charge. *See id.*

53. The 1999 Guidance applied in both the admission and removal contexts. 64 Fed. Reg. at 28,689.

54. The INS explained that guidance was necessary to clarify, in the wake of PRWORA, “the relationship between the receipt of public benefits and the concept of ‘public charge’” because PRWORA “deterred eligible aliens and their families, including U.S. citizen children, from seeking important health and nutrition benefits that they are legally entitled to receive.” *Id.* at 28,692.

55. The 1999 Guidance acknowledged the well-documented benefits of access to public benefits and recognized that receipt of non-cash benefits did not correlate with a likelihood of long-term dependence on the government for subsistence. The INS noted that “[t]his reluctance to access benefits has an adverse impact not just on the potential recipients, but on public health and the general welfare.” *Id.*

56. The 1999 Guidance also concluded that the “nature of the public program” is critical to determining whether a particular public benefit is relevant to the public charge

determination. 64 Fed. Reg. at 28,678–79. As the INS explained, non-cash benefits (other than institutionalization for long-term care) are by their nature supplemental and do not, alone or in combination, provide sufficient resources to support an individual or family. *Id.* at 28,678. Such non-cash benefits are also often “available to families with incomes far above the poverty level,” the INS explained, reflecting broad public policy decisions about improving general public health and nutrition rather than any indication that a recipient is primarily dependent on the government. *Id.* By contrast, substantial cash benefits for income maintenance may provide enough resources to primarily support an individual or family.

57. In addition to expressly codifying which circumstances and public benefits gave rise to a public charge determination, the 1999 Guidance explained in greater detail the application of the INA’s public charge considerations, including “age, health, family status, assets, resources, and financial status, and education and skills.” 64 Fed. Reg. at 28,679–82, 87; 8 U.S.C. § 1182(a)(4)(B)(i). Consistent with BIA decisions in the 1960s and 70s,²⁰ the 1999 Guidance required INS officials to evaluate each factor as a part of a totality of circumstances test to assess whether an applicant would become primarily dependent on governmental assistance in the future. 64 Fed. Reg. at 28,690. The 1999 Guidance provided that “[s]ervice officers should assess the financial responsibility of the alien by examining the totality of the alien’s circumstances at the time of his or her application The existence or absence of a particular factor should never be the sole criterion for determining if an alien is likely to become a public charge.” *Id.* (emphasis omitted).

²⁰ See *Matter of Martinez-Lopez*, 10 I. & N. Dec. 409, 421–22 (AG 1964) (finding that a determination of public charge “requires more than a showing of a possibility that the alien will require public support” and “[s]ome specific circumstance . . . tending to show that the burden of supporting the alien is likely to be cast on the public, must be present”); see also *Matter of Harutunian*, 14 I. & N. Dec. 583 (BIA 1974) (determining applicant was a public charge after considering the totality of the applicant’s circumstances, including age, inability to earn a living, and lack of family or other support).

58. The 1999 Guidance further specified that the public charge determination for visa and green card applicants was forward-looking and that “past receipt of non-cash benefits” and even “past receipt of special-purpose cash benefits” should not be taken into account. 64 Fed. Reg. at 28,690.

59. Additionally, the 1999 Guidance stated that, as a general rule, public benefits received by a noncitizen applicant’s children or other family members are not attributed to the applicant for public charge purposes. However, if the family is reliant on those benefits as their sole means of support, the applicant may be treated as having received cash assistance. 64 Fed. Reg. at 28,692. And because the 1999 Guidance excluded non-cash benefits from the public charge analysis, a family member’s receipt of such benefits had no bearing on the determination of whether an applicant was likely to become a public charge. The 1999 Guidance noted courts’ approval when the agency took precisely this approach to consideration of family members’ benefits in the context of the amnesty legalization program of a 1986 immigration law. *Id.* at 28,691–92 (citing *Perales v. Reno*, 48 F.3d 1305, 1309–10 (2d Cir. 1995)).

60. There is no evidence in the record before Defendant agencies that, when applying the 1999 Guidance, DHS granted admission or green cards to applicants who were, in fact, likely to become primarily dependent on the government for subsistence.

61. Based on the 1999 Guidance, DOJ, the agency responsible for applying the public charge determination in the removal context at the time, issued a fact sheet acknowledging that the public charge doctrine “ha[d] been part of U.S. immigration law for more than 100 years” and clarifying that benefits like food supplements, public health benefits, and housing assistance were “not intended for income maintenance” and “are not subject to public charge consideration.” U.S. Dep’t of Justice, Public Charge Fact Sheet, 2009 WL 3453730 (Oct. 29, 2011).

C. The 2019 Public Charge Rule and Judicial Rejection of that Rule as Contrary to Law and Arbitrary and Capricious.

62. In 2019, DHS unsuccessfully sought to expand the scope of the public charge inquiry by promulgating a final rule, entitled Inadmissibility on Public Charge Grounds (“2019 Public Charge Rule” or “2019 Rule”), that purported to define “public charge” to mean noncitizens who used a specified quantity of certain, enumerated benefits. These benefits included non-cash programs, even where such benefits were temporary or supplemental. The 2019 Rule imposed a prescriptive system that heavily negatively weighted certain characteristics, including unemployment, past receipt of (or approval to receive) public benefits (including supplemental benefits) for more than 12 of the previous 36 months, inability to cover medical costs, and prior public charge determinations.

63. The 2019 Public Charge Rule thus marked a sharp break from the 1999 Guidance and decades of agency practice, which had tied “public charge” to primary dependence on cash assistance or long-term institutionalization at government expense.

64. The 2019 Rule sought to expand the types of benefits whose anticipated use would render a person inadmissible on public charge grounds to include, among others, supplemental programs like SNAP, Medicaid for non-pregnant adults, and certain federal housing assistance programs. These programs had long been available to eligible immigrants and their families without any suggestion from Congress that their lawful use would render a person a “public charge.”

65. At the time it promulgated the 2019 Rule, DHS was on notice, including from its own prior analyses and extensive public comments, that expanding the list of benefits considered in a public charge determination would deter eligible families from accessing critical food, health,

and housing programs, including for U.S. citizen children in mixed-status families, due to fear of immigration consequences.

66. Following publication of the 2019 Rule, numerous states and local governments—including several of the Plaintiffs in this action—and nonprofit organizations filed lawsuits in federal courts across the country challenging the rule under the INA, the APA, and, in some cases, the Constitution. Several district courts, including a court in this district, granted preliminary injunctions barring implementation of the 2019 Rule, finding that the plaintiffs were likely to succeed on the merits of their INA and APA claims and faced irreparable harm.²¹

67. The federal government appealed, and courts of appeals, including the Second, Seventh, and Ninth Circuits, issued detailed opinions addressing the legality of the 2019 Public Charge Rule, the meaning of “public charge” under the INA, and DHS’s compliance with the APA. Those three circuits ultimately recognized substantial legal defects in the 2019 Rule’s misinterpretation of the statute and the agency’s adherence to the rulemaking process.²²

68. In evaluating the 2019 Rule, the Second, Seventh, and Ninth Circuits emphasized that, under historical practice and the common law, a “public charge” meant a person primarily dependent on government support, not a person who made incidental or supplemental use of public benefits. These courts concluded that the 2019 Rule’s redefinition of “public charge” to include short-term or partial use of an expanded list of benefits conflicted with the INA’s text, structure,

²¹ See, e.g., *New York v. DHS*, 408 F. Supp. 3d 334, 351 (S.D.N.Y. 2019); see also *New York v. DHS*, 969 F.3d 42, 70–80, 83–84 (2d Cir. 2020); *Cook Cty. v. McAleenan*, 417 F. Supp. 3d 1008, 1027 (N.D. Ill. 2019); *Cook Cty. v. Wolf*, 962 F.3d 208, 223–29 (7th Cir. 2020); *City & Cty. of San Francisco v. USCIS*, 408 F. Supp. 3d 1057, 1102–05 (N.D. Cal. 2019); *City & Cty. of San Francisco v. USCIS*, 981 F.3d 742, 758 (9th Cir. 2020); but see *CASA de Md., Inc. v. Trump*, 971 F.3d 220 (4th Cir. 2020) (upholding 2019 Final Rule), *vacated and reh’g en banc granted*, 981 F.3d 311 (4th Cir. 2020), *appeal dismissed*, *Casa de Md., Inc. v. Biden*, No. 19–2222, 2021 U.S. App. LEXIS 7177 (4th Cir. Mar. 11, 2021). The Supreme Court stayed certain of the district court injunctions but expressed no views. *Dep’t of Homeland Sec. v. New York*, 589 U.S. 1173, 1173 (2020).

²² See *id.*

history, and purpose, and was likely arbitrary and capricious, “not in accordance with law,” and an unreasonable construction of INA § 212(a)(4) (8 U.S.C. § 1182 (a)(4)).

69. Subsequently, a district court in the Seventh Circuit vacated the 2019 Rule. *Cook Cty. v. McAleenan*, 417 F. Supp. 3d 1008 (N.D. Ill. 2019). The Seventh Circuit granted a stay of that judgment pending appeal, DHS successfully moved to dismiss its appeal, and the rule was vacated. *Cook Cty. v. Wolf*, 962 F.3d 208 (7th Cir. 2020). DHS ultimately chose to stop defending the 2019 Rule in court and rescinded it.

D. The 2022 Public Charge Rule Restores and Codifies the Longstanding “Primary Dependence” Standard.

70. In 2022, DHS promulgated a final rule entitled “Public Charge Ground of Inadmissibility” (“2022 Rule”). The 2022 Rule restored and codified the longstanding understanding of “public charge” as someone who is likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of cash assistance for income maintenance or long-term institutionalization at government expense. 8 C.F.R. § 212.21(a) (2022).

71. Consistent with the 1999 Guidance, the 2022 Rule expressly excluded from consideration a broad range of non-cash benefits and supplemental programs, such as Medicaid (other than for long-term institutionalization), CHIP, SNAP, WIC, school meals, and most housing and energy assistance. These programs, the 2022 Rule reasoned, are designed to supplement income and promote health and stability, not to provide complete support. Moreover, the 2022 Rule recognized that neither DHS nor INS had ever considered free school lunches, home energy assistance, childcare assistance, or special nutritional benefits for children and pregnant individuals to be the types of public benefits that should be considered in a public charge inadmissibility determination.

72. In adopting the 2022 Rule, DHS acknowledged and relied on the definition of “public charge” established by decades of administrative practice, the common law, and the historical understanding of the term.

73. In 2022, DHS also considered extensive evidence that the agency’s attempt to broaden the public charge definition in the 2019 Rule, and the rulemaking process preceding it, had created widespread confusion and fear in immigrant communities, including mixed-status households. This documented “chilling effect” resulted in noncitizens and their family members disenrolling from or forgoing critical health, nutrition, and housing programs for which they were lawfully eligible and that benefited the broader health and welfare of their communities.

74. Among the 2022 Rule’s stated goals were to (i) provide clear, administrable standards for adjudicators and the public that would lead to fair and consistent determinations and ensure equitable treatment of similarly situated individuals; and (ii) advance the federal government’s interest in encouraging eligible noncitizens and their family members to access health care, nutrition, and housing assistance without fear of immigration consequences, thereby supporting public health and economic participation.

E. The 2025 Proposed Rulemaking.

75. On November 19, 2025, DHS published in the Federal Register a Notice of Proposed Rulemaking titled “Public Charge Ground of Inadmissibility,” DHS Docket No. USCIS-2025-0304 (“2025 Public Charge NPRM” or “2025 NPRM”). Through the 2025 Public Charge NPRM, DHS proposed to rescind the 2022 regulatory definitions governing the public charge ground of inadmissibility under section 212(a)(4) of the INA, which matched the 1999 Guidance that incorporated the well-understood meaning of “public charge,” without proposing any replacement regulatory standard. The NPRM clearly demonstrated a departure from the

historical and long-understood definition of “public charge.” DHS also proposed amendments to its regulations governing the cancellation and breach of public charge bonds at 8 C.F.R. 103.6(c)(1). DHS provided a window of only thirty days, during a federal holiday, to submit comments on the proposed rule.

76. The 2025 Public Charge NPRM received over 5,000 comments, most of which opposed the rule. Many commenters strongly opposed the Proposed Rule and expressed concern for the substantial negative public health outcomes and economic consequences that would result from decreased enrollment in subsidized nutrition, health insurance, and housing programs. Commenters cautioned that these proposed changes, taken together, would target some of the country’s most vulnerable residents, including persons with disabilities, women, and children.

F. The Final Rule.

77. On July 20, 2026, DHS published the Final Rule in the Federal Register. 91 Fed. Reg. 45,324.

78. As the 2025 NPRM proposed, the Final Rule rescinds but does not replace the 2022 Rule’s articulation of the statutory meaning or the 2022 Rule’s regulatory text listing the categories of noncitizens subject to public charge, the factors and public benefits to be considered in public charge inadmissibility determinations, and the exemptions and waivers from public charge.

79. Under the cloak of the “totality of the circumstances” framework, the Final Rule directs immigration officers to consider, in addition to the mandatory statutory factors in the INA, a noncitizen’s receipt of any means-tested public benefits—including, expressly, programs well-recognized to be supplemental supports—“any other individualized case-specific factors and circumstances” that the officer may decide is relevant, and “any empirical data” the officer may decide is relevant to self-sufficiency. The Final Rule states explicitly that DHS has abandoned the

well-established “primary dependence” standard for public charge determinations. 91 Fed. Reg. 45,324.

80. In the Final Rule, Defendants fail to provide a meaningful, codified definition of means-tested public benefits. DHS claimed that doing so was unnecessary as “that term is generally understood to refer to a government program or benefit where eligibility is based on an individual’s or family’s income and/or assets falling below a specific threshold.” 91 Fed. Reg. at 45,343. DHS merely referenced a university’s webpage stating that means-tested programs are “generally financed by tax revenues and may take the form of entitlements (e.g., Medicaid, SNAP/Food Stamps) or have spending caps (e.g., State Child Health Insurance Programs, housing subsidies, Temporary Assistance for Needy Families).” *Id.*

81. The Final Rule also amends the regulatory text on cancellation and breach of public charge bonds, removing language indicating that a breach occurs upon receiving cash assistance or long-term governmental institutionalization and replacing that text with language stating that any means-tested public benefits usage would constitute a breach of the public charge bond.

82. The Final Rule eliminates the 2022 Rule’s codification of the definition of “public charge” based on a misinterpretation of PRWORA and incorrectly conflating that misinterpretation with the public charge statute. With this change, the Final Rule expands the meaning of public charge far beyond that of the rejected 2019 Rule—a rule that the Second Circuit and other courts rejected as contrary to law because of its overbreadth and departure from the “primary dependence” standard.

83. As discussed further below, the Final Rule is fatally flawed. Defendants reach conclusions in the Final Rule that are not rationally connected to the facts and fail to provide a reasoned explanation for their drastic change in position. The Final Rule is internally inconsistent

and is counter to the evidence before it. Defendants also do not adequately consider numerous significant issues, including a wide range of public health, economic, and administrative harms to Plaintiffs that will result from the Final Rule's adoption.

84. In response to a commenter requesting that DHS identify the legal authorities and other information, apart from those that predated the 1999 Guidance and the 2022 Final Rule, that DHS relied on in developing the Final Rule, DHS stated that the rescission of the 2022 Final Rule is “based on the same statutes, authorities, and other resources that served as the basis and justification for the 2022 Final Rule.” 91 Fed. Reg. 45,335.

85. The Final Rule contemplates that DHS would issue “nonbinding” subregulatory guidance before the Final Rule becomes effective, which DHS did issue about 30 days later. The Final Rule also provides that USCIS will issue “policy and interpretive tools” and training but does not state whether all of those “tools” will be made public, implying by omission that they would not be made public or follow notice-and-comment procedures. Aside from the Policy Alert, DHS has not publicly announced or issued any additional policy and interpretive tools or training.

G. The Policy Alert.

86. On August 18, 2026, Defendants published a 99-page subregulatory guidance titled “Policy Alert” that USCIS will include in its Policy Manual as an entirely revised version of Part G (“Public Charge Ground of Inadmissibility”) of Volume 8 (“Admissibility”) and that supersedes all prior guidance regarding the public charge ground of inadmissibility. Although the Final Rule had said the subregulatory guidance would be “nonbinding,” the Policy Alert itself states that it is “controlling and supersedes any related prior guidance, including the 1999 Interim Field Policy Alert and any related guidance addressing public charge inadmissibility,” Policy Alert at 1, and USCIS itself states its Policy Manual “contains the official policies of USCIS . . . and is to be

followed by all USCIS officers in the performance of their duties.”²³ As described below, the Policy Alert speaks in mandatory terms and instructs officers to follow various directives. Policy Alert at 2–3 (the Policy Alert mandates what information “will be considered by officers” so they “faithfully and consistently make public charge inadmissibility determinations”). Taken together, and contrary to DHS’s representations in the Final Rule, the Policy Alert is binding on immigration officers.

87. The Policy Alert expresses DHS’s interpretation of “public charge” in light of the Final Rule’s stated departure from the term’s well-understood “primary dependence” standard—of public cash assistance for income maintenance or long-term institutionalization at government expense—found in the 2022 Rule. Specifically, the Policy Alert’s “Key Concepts” state that “[f]or purposes of a public charge inadmissibility determination under INA § 212(a)(4), officers must determine whether an alien is *likely at any time* to become a public charge, *that is, likely at any time to depend on means-tested public benefits*.” Policy Alert at 13 (emphasis added). Without providing a framework for doing so, the Policy Alert states that “officers will consider any evidence in the record pertaining to whether the alien has applied for any means-tested public benefits and/or whether the alien has been approved or certified to receive any means-tested public benefits.” *Id.* at 50. Under the Policy Alert, officers will also consider disenrollment from the means-tested public benefit program. *Id.* at 51.

88. The Policy Alert refers repeatedly to “means-tested public benefits” (the phrase appears more than 100 times over the 99 pages), but it fails to provide a meaningful definition of that term. Instead, the Policy Alert provides that officers “should consider” various factors for

²³ *Policy Manual*, U.S. Citizenship and Immigration Services (Sep. 11, 2026), <https://www.uscis.gov/policy-manual> [archived at <https://perma.cc/AN6S-TANW>].

determining if a program is a means-tested public benefit and situations when a benefit “is generally considered” means-tested or a “public benefit,” without explaining to officers when such circumstances would or would not be considered means-tested or a public benefit. Policy Alert at 14. The Policy Alert provides examples of public benefits “that could *potentially* be means-tested,” without providing any limiting principle. *Id.* And the Policy Alert includes in the list of “potential” means-tested public benefits that have never been considered before as evidence that one might become a public charge, such as “financial aid for postsecondary education.” *Id.*

89. Although the Policy Alert claims that it and the Final Rule only apply to applications postmarked on or after September 18, 2026, the Policy Alert’s section titled “Receipt (of Means-Tested Public Benefits)” demonstrates their retroactive impact. There, Defendants direct officers to consider the noncitizen’s application for, or certification or approval to receive, a benefit, separate and apart from a noncitizen’s actual receipt of the benefit after September 18, 2026. Thus, immigration officers are instructed to consider such application, certification, or approval to receive a means-tested public benefit, even if such actions occurred prior to September 18, 2026, unless an applicant withdraws or expresses a desire to withdraw that application or certification. However, as discussed further below, *see infra* at ¶¶ 128–129, 312, in practice, applicants cannot effectively disenroll or withdraw from certain means-tested public benefits. As such, the Final Rule and Policy Alert, in its effect, retroactively penalizes applicants for benefits they applied for and received prior to the Final Rule. Moreover, in a drastic departure from longstanding practice, the Policy Alert in this section also makes clear that the receipt of means-tested public benefits for a noncitizen’s child, relative, or household member can be weighed against the noncitizen applicant.

90. The Policy Alert contains a section entitled “Dependence on Means-Tested Public Benefits,” which incorrectly states that “[i]n codifying [PRWORA’s] immigration policy close in time to the enactment of the current iteration of INA 212(a)(4), USCIS believes that Congress intended these two statutes to address aliens’ dependence on means-tested benefits to meet their needs.” Policy Alert at 15. That section further states that “neither the statute nor relevant precedent decisions prescribe a primary dependence standard or consideration of only a narrow and specific list of public benefits for public charge inadmissibility determinations” and, as a result, “it is appropriate for officers to consider an alien’s [potential] dependence on *any* means-tested public benefits to meet his or her basic needs.” *Id.* (emphasis added). Thus, use of programs that Congress designed to supplement income and promote health and stability may now lead to determinations of public charge. And even more concerning, it is unclear what “potential dependence on any means-tested public benefits” even means. *Id.* The Policy Alert’s hypothetical public charge “scenarios” do not fix the problem. Indeed, the scenarios establish that use of a single means-tested public benefit, such as Medicaid, may be enough to deem an individual a public charge.

91. The Policy Alert also sets forth the categories of individuals subject to and exempt from the public charge ground of inadmissibility as well as categories of individuals exempt from needing affidavits of support. As to applicants relying on an affidavit of support from a sponsor, the Policy Alert states that “a sufficient Form I-864 does not eliminate the need to consider all of the factors of a public charge inadmissibility determination, and USCIS only considers it as one factor in the totality of the circumstances.” Policy Alert at 11. Moreover, USCIS may consider “whether the sponsor is actually willing to provide financial assistance” to the applicant. *Id.* at 12. This approach to sponsorship is a significant departure from prior practice, as affidavits of support will now carry less weight and will be subject to greater scrutiny. As to the public charge bond,

the Policy Alert confirms that “use of a single means-tested public benefit in any amount is sufficient for a breach.” *Id.* at 92.

H. The Final Rule and Policy Alert Violate the Administrative Procedure Act.

1. The Final Rule and Policy Alert Are Contrary to Law and in Excess of Statutory Authority.

A) The Final Rule and Policy Alert Conflict with the Meaning of the Statutory Term “Public Charge” and Are Not in Accordance with Law.

92. As discussed above, the term “public charge” has been a feature of U.S. immigration law since the nineteenth century and has consistently been understood to mean a person primarily dependent on government for subsistence. *See supra* at ¶¶ 30–36.

93. Defendants rescind the clear definitions and regulations codifying the historical and statutory meaning of public charge. Defendants expressly reject the coherent and well-established primary dependence standard and describe public charge as dependency with no clear limits. In fact, Defendants have impermissibly expanded the public charge definition to include any level of dependence on any means-tested public benefits. The Final Rule and Policy Alert set no meaningful outer bound on the type of information that might be relevant in predicting whether a person is likely to become a public charge or how that information should be assessed, aside from its undefined reference to the consideration of means-tested public benefits rather than any public benefits generally.

94. As discussed further below, the Final Rule and Policy Alert allow immigration officers to deny green cards or admission on public charge grounds based on even *de minimis* use of supplemental means-tested public benefits. This is an even weaker basis for rendering a person inadmissible on public charge grounds than was authorized by the 2019 Rule, which three circuit courts of appeals held to be contrary to law. Indeed, DHS concedes that it “believes that the current and/or past receipt of any means-tested public benefits is a key gauge in determining” a

noncitizens’ likelihood of dependence on the government and therefore whether they are inadmissible as a public charge. 90 Fed. Reg. 52,186. Betraying its claims of a neutral “totality of the circumstances” analysis, DHS’s proposed rule put a thumb on the scale by mandating that receipt of any means-tested public benefit is “almost always highly relevant” and a “key gauge” in the public charge analysis, *id.*, and this is precisely what the Final Rule did, *see also* Policy Alert at 27. The result is that DHS improperly treats public charge as an income test. These changes are contrary to history and Congress’s intent embodied in the INA, not in accordance with law, and exceed DHS’s rulemaking authority. *See New York v. United States Dep’t of Homeland Sec.*, 969 F.3d 42, 85 (2d Cir. 2020) (“DHS goes too far in assuming that all those who participate in non-cash benefits programs would be otherwise unable to meet their needs and that they can thus be categorically considered ‘public charges’”); *see also City & Cty. of San Francisco v. USCIS*, 981 F.3d 742, 757 (9th Cir. 2020) (“There is a floor inherent in the words ‘public charge,’ backed up by the weight of history.”) (quoting *Cook Cty. v. Wolf*, 962 F.3d 208, 229 (7th Cir. 2020)).

95. On at least three occasions—while debating ICFRA, IIRIRA, and the Border Security Bill—Congress considered and rejected proposals to alter the well-settled meaning of public charge to encompass receipt of non-cash supplemental benefits. 142 Cong. Rec. 24,313, 24,425 (1996); 142 Cong. Rec. S11,882 (daily ed. Sep. 30, 1996); S. Rep. No. 113-40, at 42, 63 (2013). The Final Rule and Policy Alert purport to instantiate *precisely* what Congress has thrice rejected.

96. For most of the relevant history of public charge, with exception to the 2019 Rule, the executive branch has also confirmed the meaning of public charge as primary dependence. *See supra* at ¶ 40 (discussing the United States Attorney General’s 1964 decision and the 1999 Guidance).

97. As evident from this history, the Final Rule and Policy Alert are impermissibly broad and contrary to the historical and statutory meaning of public charge. They sweep in applicants who are not remotely likely to become primarily dependent on the government for subsistence. The Final Rule and Policy Alert place no meaningful guardrails, and DHS concedes that they are meant to be broader than all previous rules and regulations. Courts held the 2019 Rule unlawfully overbroad, and the Final Rule and Policy Alert go further—now defining public charge to include any person based on their use of *any* means-tested public benefit (a term left open-ended) for *any* amount of time.

98. Courts, not agencies, interpret statutes. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 391, 412-13 (2024). The Second Circuit concluded that the statutory term “public charge” has a core, settled definition: it means primarily dependent on the government, *i.e.*, unable to support oneself and reliant on the government for subsistence. *New York*, 969 F.3d at 60, 65–73. The Ninth Circuit agreed. *City & Cty. of San Francisco*, 981 F.3d at 758. DHS has no authority to reject, circumvent or displace the statute’s meaning, and its attempted departure is due no deference.

99. Defendants are acting in excess of the statutory authority of the INA.

100. Although Defendants claim that DHS’s authority for issuing the Final Rule also comes from the Homeland Security Act of 2002 (“HSA”), nothing in the HSA grants the Secretary any authority to change or eliminate the definition of the statutory term “public charge.”

101. The Final Rule and Policy Alert are inconsistent with other statutes. They all but mandate that officers consider an applicant’s receipt of SNAP benefits when considering an applicant’s income and assets, even though Congress has expressly said that SNAP benefits do not constitute income or resources under any federal, state, or local law. 7 U.S.C. § 2017(b). And the

Final Rule and Policy Alert are in significant tension with Congress’s determination that several of the benefits that the Final Rule allows officers to consider as means-tested benefits in a public charge determination are excluded from the means-tested benefits for which the government can seek reimbursement from a noncitizen’s sponsor. 8 U.S.C. § 1183a note (excluding 11 categories of public benefits, including free school lunch, Head Start, emergency Medicaid, and public health assistance for immunizations from the requirement of sponsor reimbursement). Indeed, the Policy Alert simply asserts, without explanation or rationale, that the term “means-tested public benefit” under the Final Rule and Policy Alert “is distinct from, and should not be confused with,” the definition of that term for purposes of affidavits of support. Policy Alert at 14 n.57.

B) The Final Rule and Policy Alert Incorrectly Conflate DHS’s Misinterpretation of PRWORA with Public Charge.

102. The Final Rule justifies its abandonment of the 2022 Rule with an erroneous interpretation of PRWORA, which it conflates with the distinct public charge inadmissibility statute, the INA. The Policy Alert likewise justifies its expansiveness by relying on the same misinterpretation and conflation of PRWORA.

103. Defendants misinterpret PRWORA in concluding that Congress intended with PROWRA to equate any dependence on means-tested public benefits with being a public charge. *See, e.g.*, Final Rule, 91 Fed. Reg. 45,337, 45,339; Policy Alert at 5, 13, 15. As the Second Circuit found, PRWORA reflects Congress’s determination that noncitizen’ use of means-tested benefits is consistent with assuring noncitizens self-sufficiency. *New York*, 969 F.3d at 81-82. The Seventh and Ninth Circuits agreed. *See Cook Cty.*, 962 F.3d at 228–29 (describing how Congress’s exclusions of certain benefits to noncitizens in PRWORA were not “absolute”); *see also City & Cty. of San Francisco*, 981 F.3d at 751 (“[T]he fact that Congress delineated the factors relevant to the public charge determination at the same time it adjusted certain immigrants’ eligibility to

receive specific supplemental assistance strongly suggests that Congress did not intend for such assistance to be considered as one of the public charge factors”).

104. To achieve the goal of preventing overuse of benefits by noncitizens, PRWORA restricted eligibility for certain benefits, but made no changes to the INA’s provisions regarding the public charge ground of inadmissibility. Moreover, nothing in PRWORA suggests that Congress intended its restrictions to impliedly alter the public charge ground of inadmissibility.

105. PRWORA and public charge are two distinct statutory regimes operating in different contexts. PRWORA’s regulation of noncitizen eligibility for certain benefits does not equate to or evidence congressional intent to expand or redefine the public charge ground of inadmissibility. Defendants nonetheless conflate PRWORA with public charge. This error renders the Final Rule and Policy Alert contrary to law and arbitrary and capricious. *See SSM Litigation Group v. EPA*, 150 F.4th 593, 599–600 (D.C. Cir. 2025) (concluding that federal agency’s rescission of an existing rule based on erroneous legal justifications was not in accordance with law); *see also Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42–43 (1983) (holding that federal agency’s rescission of a requirement was arbitrary and capricious because the agency failed to present an adequate basis and reasoned explanation).

106. In recognition of core principles of federalism, PRWORA also permits States to use broader eligibility criteria when providing state and local benefits to noncitizens who do not qualify for federal benefits. 8 U.S.C. § 1621(d). For DHS to now penalize noncitizens for using state and local benefits that Congress chose to permit is nonsensical and contrary to the scheme established by PRWORA.

2. The Final Rule and the Policy Alert Are Arbitrary and Capricious.

A) The Final Rule’s Rescission of the 2022 Regulation Without Replacement Regulatory Text or Meaningful Limits Is Arbitrary and Capricious.

107. The Final Rule withdraws the 2022 regulation provisions that codified the long-established meaning of the statutory term “public charge” and fails to provide any replacement regulatory provisions. Instead, the Final Rule provides an overly broad framework without any clear limitations. This is not rectified or clarified by the Policy Alert, which similarly fails to provide any limitations. The Final Rule’s rescission without replacement is arbitrary and capricious because Defendants fail to supply reasoned analysis for the change, articulate a rational connection between the facts found and the choice made, address prior factual findings underlying the rescinded regulations, and account for the serious reliance interests engendered by the prior regulation.

108. Defendants also fail to supply a sufficiently reasoned explanation for their change of position. Defendants wrongly proffers that the change reverts to pre-1999 Guidance without acknowledging or rebutting contrary evidence available to the agency. First, because the 1999 Guidance reflected the long-established understanding of public charge to mean primary dependence on the government for subsistence, the Final Rule and Policy Alert are antithetical to the pre-1999 circumstances. Second, INS issued the 1999 Guidance “to counteract public confusion after IIRIRA and PRWORA,” *New York*, 969 F.3d at 70, and to reduce the negative public health consequences flowing from that confusion. Defendants fail to grapple with those facts, which are nearly identical to the harms that the Final Rule and Policy Alert will produce. Defendants’ justification for their change in position rests on speculation and erroneous legal interpretation and fails to consider evidence before it.

109. As discussed below, Defendants veer sharply away from past policies and practices, which engendered serious reliance interests, and fails to consider the significance and weight of

those interests and the consequences from the drastic changes in and uncertainty generated from the Final Rule.

110. The Final Rule and Policy Alert create an unjust system that invites bias in decision-making and will produce inconsistent and arbitrary outcomes. Defendants fail to adequately explain the rescission without replacement, leaving immigration officers without clear guidelines or constraints, which will inevitably lead to arbitrary enforcement. In the Policy Alert, Defendants also direct officers to negatively weigh factors previously accepted as promoting health and welfare, such as seeking health care or nutrition support while pregnant. Defendants also do not adequately explain why it did not make smaller adjustments or consider other alternatives rather than upend an entire system that noncitizens, mixed-status families, and Plaintiffs have relied upon for decades.

B) The Final Rule and the Policy Alert Are Arbitrary and Capricious Because They Rely on Defective Reasoning and Fail to Adequately Consider the Resulting Inconsistent Outcomes, the Retroactive Impacts, and the Significant Harms.

111. The Final Rule and Policy Alert are flawed, fail to consider important issues, are counter to the evidence before them, and fail to reasonably justify the creation of such enormous uncertainties for Plaintiffs and the entire nation.

112. The Final Rule and the Policy Alert are inconsistent and confusing in numerous respects. The Final Rule repeatedly and incorrectly claims that the Policy Alert is “nonbinding.” 91 Fed. Reg. 45,337, 45,338–39. However, the Policy Alert contradicts this claim by stating, for example, that it is “controlling” and “supersedes any related prior guidance.” Policy Alert at 1. The Final Rule and Policy Alert claim that the Policy Alert “help[s] guide, but not prescribe,” public charge inadmissibility determinations. 91 Fed. Reg. 45,385; Policy Alert at 9. However, the Policy Manual itself says it is binding, and the Policy Alert repeatedly directs immigration officers

to take various actions in mandatory terms. For example, the Policy Alert instructs officers to treat “likely at any time to depend on means-tested public benefits” as synonymous with “likely at any time to become a public charge.” Policy Alert at 13.

113. The Final Rule and Policy Alert also contain no limiting principle as to which means-tested public benefits are covered both for public charge inadmissibility determinations and the bond provisions, resulting in a lack of adequate notice to the regulated public. *See infra* at ¶ 174.

114. Defendants fail to reasonably justify why the Final Rule and Policy Alert swap the clear, easily applied standards of the 2022 Rule with an overly broad framework that permits individual officers to reach different conclusions based on materially similar facts. DHS recognized that additional guidance was necessary to instruct officers on implementing the Final Rule, including how to consider an applicant’s use of means-tested public benefits, yet the Policy Alert leaves central questions governing that consideration unanswered. For example, the Final Rule illogically demands that officers conduct research and apply “empirical data” as well as “relevant statistics” in reaching their determinations. But the Policy Alert provides no such guidance. It is unreasonable to expect immigration officers, already burdened by substantial backlogs, to do this empirical research without proper guidance and instructions.

115. Defendants also fail to reasonably justify their significant departure from prior practice. Defendants rely on a legally flawed interpretation of PRWORA and conflate it with the public charge statute. Defendants claim there are benefits to the changes but they cannot articulate them. Instead, Defendants use circular reasoning, stating that the Final Rule will result in a reduction in the number of “inadmissible” persons who enter the United States. Defendants do not provide any evidence in the record that when applying the 1999 Guidance or the 2022 Rule, DHS

struggled to identify or inappropriately granted admission or green cards to applicants who were, in fact, likely to become primarily dependent on the government for subsistence.

116. Defendants claim a “benefit” of the Final Rule would be a reduction in the number of noncitizens who rely on public benefits programs—despite the fact that Congress has made those benefit programs available to noncitizens—essentially stating that one of the goals of the Final Rule is disenrollment from public benefits programs. As discussed below, Defendants do not grapple with the immensely harmful downstream effects of reducing the use of benefits on health and economic outcomes. Defendants claim they wish to disincentivize immigration to the United States that is motivated by access to public benefits but fail to provide any evidence in the record that this is a problem. 91 Fed. Reg. at 45,342. Indeed, Defendants’ premise is factually baseless. The weight of the empirical literature finds little or no evidence that the availability or generosity of public benefits serves as a meaningful incentive influencing immigrants’ migration or location decisions.²⁴

117. Moreover, Defendants fail to reasonably justify departing from prior practice to sweep into the public charge ground of inadmissibility various tax credits, such as Earned Income Tax Credits (EITC), Child Tax Credits, and American Opportunity Tax Credits, which have never been considered benefits relevant to public charge. DHS’s consideration of these types of tax credits is arbitrary and capricious because it ignores that people making up to 400 percent of the federal poverty line would be included in the public charge analysis. Additionally, Defendants’ consideration of these tax credits ignore the fundamental structural differences between tax credits

²⁴ See, e.g., Madeline Zavodny, *Welfare and the locational choices of new immigrants*, Econ. & Fin. Policy Rev., Fed. Reserve Bank of Dallas, 2-10 (1997), <https://ideas.repec.org/a/fip/fedder/y1997iqip2-10.html>; Neeraj Kaushal, *New Immigrants’ Location Choices: Magnets without Welfare*, Journal of Labor Econs., Univ. of Chicago Press (2005), <https://doi.org/10.1086/425433>; Tsewang Rigzin, *Medicaid Expansion Through the Affordable Care Act and Interstate Mobility of Low-Income Immigrants: Welfare Magnet or Myth?*, Journal of Int’l Migration and Integration (2023), https://ideas.repec.org/a/spr/joimai/v25y2024i2d10.1007_s12134-023-01105-w.html.

and welfare benefits. *See Sorenson v. Sec. of Treasury*, 475 U.S. 851, 858 (1986) (classifying the EITC as a tax overpayment designed to reduce work disincentives, not to provide welfare assistance).

118. Defendants reach conclusions that are not rationally connected to the facts in the record. The Final Rule claims that its drastic change in position is needed because it will allow DHS to make more “reliable” determinations. 91 Fed. Reg. 45,324. Likewise, the Policy Alert claims it will help officers “faithfully and consistently make public charge inadmissibility determinations.” Policy Alert at 3. But nothing in the record or in Defendants’ explanations justify this unexplained optimism. To the contrary, Defendants entirely failed to consider the obvious possibility, if not likelihood, that rescission without replacement of the 2022 Rule’s defined framework and bright line rules would decrease rather than increase consistency and reliability of the public charge determinations made by many different immigration officers. Additionally, while Defendants concede that the chilling effect from the Final Rule (which includes the accompanying Policy Alert) could have broad consequences for public benefit usage, Defendants inexplicably resist the practical result of that impact despite the record evidence to substantiate it. *See, e.g.*, 91 Fed. Reg. at 45,360-62. For example, Defendants simply disagree that the Final Rule will cause an increased risk of communicable disease among noncitizens, despite the fact that Defendants admit the Final Rule will chill individuals and families from seeking public health benefits. Perversely, Defendants reconcile these two positions by asserting that the Rule does not prevent individuals from accessing benefits for which they are eligible—even though, in practical effect, the Rule forces individuals to choose between accessing benefits and their ability to adjust status. Because they put their head in the sand, Defendants fail to adequately account for the increased public health risks in the noncitizen population and the significant ripple effects.

119. As detailed further below, the Final Rule’s claimed “Regulatory Impact Analysis” fails to conduct a complete economic impact analysis, account for important issues, and quantify the many significant harms that Defendants admit will arise from the Final Rule.

120. Defendants agree that the Final Rule will cause immigrant families to disenroll from benefits, including Medicaid, CHIP, and food assistance programs. Even so, Defendants severely underestimate the Final Rule’s chilling effects, ignoring extensive and well-documented empirical evidence from prior public charge rules.

121. Although the 2025 NPRM acknowledges that chilling effect studies from 2016-2020 showed affected populations disenrolling from benefits at rates ranging from 4.1 percent to 48 percent, the Final Rule inexplicably asserts a range of 3.3 percent to 17.3 percent, even as it concedes that this range underestimates the likely chilling effect.

122. Compounding the underestimation, DHS uses 10.3 percent as its primary estimate, which is the midpoint between the underestimated low estimate (3.3 percent) and upper estimate (17.3 percent) to reach its predicted impact of 950,124 individuals disenrolling or forgoing enrollment in public benefits. This midpoint is not based on economic modeling that reflects behavioral responses to the policy changes around public charge. In reality, behavioral responses to public charge rulemaking should be expected to vary across programs due to differences in recertification frequency, benefit values, language access, and household versus individual program eligibility. DHS’s estimated percentage of individuals who forgo benefits does not include those who are eligible but currently not enrolled, or individuals who are expected to become eligible in future years (due to childbirth, disability, unemployment, aging or income loss). Thus, DHS fails to accurately incorporate or refute the evidence before it in the record and grossly underestimates the magnitude of the expected chilling effect.

123. Defendants fail to quantify the downstream effects or adequately analyze its economic impact, including the negative impacts on state and local programs and hospitals, the grave adverse public health consequences, the severity of the harms to local and state economies and businesses, and the bulk of the countervailing costs attributable to the Final Rule. Commenters opposed the 2025 Public Charge NPRM for each of those reasons, including because reducing federal funds to states for Medicaid, CHIP, SNAP, and SSI—an expected consequence of the Final Rule’s chilling effect—would significantly harm state and local economies. Some commenters estimated that the proposed rule would cause state economies to shrink by more than \$10 billion and that more than 100,000 jobs would be lost. Commenters noted that the loss of individual and business income could cause state and local tax revenues to fall by \$2 billion, making it harder for state and local governments to provide services like education and health care.²⁵ Defendants fail to adequately consider these economic analyses, instead providing conclusory responses to comments. Defendants also fail to adequately consider the downstream economic and human impacts. Defendants fail to adequately consider lower consumer spending by affected households and the commensurate reduction in state and local economic activities and tax revenue. Defendants relatedly provide no estimates of reduced business and provider revenues driven by reductions in SNAP and WIC, which directly affect local grocery retailers, food production, and food supply chains.

124. The Final Rule also does not include a federalism analysis in violation of Section 6(b) of Executive Order 13132. As discussed in this Complaint, the Final Rule has a significant

²⁵ See, e.g., American Public Health Association, Robert Wood Johnson Foundation, and Public Health Deans and Scholars’ Comments on 2025 Public Charge NPRM at 19, n. 95 (Dec. 19, 2025), https://hpmatters.publichealth.gwu.edu/sites/g/files/zaxdzs6671/files/2025-12/Public%20Charge%20NPRM%202025_FINAL_121825.pdf.

effect on local economic activity. The Final Rule’s conclusion that it “does not have federalism implications because it does not have substantial effects on the states” is entirely at odds with the facts.

125. Defendants fail to adequately consider the significant consequences of individuals forgoing and disenrolling from benefits. Even at the rate that DHS anticipates, the result will be devastating for health, educational, and financial outcomes for Plaintiffs and increased financial and operational burdens on Plaintiffs. Defendants do not adequately consider many of the longer-term costs on a population that will, as a result of the Final Rule, become sicker, poorer, and less educated. The Final Rule improperly dismisses these harms without rationale or explanation, essentially arbitrarily assigning them zero weight in the cost-benefit calculus. Defendants also fail to consider, despite substantiating evidence in the record, that the Final Rule will create a breach of trust with the government, a trust which local governments rely on to combat the spread of communicable diseases, homelessness, and hunger.

126. Defendants fail to consider alternative approaches, which would offer more effective ways to estimate local economic impacts—such as using research on multiplier effects for specific benefit programs.

127. Defendants fail to adequately analyze reliance interests and transition costs. Local governments, such as Plaintiffs, shape their Medicaid and CHIP eligibility determination systems around federal law, but Defendants did not consider how their attempted abandonment of the INA’s settled statutory meaning of public charge would disturb that reliance. Defendants likewise fail to adequately consider the investments Plaintiffs have made in educating the public on the contours of the longstanding public charge rule. Because the Final Rule and Policy Alert depart so dramatically from the prior regulatory regime, Plaintiffs must update information about public

charge and benefits use, which confuses beneficiaries, reduces trust in government programs (including health programs that require that trust to operate effectively), and requires that Plaintiffs invest anew in outreach education efforts. As public health and social safety net providers, Plaintiffs also have hundreds of staff—including benefits counselors, interpreters, and hospital staff—who serve Plaintiffs’ residents based on the statutory meaning of public charge articulated in the 2022 Rule. Defendants fail to consider these reliance costs of states and localities.

128. Defendants also fail to adequately consider the serious reliance costs to immigrant families. Individual noncitizens and mixed-status families have made medical, educational, employment, and family-planning decisions in reliance on the 2022 Rule and the stable, longstanding definition of the term “public charge” that it codified. Families have enrolled pregnant women and children in Medicaid and CHIP for prenatal and other medical care, applied for food and housing assistance, and accepted federal financial assistance to pay for college, shaping their entire lives around one consistent understanding. Defendants fail to adequately consider and quantify those reliance costs. Defendants’ unreasonable expectation that people can disenroll between issuance of the Final Rule and its effective date is not rationally connected to the facts and untethered to the realities on the ground, as Defendants fail to consider the difficulties associated with disenrollment, *i.e.*, that some benefits cannot be disenrolled from or there is no clear disenrollment process. *See infra* at ¶ 129. Moreover, the Final Rule and Policy Alert ignore that some families have made life decisions based on the availability of means-tested public benefits, and the window of time to disenroll is unreasonable given these weighty reliance interests.

129. Moreover, Defendants fail to consider that the Final Rule and the Policy Alert have retroactive effects that are causing and will cause harm. *Bowen v. Georgetown Univ. Hosp.*, 488

U.S. 204, 208-209, 220 (1988); *Landgraf v. USI Film Prods.*, 511 U.S. 244, 293 (1994). For example, the Final Rule and the Policy Alert state that means-tested benefit programs applied for prior to the effective date will not count against a noncitizen if they disenroll or seek to disenroll before the effective date. But Defendants fail to consider that some so-called means-tested public benefits such as the Earned Income Tax Credit and free school lunch cannot be “disenrolled” from. As a practical matter, many other programs only offer opportunities for disenrollment on an annual or semiannual basis, and there are certain benefit programs that do not have any or do not have clear disenrollment processes. Expecting individuals to disenroll within such a short time before the effective date of the Final Rule and Policy Alert is unreasonable. Coupled with their breadth and their abandonment of decades of clear, uniform agency standards, the Final Rule and the Policy Alert “take[] away or impair[] vested rights” and “attach[] a new disability in respect to . . . considerations already past.” *National Mining Ass’n v. United States DOI*, 177 F.3d 1, 8 (D.C. Cir. 1999). The Final Rule and Policy Alert have “unreasonable secondary retroactivity” that alters the future “in a manner that makes worthless substantial past investment incurred in reliance upon the prior rule.” *Bowen*, 488 U.S. at 220 (Scalia, J., concurrence). Because the Final Rule and the Policy Alert operate retroactively, without considering the reality of benefit disenrollment, and fail to recognize or consider their retroactive impacts, the Final Rule and Policy Alert are arbitrary and capricious.

130. Additionally, since 1999, the benefits use of a family member has never been weighted negatively against a noncitizen applicant—not even in the 2019 Rule. Thus, the Final Rule’s claim that the reliance interest is not as strong because of the 2019 Rule is not rationally connected to the facts. The Final Rule and Policy Alert also ignore that certain federal programs such as SNAP and Medicaid already assess eligibility on an individual basis and allocate money

only to eligible members of households. The Final Rule and Policy Alert penalize a program-eligible applicant for their eligible family member's receipt of benefits even though that applicant has already been excluded from the benefits calculation. The Final Rule and Policy Alert undermine family stability and depart from this nation's recognition across many administrations that U.S. citizen children and other eligible family members should be free to access public programs without jeopardizing a loved one's immigration status.

131. The Final Rule and Policy Alert also fail to adequately consider their impact on family well-being and vulnerable populations. Commenters opposed the 2025 NPRM because it would harm families, including children (many of them U.S. citizens) and pregnant women. DHS argues it is essentially reverting the public charge determination to the pre-1999 Guidance status quo. However, Defendants fail to adequately consider the justification and reasoning for the 1999 Guidance. The 1999 Guidance sought to ameliorate the enormous confusion that resulted from the 1996 enactments of PRWORA and IIRIRA, which chilled eligible noncitizens' access to benefits and, in turn, led to significant public health consequences. DHS's failure to acknowledge that a return to the pre-1999 regulatory regime will foster the very same confusion makes the Final Rule and accompanying Policy Alert arbitrary and capricious.

132. The Final Rule and Policy Alert ignore these harms and fail to fully consider the enormous costs they will impose on families with noncitizen members, including mixed-status families with noncitizen and U.S. citizen members.

133. The Final Rule and Policy Alert also fail to account for important differences across programs, including recertification frequency, benefit value, language access, perceived immigration risk, and whether eligibility is determined at the household or individual level. All of

these factors could lead to substantially different chilling effects across different programs, including Medicaid, SNAP, WIC, and housing assistance.

C) The Final Rule and Policy Alert Are Arbitrary and Capricious, as They Do Not Adequately Address That Supplemental Supports Help Maintain a Healthy and Stable Nation and Do Not Demonstrate Dependency.

134. The longstanding definition of “public charge,” which the Final Rule would upend, ensures that people, including immigrants, are able to participate in essential federal, state, and local benefits programs for which they are eligible that provide supplemental assistance to further public health, nutrition, housing stability, educational, and other public policy goals.

135. As discussed further below, receipt of limited governmental assistance, particularly in the form of food, housing, health insurance subsidies, and education, including state and local benefit programs that Plaintiffs administer, enables all people, including immigrants, their children, and their other family members, to maintain employment, continue healthy and stable lives, and contribute fully to federal, state, and local economies. These limited benefits help citizens and noncitizens alike achieve the stability necessary to support themselves—a condition plainly inconsistent with the state of primary dependence that Congress, courts, and regulators have long understood the term “public charge” to mean.

136. For this reason, the definition of “public charge” has never been understood to encompass temporary receipt of these benefits, and while the Final Rule and Policy Alert assert that immigration officers can consider the duration and recency of the receipt, they neither set limits precluding officers from determining someone a public charge based on their receipt nor provide intelligible standards.

137. The Second Circuit found that programs such as SNAP, Medicaid, and housing assistance “are designed to provide supplemental support, rather than subsistence, to a broad swath

of the population.” *New York*, 969 F.3d at 84. “[T]hese programs sweep more broadly than just families on the margin, encompassing those who would no doubt keep their families fed and housed without government support but are able to do so in a healthier and safer way because they receive supplemental assistance.” *Id.* at 85 (citing *Cook Cty.*, 962 F.3d at 232). “Accepting help that is offered to elevate one to a higher standard of living, *help that was created by Congress for that precise purpose*, does not mean a person is not self-sufficient – particularly when such programs are available not just to persons living in abject poverty but to a broad swath of low – and moderate-income Americans, including those who are productively employed.” *Id.* (emphasis in original).

138. Further, DHS’s interpretation of public charge in the Final Rule and Policy Alert to encompass supplemental non-cash supports without clear limitations rests on unsupported speculation, based on “categorical assumptions [that] run counter to the realities of th[ose] non-cash benefits” and thus counter to the evidence before DHS. *Id.* at 83.

139. DHS ignores this important aspect of the problem, rests its decision-making on faulty assumptions counter to the evidence, and fails to provide a reasonable explanation for its change in policy. Accordingly, the Final Rule and Policy Alert are arbitrary and capricious.

1) Food Programs Like SNAP Provide Supplemental Support, Prevent Health Problems, Promote Healthy Eating Habits, and Are Not a Proxy for Dependency.

140. Supplemental nutrition benefits are available to a wide range of households with low and moderate incomes, promote positive health outcomes, and prevent conditions like obesity, diabetes, and malnutrition, which can limit an individual’s ability to work. These benefits offer targeted and crucial assistance to working families.

141. SNAP is a federal nutritional supplement program that is overseen by USDA but administered in large part at the state and local levels. SNAP benefits are available to low-income residents for purchasing nutritional staples, such as bread and cereals, fruit and vegetables, meats, and dairy products.²⁶ Receiving SNAP benefits is associated with better self-reported health as well as a lower risk of heart disease and obesity.

142. More than 38 percent of SNAP recipients nationally are in working families.²⁷ Approximately 10.6 million adults live in households that receive SNAP, and they mostly work full-time schedules.²⁸ The SNAP program has consistently reduced poverty among its participants, including children.²⁹

143. As the Second Circuit noted, supplemental food benefits such as SNAP “are intended for all those whose “financial resources . . . are determined to be a substantial limiting factor in permitting them to obtain a *more nutritious* diet.” *New York*, 969 F.3d at 84 (quoting Food and Agric. Act of 1977, Pub. L. No. 95–113, § 1301, 91 Stat. 913, 962; citing 7 C.F.R. § 273.9(a)) (emphasis in original). “Because SNAP is not intended only for those who might otherwise face starvation, the program is open to households with incomes exceeding the federal poverty

²⁶ See *Supplemental Nutrition Assistance Program (SNAP)*, Off. of Temp. & Disability Assistance, Frequently Asked Questions, <http://otda.ny.gov/programs/snap/qanda.asp#noncitizen>.

²⁷ New York: Supplemental Nutrition Assistance Program, Center on Budget and Policy Priorities (Jan. 21, 2025), https://www.cbpp.org/sites/default/files/atoms/files/snap_factsheet_new_york.pdf.

²⁸ Taml Luhby, *More Amazon and gig workers are turning to SNAP and Medicaid to make ends meet, study finds*, CNN <https://www.cnn.com/2026/07/23/economy/mcicaid-snap-amazon-gig-workers> [archived at <https://perma.cc/X75K-3CJD>].

²⁹ *Supplemental Poverty Measure Shows State-Level Impact of Food Stamps*, U.S. Census Bureau (Oct. 25, 2019), <https://www.census.gov/library/stories/2019/09/supplemental-poverty-measure-shows-state-level-impact-of-food-stamps.html> [archived at <https://perma.cc/2UBS-XX34>].

guideline,” and thus covers large numbers of individuals that, “far from being incapable of productive employment, work for some of America’s largest corporations.” *Id.*³⁰

2) Use of Health Insurance Programs, Which Increases Access to Preventative Healthcare and Treatment, Does Not Demonstrate Dependency.

144. “[I]n this country, access to private healthcare depends for many people on whether an employer offers coverage.” *New York*, 969 F.3d at 84.

145. Health insurance programs, like Medicaid and CHIP, expand coverage to low-income individuals and families who may otherwise be uninsured. Having access to health insurance increases the likelihood that individuals will seek medical care regularly, receive recommended vaccinations, and receive preventative and potentially life-saving treatment. In contrast, individuals without insurance are more likely to wait to seek healthcare until they are sicker, harder to treat, and more likely to require more expensive emergency services and hospitalizations.

146. Most adults receiving Medicaid are employed and working either full- or part-time.³¹ Nearly 14 million adults who worked at some point in 2024 were enrolled in Medicaid.³²

147. Medicaid’s role is particularly important for vulnerable populations and populations with specialized health care needs. Studies have shown that expanded Medicaid access

³⁰ See also *SNAP Helps Millions of Workers in Low-Paying Jobs*, Ctr. on Budget and Policy Priorities (July 30, 2024), <https://www.cbpp.org/research/food-assistance/snap-helps-millions-of-workers-in-low-paying-jobs>; Elvia Malagon and Lauren FitzPatrick, *Walmart, Amazon and CPS top list of employers where Illinois workers still need SNAP benefits*, CHICAGO SUN-TIMES (Feb. 6, 2026), <https://chicago.suntimes.com/news/2026/02/06/walmart-amazon-cps-top-employers-illinois-workers-still-need-snap-benefits-trump-work-requirements-lose-benefits>.

³¹ *Understanding the Intersection of Medicaid and Work*, KFF, (May 30, 2025), <https://www.kff.org/medicaid/understanding-the-intersection-of-medicaid-and-work-an-update/> [archived at <https://perma.cc/SY8V-DXZP>].

³² Tamr Luhby, *More Amazon and gig workers are turning to SNAP and Medicaid to make ends meet, study finds*, CNN (July 23, 2026), <https://www.cnn.com/2026/07/23/economy/medicaid-snap-amazon-gig-workers> [archived at <https://perma.cc/X75K-3CJD>].

is associated with improvement in public health, and in particular with lower mortality rates, better pregnancy and birth outcomes, and higher cancer detection rates.

148. CHIP covers services such as check-ups, vaccinations, blood tests, and X-rays for infants and children, which help to prevent them from developing a lifetime of serious diseases and medical conditions.

3) Use of Housing Assistance Programs, Which Decrease Displacement and Homelessness, Does Not Equate to Dependency.

149. Housing benefits programs are “intended to ensure ‘a decent home and a suitable living environment for all persons, but principally those of low *and moderate* income.’” *New York*, 969 F.3d at 84 (citing Hous. and Cmty. Dev. Act of 1974, Pub. L. No. 93-383, § 101(c)(3), 88 Stat. 633, 634) (emphasis in original). Indeed, as the Second Circuit pointed out, “while the majority of those using housing programs are low-income families, benefits remain available to those earning up to 80% of the area median income.” *Id.* (citing *M.T.R. J. App.* 164; 42 U.S.C. § 1437a(b)(2)(A)). “It makes little sense to treat the mere receipt of housing benefits as proof of inability to survive by one’s own efforts when the program is intended for, among others, people who can and do earn moderate incomes.” *Id.*

150. Affordable housing programs decrease housing displacement and homelessness and allow recipients to live in a stable physical environment, which in turn has compounding impacts on public health. *See, e.g. infra* at ¶¶ 273–75.

151. Recipients of public housing benefits often work and do not necessarily receive other governmental assistance.

152. Affordable housing programs also promote employment by providing beneficiaries with stable accommodation, which often provides access to reliable transportation. Individuals

who receive housing assistance are less likely to face chronic tardiness or absenteeism at work or school.

4) Educational Supports for Children Do Not Equate to Dependency and Are Crucial to the Nation’s Success.

153. The Final Rule and Policy Alert create enormous uncertainties, ambiguously sweeping in even early childcare and other educational supports that have never been considered for public charge determinations, even under the 2019 Rule. *See, e.g.*, Policy Alert at 65–66 (considering child’s receipt of free school lunches in his mother’s public charge determination); *see infra* at ¶¶ 241–252. And the Final Rule and Policy Alert fail to provide an intelligible standard for determining whether such programs are in fact means-tested public benefits.

154. Strong evidence shows that early childhood education is foundational to a child’s future success. Quality early childhood programs have been shown to be associated with higher academic achievement, reduced grade retention, and a greater likelihood of graduating high school on time.

155. The educational opportunities offered by these programs benefit not only the individual students enrolled, but also their future elementary schools, teachers, and classmates.

156. Use of these and other educational and childcare programs is inconsistent with the idea of primary dependency, as they connect families to services and resources that promote long-term self-sufficiency. By making reliable care available, these programs enable parents to enter and remain in the labor force.

D) The Lack of a Fair and Transparent Process for the Final Rule and Policy Alert Demonstrates the Arbitrary and Capricious Nature of DHS’s Actions.

157. The rulemaking process and the events leading up to the release of the Final Rule and Policy Alert demonstrate the arbitrariness and capriciousness of DHS’s actions.

158. DHS acted arbitrarily and capriciously through issuing a 99-page Policy Alert that it did not make available for notice and comment. Additionally, DHS is seeking to bypass necessary congressional oversight and is acting arbitrarily and capriciously through effectively evading the 60-day rule for major rulemaking under the Congressional Review Act, which requires that major rules take effect after 60 days. The Final Rule wipes the slate clean with the rescission of the regulatory texts surrounding the definition of public charge, and then fills the gap with the accompanying subregulatory guidance—which will be in place for fewer than 60 days before the effective date.

159. DHS issued the 99-page Policy Alert just 30 days before its effective date and that of the Final Rule, which is not sufficiently fair notice to the regulated public to make the drastic changes required.

160. The public charge inquiry and the issues associated with it are well known to be complex. *New York*, 969 F.3d at 84 (acknowledging that the questions on public charge before the Second Circuit were complex). Despite knowing the complexities around public charge, its long history, and the proposed sudden change in its policies, DHS conducted its rulemaking on public charge in a rushed and arbitrary manner. Although Plaintiffs and others impacted by the Final Rule submitted comments, those comments could have included more information with more time. The Final Rule claims commenters did not provide the agency quantitative analyses or research that were exactly on point; however, DHS did not give commenters sufficient time to respond in that manner. It is unreasonable, arbitrary, and capricious to expect extensive quantitative analysis or research on such a complex issue in merely 30 days.

161. Additionally, despite taking seven months from the end of the public comment period to issue the Final Rule, Defendants failed to conduct a complete economic impact analysis. *See supra* at ¶¶ 119–23.

E) To the Extent the Policy Alert Imposes New Obligations, Defendants Failed to Observe Required Procedure.

162. As alleged above, the Policy Alert flows from and implements the Final Rule, and the Policy Alert is contrary to law and arbitrary and capricious for the same reasons as the Final Rule.

163. In the alternative, the Policy Alert is a legislative rule that imposes independent binding legal obligations.

164. Contrary to the Final Rule’s claim that the Policy Alert is “nonbinding,” guidance published in the USCIS Policy Manual is binding on immigration officers.³³ Indeed, the USCIS states on its website that the Policy Manual contains the “official policies of USCIS” and “is to be followed by all USCIS officers in the performance of their duties.”³⁴ The Policy Alert also states that it is “controlling.” Policy Alert at 1. To the extent that the Policy Alert imposes new obligations, substantively amends an existing regulatory regime with the force and effect of law, and produces concrete legal consequences, the Policy Alert is a legislative rule.

165. Even if it were considered on its own, the Policy Alert is contrary to law and arbitrary and capricious for the reasons stated above, including because it adopts an interpretation of public charge that is inconsistent with the plain meaning of the statute as written by Congress and interpreted by the courts and is not an exercise of reasoned agency decision-making.

³³ *Policy Manual*, U.S. Citizenship and Immigration Services (Sep. 11, 2026), <https://www.uscis.gov/policy-manual> [archived at <https://perma.cc/AN6S-TANW>].

³⁴ *Id.*

166. Moreover, the Policy Alert is independently unlawful because Defendants seek to circumvent the rule of law and a fair implementation process through issuance of the Policy Alert without notice and comment. To the extent that the Policy Alert is a legislative rule, Defendants are acting unlawfully by issuing the Policy Alert without engaging in the notice and comment rule making and instead relocating substantive regulatory decisions to subregulatory “policy alerts” and “guidance.”

167. To the extent that the Policy Alert is a substantive, legislative rule, Defendants are seeking to bypass necessary congressional oversight through evading the 60-day rule for major rulemakings under the Congressional Review Act, which requires that major rules take effect after 60 days.

168. Executive Order 12866, which provides for presidential review of agency rulemaking via the Office of Management and Budget’s Office of Information and Regulatory Affairs, states that the public’s opportunity to comment, “in most cases should include a comment period of not less than 60 days.” Exec. Order No. 12866, § 6(a), 58 Fed. Reg. 51,735 (Oct. 4, 1993).

169. Defendants did not publish the Policy Alert as a proposed rule or provide Plaintiffs or other interested members of the public with notice and an opportunity to comment before its issuance.

170. Thus, in the alternative, to the extent that Defendants promulgated and implemented a legislative rule without observing the procedures required by the APA, Defendants violated 5 U.S.C. §§ 553 and 706(2)(D), and the Policy Alert should be vacated and set aside on that independent basis.

I. The Final Rule and Policy Alert Harm Plaintiffs.

171. The Final Rule and Policy Alert have caused, are causing, and will cause harm to Plaintiffs. The resulting benefits disenrollment will undermine public health, increase food insecurity and housing instability, increase costs to medical and hospital systems including those owned and operated by Plaintiffs, and drive up costs for uncompensated healthcare system and shelter services. The Final Rule and Policy Alert will also harm Plaintiffs' economies, and they will inflict substantial and burdensome administrative costs on Plaintiffs' institutions. Additionally, they will undermine Plaintiffs' public health and education efforts.

1. The Final Rule and Policy Alert Have and Will Continue to Have a Broad Chilling Effect on Public Benefits Enrollment.

172. Defendants are forcing residents to choose between forgoing supplemental public benefits or risking their and/or their loved ones' immigration statuses. Millions of immigrants are and will be frightened and confused about the potential consequences of applying for benefits and will forgo public assistance altogether, even if the Final Rule and the Policy Alert do not implicate their immigration status. The same is true for their U.S. citizen family members.

173. As discussed above, the Final Rule concedes that it will cause a chilling effect. DHS uses 10.3 percent as its primary estimate for that chilling effect, which is a gross and arbitrary underestimate.

174. With respect to the 2019 Public Charge Rule, Plaintiffs' residents began disenrolling from multiple public benefit programs in early 2018 after the press published a leaked early version of the proposed rule. Residents disenrolled out of fear that participation in programs covered by the leaked draft (and, subsequently, by the 2018 Notice of Proposed Rulemaking and the 2019 Rule) would trigger adverse immigration consequences. For example, New York City saw a significant decline in SNAP enrollment for households with a noncitizen head of household

associated with the 2019 Rule. San Francisco likewise saw a decline of 16 percent in SNAP³⁵ enrollment for households with noncitizen members. New York City’s Mayor’s Office of Immigrant Affairs (“MOIA”) also confirmed noncitizens’ benefit disenrollment and fear of seeking out medical care in response to proposed changes to public charge inadmissibility.

175. In response to the 2025 NPRM, and even before the publication of the Final Rule, the chilling effect had already begun. Earlier this year, families fearing that use of public benefits will have adverse immigration consequences were already retreating from public benefits programs, including withdrawing their children from vital programs.³⁶ The breadth of the Final Rule and Policy Alert have exacerbated the chilling effect, and the number of immigrants forgoing critical public benefits will only increase.

176. Fear and concern about the Final Rule and Policy Alert are already having a broad and negative impact on the health of noncitizens and their families in New York City. Noncitizens and their families are avoiding or refusing health care benefits and services to which they are entitled. And some individuals and families who would not be affected by the Final Rule and Policy Alert are declining care benefits and services to which they are entitled.

177. For example, frontline staff members from NYC Health + Hospitals, New York City’s municipal, publicly funded hospital system, have reported instances in which clients have declined to enroll in public benefits and services due to a stated fear of changes in the public charge definition and determination. Likewise, New York City-based community health center staff have advised NYC Department of Health and Mental Hygiene managers about an increase in no-shows

³⁵ In California, SNAP is referred to as CalFresh. For consistency and to avoid confusion, this Complaint refers to CalFresh as SNAP.

³⁶ See, e.g., *Immigrant families in California fear losing benefits amid public charge confusion*, MSN (Mar. 23, 2026), <https://www.msn.com/en-us/news/other/immigrant-families-in-california-fear-losing-benefits-amid-public-charge-confusion/ar-AA1ZfECK?ocid=BingNewsVerp>.

and canceled appointments for clinic visits following the issuance of the Final Rule. The New York City Department of Social Services has also seen a decline in SNAP enrollment for households with a noncitizen head of household after the Final Rule was issued.

178. Even under DHS’s conservative estimate of the chilling effect, the Final Rule and Policy Alert will lead thousands of Plaintiffs’ residents to disenroll from public benefits for which they are otherwise eligible, with deleterious effects on public health, welfare, and safety. Several Plaintiffs have locally funded safety-net systems or programs—which are intended to supplement, but not supplant, federal benefits programs—that will face substantially heightened costs to meet the needs of these residents.

179. The Final Rule will harm children with at least one noncitizen parent, regardless of the child’s citizenship status. Of the 10.5 million U.S. children with at least one immigrant parent, approximately 9.2 million are American citizens by birth.³⁷ One in four U.S. children, the vast majority of whom are U.S. citizens, has an immigrant parent.³⁸

180. Children thrive when their families thrive. When the immigrant parents of citizen children disenroll or decline to enroll in public benefits, their children will suffer too. Experts estimate that about 13.4 million Medicaid/CHIP enrollees live in households with at least one noncitizen, including 5.9 million U.S. citizen children, who may experience increased disenrollment due to fear and misunderstanding of the public charge rule.³⁹ Under modeled

³⁷ Jeanne Batalova, Michael Fix & Mark Greenberg, *Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families’ Public Benefits Use*, Migration Pol’y Inst., 4, 23 (June 2018), <https://www.migrationpolicy.org/sites/default/files/publications/ProposedPublicChargeRule-Final-Web.pdf> [archived at <https://perma.cc/W3TD-VFG8>].

³⁸ Drishti Pillai, Akash Pillai, and Samantha Artiga, *Children of Immigrants: Key Facts on Health Coverage and Care*, KFF (May 19, 2026), <https://www.kff.org/racial-equity-and-health-policy/children-of-immigrants-key-facts-on-health-coverage-and-care/> [archived at <https://perma.cc/9MV7-5Q42>].

³⁹ Comment on *Notice of Proposed Rulemaking: Public Charge Ground of Inadmissibility*, Georgetown University Health Policy Inst. Ctr. for Children and Families, 4 (Dec. 19, 2025), <https://ccf.georgetown.edu/wp->

disenrollment scenarios of 10 to 30 percent, experts estimate between 1.3 and 4.0 million individuals could lose coverage, including from 600,000 up to 1.8 million citizen children.⁴⁰

181. Based on an analysis of American Community Survey data, which is known to systematically undercount Medicaid enrollment, King County estimates that tens of thousands or more benefit recipients in its jurisdiction will be chilled.

182. The City of Seattle, located in King County, is the most populated city in King County. Seattle expects a chilling effect on SNAP and Medicaid enrollment. Seattle funds 25 food banks that would see increased demand if SNAP enrollments are chilled. Indeed, the food banks already experienced this during the government shutdown in 2025 when SNAP benefits were paused.

183. DHS is aware of the devastating impact the Final Rule and Policy Alert will have on residents who depend on the public benefits newly included in the public charge determination, including both residents who are directly subject to the Final Rule and those who are not. 91 Fed. Reg. at 45,361–70. But awareness is not analysis, and Defendants fail to adequately consider the harm associated with both groups.

184. Defendants concede that the Final Rule (which encompasses its accompanying Policy Alert) will affect Plaintiffs' residents regardless of whether the Final Rule directly applies to their immigration status. Additionally, DHS concedes that the chilling effect could have consequences and impacts on public benefit usage. 91 Fed. Reg. at 45,361–62. Even at the rate

content/uploads/2025/12/FINAL-CCF-Comments-on-Public-Charge-NPRM-2025.pdf; Samantha Artiga et al., *Potential 'Chilling Effects' of Public Charge and Other Immigration Policies on Medicaid and CHIP Enrollment*, KFF (Dec. 2, 2025), <https://www.kff.org/medicaid/potential-chilling-effects-of-public-charge-and-other-immigration-policies-on-medicare-and-chip-enrollment/> [archived at <https://perma.cc/V6NZ-V4CN>].

⁴⁰*Id.*

that DHS anticipates, the result will be devastating for health, educational, and financial outcomes for Plaintiffs and increased financial and operational burdens on Plaintiffs.

2. The Final Rule and Policy Alert Will Result in Negative Public Health Outcomes.

A) The Final Rule and Policy Alert Will Harm Public Health.

185. The NYC Department of Health and Mental Hygiene (“NYC DOHMH”) researchers recently published and preprinted the results of a study modeling the likely impacts of the Final Rule on primary care access and premature mortality. The study estimated that the chilling effects caused by the Final Rule will reduce primary care access by 4.1 to 9.9 percent over five years, reduce doctors’ visits by 5.1 to 12.2 percent over five years, and increase premature mortality by 4.4 to 10.6 percent over five years, among New York City immigrants under age 65 and US citizen children in mixed-status households.⁴¹

186. Millions of Plaintiffs’ residents rely on enrollment in health insurance programs like Medicaid and CHIP to help pay for the medical care that Plaintiffs provide.

187. In January 2026, Medicaid provided comprehensive insurance coverage to about 6.7 million New Yorkers.⁴² Of those New Yorkers, approximately 3.8 million (or about 56.5 percent) were New York City residents.⁴³ More than one third of Medicaid enrollees statewide are children.⁴⁴ New York State provides coverage to eligible children through its own programs, such

⁴¹ Kaveri Nadhamuni et al., *The 2026 public charge rule and long-term health impacts among NYC immigrants: a simulation study* (July 17, 2026), <https://www.medrxiv.org/content/10.64898/2026.07.23.26358686v1.full-text> [archived at <https://perma.cc/A4HR-AWS4>].

⁴² *NYS Medicaid Enrollment Databook by Month*, New York State Dep’t of Health (July 2026), https://www.health.ny.gov/health_care/medicaid/enrollment/docs/by_resident_co/current_month.htm [archived at <https://perma.cc/2DGK-25XL>].

⁴³ *Id.*

⁴⁴ *New York Medicaid Enrollment by Eligibility Group*, United Hosp. Fund (May 23, 2023), <https://uhfnyc.org/our-work/initiatives/medicaid-institute/dashboards/ny-eligibility-category/> [archived at <https://perma.cc/9TYQ-WKBY>].

as Child Health Plus (“CHP”), as well as through Medicaid.⁴⁵ Over 230,000 children in New York City are covered by CHP, and approximately 42 percent of all CHP enrollees statewide live in New York City.⁴⁶

188. In New York City, DOHMH operates ten public health clinics that provide low to no-cost services to patients to ensure that New Yorkers have access to these services regardless of their ability to pay. These clinics are a critical source of care for foreign-born New York City residents. Both DOHMH and NYC Health + Hospitals receive reimbursements from Medicaid. NYC Health + Hospitals, DOHMH, and New York City Department of Social Services (“NYC DSS”) assist potential beneficiaries with applying for Medicaid and CHIP/CHP.

189. Based on Defendants’ conservative projection that approximately 10 percent of individuals residing in households with noncitizens will disenroll from public benefits, NYC Health + Hospitals estimates that over 16,000 of its patients enrolled in Medicaid or CHP may disenroll out of concern about the Final Rule and Policy Alert. NYC Health + Hospitals expects that patients may use fewer preventative services, resulting in a downstream increase of high-severity and inpatient services over time if patients believe their use of public benefits could endanger their ability to attain immigration relief in the future, or if they believe it may impact the ability of a household member to attain immigration relief in the future. Each of these responses has detrimental consequences for New York City.

190. Through the Chicago Department of Public Health (“CDPH”) and the City’s partnerships with community-based health centers, Chicago offers a wide variety of preventative, treatment, and health educational services. CDPH receives reimbursements from Medicaid for

⁴⁵ *Total Enrollment by County Report for March 2026*, Child Health Plus, New York State Dep’t of Health, https://www.health.ny.gov/statistics/child_health_plus/enrollment/docs/2026-03.pdf (accessed Sep. 11, 2026).

⁴⁶ *Id.*

administrative costs and as a medical services provider. Chicago also seeks Medicaid reimbursement for the Chicago Fire Department, which provides ambulance transportation services to residents, regardless of income and insurance status. CDPH and its Department of Family and Support Services assist potential beneficiaries with applying for Medicaid and CHIP. According to state enrollment data from 2025, over 950,000 Chicago residents—close to 25 percent of the City’s population—are enrolled in Medicaid.⁴⁷

191. San Francisco administers myriad public benefits that promote the health of the City’s most vulnerable residents. For example, the San Francisco Human Services Agency (“SFHSA”) administers Medicaid⁴⁸ at the local level. As of December 2025, approximately 45 percent of all Medicaid enrollees in San Francisco—over 90,000 individuals—lived in households with at least one noncitizen. The City of San Francisco estimates that 33 percent of Medicaid enrollees in San Francisco receive some aspect of their medical care through San Francisco’s Department of Public Health (“SFDPH”).

192. The San Francisco Department of Disability and Aging Services (“SFDAS”) administers the In-Home Supportive Services (“IHSS”) program, a component of Medicaid that provides personal care and domestic services to people who are aged, blind, or disabled and live in their own houses. In December 2025, there were an estimated over 3,000 noncitizen recipients of IHSS services in San Francisco.

⁴⁷ *Medicaid Coverage*, Chicago Health Atlas, <https://chicagohealthatlas.org/indicators/MCD?tab=map> (accessed Sep. 11, 2026).

⁴⁸ In California, Medicaid is referred to as Medi-Cal, which is a program that combines federally funded Medicaid with state-only funded pathways to provide coverage for low-income residents, adapting eligibility parameters based on federal guidelines and state-specific legislative expansion. For consistency and to avoid confusion, this Complaint refers to Medi-Cal as Medicaid, and allegations concerning Medicaid for California refer to both the federal and state components of Medi-Cal.

193. Based on Defendants’ conservative projections that 10 percent of individuals residing in households with noncitizens will disenroll from public benefits, San Francisco expects to see close to 9,400 people disenroll from Medicaid. And San Francisco expects to see at least hundreds of individuals withdraw from IHSS.

194. Santa Clara owns and operates the largest public health and hospital system (hereafter “Santa Clara Health System”) in Northern California and one of the largest in the nation. The Santa Clara Health System’s responsibilities include routine, preventive, and emergency medical care across its four acute-general hospitals and 15 major health centers and clinics; preventing the spread of infectious diseases such as tuberculosis (TB) and HIV; maintaining maternal, child, and family health; operating a health plan that provides medical coverage and insurance to a quarter-million people, including through Medicaid; offering mental health and substance use services and coverage; and otherwise promoting healthy communities. More than 350,000 Santa Clara residents are enrolled in Medicaid, of whom more than 150,000 (or about 46 percent) are noncitizens or belong to households with at least one noncitizen member.

195. Through Public Health – Seattle & King County’s (“PHSKC”) own health centers and its partnerships with other community-based health centers, PHSKC offers a wide variety of preventative, treatment, and health educational services. PHSKC receives reimbursements from Medicaid for administrative costs and as a medical services provider. PHSKC assists potential beneficiaries (adults and children) with applying for Medicaid. According to state enrollment data from 2025, over 350,000 King County residents—close to 16 percent of the county’s population—are enrolled in Medicaid. About 4 in 10 children in King County are covered by Medicaid.

196. Based on Defendants’ conservative projections that 10 percent of individuals residing in households with noncitizens will disenroll from public benefits, King County expects

to see close to 20,000 people disenroll from Medicaid, SNAP or both, with a significant number of those individuals residing in Seattle, which is the most populous city in King County.

197. By deterring participation in Medicaid, CHIP, and other health insurance programs, the Final Rule and Policy Alert undermine Plaintiffs' interest in improving both short- and long-term health and advancing public health interests for citizens and noncitizens alike.

198. Individuals who disenroll from public benefits for which they are otherwise eligible will be at heightened risk for hunger and adverse health outcomes. They are also likely to delay seeking treatment and more likely to use the emergency department for routine care services, which are far costlier to Plaintiffs' health systems than providing primary or preventative care. Specifically, for example, NYC Health + Hospitals estimates that a 10 percent disenrollment rate could result in over 15,000 fewer annual specialty care visits and 6,000 fewer annual primary care visits.

199. The Final Rule and Policy Alert will endanger health insurance coverage for a substantial number of Plaintiffs' residents and cause significant harm to the public health by dissuading the use of, or enrollment in, insurance coverage. People not seeking health care for fear of accessing treatment directly or due to an inability to pay without Medicaid or CHIP (or the state equivalent) will lead to disruption in treatment and worsen overall physical and behavioral health outcomes among both citizens and noncitizens. This impact will be felt disproportionately among women (including pregnant women), infants, and children due to reduced use of prenatal care services.

200. Children are at particular risk because of the Final Rule and Policy Alert. Access to Medicaid for children confers a range of benefits that relate to improved health, educational, and

economic outcomes, including lower rates of asthma,⁴⁹ better access to primary care and ability to fulfill prescriptions,⁵⁰ higher high school graduation rates, and improved health as adults.⁵¹ Experts expect long-term negative impacts due to decreased access to Medicaid for eligible children.⁵²

201. An increase in uninsured residents will have significant adverse effects on individuals' well-being and the public health in Plaintiffs' communities. Lack of access to primary care endangers not only the health and well-being of noncitizens but also jeopardizes Plaintiffs' ability to safeguard the health of their communities as a whole. For example, uninsured individuals are significantly less likely to obtain routine immunizations, thereby heightening the risk of vaccine-preventable communicable disease outbreaks across the broader population.

202. The Final Rule and Policy Alert will also harm the community health of Plaintiffs and the country by reducing access to preventative and diagnostic treatment of communicable diseases.

203. Currently, measles cases are rising across the country, including in Plaintiffs' communities.⁵³ NYC DOHMH offers vaccinations, including the measles, mumps, and rubella

⁴⁹ Owen Thompson, *The long-term health impacts of Medicaid and CHIP*, J. of Health Econ. 26–40 (Jan. 2017), <https://pubmed.ncbi.nlm.nih.gov/28040620/>.

⁵⁰ Elizabeth Williams and Robin Rudowitz, *Medicaid and Children's Health: 5 Issues to Watch Amid Recent Federal Changes*, KFF (Oct. 15, 2025), <https://www.kff.org/medicaid/medicaid-and-childrens-health-5-issues-to-watch-amid-recent-federal-changes/>.

⁵¹ Edwin Park, Joan Alker, & Alexandra Corcoran, *Jeopardizing A Sound Investment: Why Short-Term Cuts to Medicaid Coverage During Pregnancy and Childhood Could Result in Long-Term Harm*, The Commonwealth Fund 4–5 (Dec. 2020), https://www.commonwealthfund.org/sites/default/files/2020-12/Park_Medicaid_short_term_cuts_long-term-effects_ib_v2.pdf [archived at <https://perma.cc/YB9A-8RWF>].

⁵² *Comment on Notice of Proposed Rulemaking: Public Charge Ground of Inadmissibility*, Georgetown University Health Policy Inst., Ctr. for Children and Families, Comment on Public Charge 3–5 (Dec. 19, 2025), <https://ccf.georgetown.edu/wp-content/uploads/2025/12/FINAL-CCF-Comments-on-Public-Charge-NPRM-2025.pdf> [archived at <https://perma.cc/LR8L-GXX5>].

⁵³ *Measles Update*, New York State Dep't of Health (Sep. 2026), <https://www.health.ny.gov/diseases/communicable/measles/> [archived at <https://perma.cc/PM4F-QXYG>]; Jesse Zanger and Lisa Rozner, *Confirmed case of measles in Manhattan*, NYC DOH says, CBS News (May 7, 2026), <https://www.cbsnews.com/newyork/news/manhattan-measles-case/> [archived at <https://perma.cc/UB2Q-XM9W>]; *San Francisco Department of Public Health Confirms Measles Case in San Francisco Infant*, City and Cnty. of San

combination (MMR) vaccine to their patients. Foreign-born NYC residents account for a majority of patients at NYC DOHMH's immunization clinic, which provides low and no-cost immunizations regardless of immigration status. By discouraging noncitizens and their families from using benefits such as these public health measures necessary to protect against and prevent transmission of measles and other diseases, the Final Rule and Policy Alert will result in decreased rates of vaccination, increased communicable disease transmission, and increases in severe illness, long-term health complications, and deaths, including among children. In addition, these health effects will lead to increased costs borne by Plaintiffs due to hospitalizations, public health responses to outbreaks, and diminished workforces. The Final Rule and Policy Alert compromise our nation's preparedness against, and increase the risk of, measles and other vaccine-preventable disease outbreaks in our country, including in Plaintiffs' jurisdictions.

204. By way of another example, the majority of patients seen at NYC DOHMH's tuberculosis chest centers and the San Francisco Tuberculosis (TB) Clinic are foreign-born. Although Plaintiffs' position is that TB centers and clinics do not fall within the scope of means-tested public benefits because eligibility is not based on income, the open-ended nature of the definition of means-tested public benefits will deter individuals in families with noncitizens from accessing public health services. As a result, the Final Rule and Policy Alert will cause patients to

Francisco (Apr. 15, 2026), <https://www.sf.gov/news-san-francisco-department-of-public-health-confirms-measles-case-in-san-francisco-infant>; *Public Health announces measles case in a Santa Clara County resident*, Cnty. of Santa Clara, Santa Clara Cnty. Pub. Health (Feb. 27, 2026), <https://publichealth.santaclaracounty.gov/news/news-release/public-health-announces-measles-case-santa-clara-county-resident> [archived at <https://perma.cc/BWC4-E5JF>]; *Measles Exposure Locations*, Illinois Dep't of Pub. Health (Sep. 11, 2026), <https://dph.illinois.gov/topics-services/diseases-and-conditions/measles/exposure-locations.html> [archived at <https://perma.cc/WJU7-GF2U>]; Laine Bergeson, *US 'highly likely' to lose measles elimination status this fall, analysis warns*, Univ. of Minnesota, Ctr. for Infectious Disease Rsh. and Policy (May 6, 2026), <https://www.cidrap.umn.edu/measles/us-highly-likely-lose-measles-elimination-status-fall-analysis-warns> [archived at <https://perma.cc/F23W-J3BU>]; *Measles Cases in Washington State*, Washington State Dep't of Health (Aug. 26, 2026), <https://doh.wa.gov/you-and-your-family/illness-and-disease-z/measles/measles-cases-washington-state> [archived at <https://perma.cc/X4MX-4GQJ>].

delay seeking TB screenings and care when they develop symptoms of TB—increasing the risk of a TB outbreak.

205. Additionally, NYC DOHMH and the Santa Clara Health System can identify and treat people with latent TB infection through screenings and preventive care paid for by public benefit programs, including Medicaid. That treatment can entirely prevent people with latent TB infection from developing active TB, experiencing symptoms, or becoming infectious. Conversely, when residents forgo primary and preventive care, NYC DOHMH and the Santa Clara Health System cannot identify these patients and therefore cannot act to prevent the development and spread of active TB. The result is greater cost to New York City and Santa Clara to provide more intensive and expensive treatment to more residents infected with active and infectious TB and a greater risk of spread throughout the community.

206. Similarly, in Seattle and King County, PHSKC's TB clinic relies on Medicaid payments to sustain treatment of over 100 active TB cases annually. PHSKC provides over 4,000 patient visits annually to people with Medicaid, as patients need daily supervised medication appointments during the most active phase of treatment. The majority of patient-generated revenue at PHSKC's TB clinic comes from Medicaid payments. By reducing Medicaid enrollment, the Final Rule and Policy Alert will imperil this revenue and increase the spread of TB throughout Seattle and King County.

207. The Final Rule and Policy Alert will also imperil significant progress made in combatting the spread of the HIV/AIDS epidemic by reducing enrollment in Medicaid and thus decreasing access to HIV prophylaxis, testing, and care; chilling participation in federal, state, and local programs and services for people with HIV; and discouraging HIV testing. For example, New York State's Medicaid Program for Persons with HIV assists tens of thousands of New

Yorkers, including many residents of New York City, by providing health care and other supportive services. As another example, Santa Clara participates in the federal Ryan White HIV/AIDS Program, through which the Santa Clara Health System provides HIV care, treatment, and essential services to low-income residents with HIV—often at low or no cost to the residents themselves. But participation in the Ryan White Program requires a patient to be enrolled in other programs for which they are eligible, including Medicaid. Therefore, as the Final Rule causes individuals and families to forgo Medicaid, it will also preclude them from accessing the Ryan White Program for life-saving medication and associated support. Because the care provided through the Ryan White Program also reduces or eliminates the risk of HIV transmission, diminished access to the program also presents concrete risks to other members of the community and imposes hazardous impacts on overall community and public health.

208. Treating persons with or at risk for HIV helps prevent the transmission and acquisition of the virus. By deterring HIV-positive individuals and those at risk for HIV from enrolling in Medicaid and other health insurance programs, noncitizens will not receive life-saving health care and the risk for disease transmission will increase within Plaintiffs' jurisdictions.

209. When large populations of people fall out of the health care system and do not receive health education or counseling, immunizations, prophylaxes, routine testing and screening, or timely treatment for communicable disease, the health of the entire community is placed at risk. Over time, as vaccine access and coverage decrease, the risk of disease outbreaks increases. As Plaintiffs—and indeed the world—know from the Covid-19 pandemic, uncontrolled disease outbreak can inflict devastating, cascading consequences.

210. Fear of interacting with government authorities may also lead noncitizens and their families to refuse to participate in public health inspections. For example, NYC DOHMH conducts

investigations, such as contact tracing, to identify individuals who may have been exposed to infection and to track the spread of communicable disease. In order for contact tracing to be an effective public health tool, community members must be willing to speak to local public health agency staff and provide names and contact information of family members. This requires trust in those governmental agencies, which the Final Rule jeopardizes.

B) The Final Rule and Policy Alert Will Increase Food Insecurity.

211. The Final Rule and Policy Alert will cause increased food insecurity, which will result in negative health impacts.

212. New York City administers SNAP benefits through its Department of Social Services under the oversight of the New York State Office of Temporary and Disability Assistance. As of December 2025, approximately 1.74 million NYC residents—about 20 percent of NYC’s population—were enrolled in SNAP. Approximately 175,000 of these individuals are noncitizens legally residing in New York City and legally eligible to receive SNAP.

213. Chicago administers SNAP benefits through its Department of Family and Support Services under the oversight of the Illinois Department of Human Services. As of December 2025, over 500,000 residents of Chicago—roughly 22 percent of the city’s population—were enrolled in SNAP. Many of these individuals are noncitizens lawfully residing in Chicago and legally eligible to receive SNAP.

214. In San Francisco, the City’s Human Services Agency administers SNAP at the local level. As of December 2025, over 100,000 individuals in San Francisco were enrolled in SNAP. Over 20 percent of these SNAP recipients—more than 20,000 individuals—are members of households with at least one noncitizen member.

215. Santa Clara administers SNAP through its Social Services Agency. SNAP helps approximately 130,000 Santa Clara residents feed their families every month. Over half of all Santa Clara residents who receive SNAP benefits are either children under the age of 18 or seniors aged 65 or older. Of Santa Clara's 130,000 SNAP enrollees, roughly 29,000, or 22 percent, are noncitizens or within households with at least one noncitizen. This figure includes many U.S. citizen enrollees in mixed-status households. The average SNAP-enrolled household in Santa Clara has between one and two members. For households of these sizes, the minimum monthly allotment is as low as \$24.

216. Seattle administers Fresh Bucks through its Office of Sustainability and Environment. While different from SNAP, Fresh Bucks serves over 17,000 income-eligible Seattle families with produce benefits that can be redeemed at farmers' markets and participating supermarkets.

217. Plaintiffs have made a concerted effort to increase SNAP enrollments among vulnerable residents living with food insecurity. For example, between June 2022 and June 2025, Santa Clara's affirmative efforts achieved a 21 percent increase in SNAP enrollment. The Final Rule and Policy Alert deter families from using SNAP and threaten to roll back this progress.

218. By penalizing immigrant participation in public benefit programs, such as SNAP enrollments, the Final Rule and Policy Alert undermine Plaintiffs' interest in combatting food insecurity.

219. For example, based on Defendants' conservative projections that 10 percent of individuals residing in households with noncitizens will disenroll from public benefits, NYC expects to see 34,000 individuals disenroll from SNAP. San Francisco expects to see almost 2,400 individuals disenroll from SNAP. This will have cascading effects on household nutrition. For

example, among other programs, NYC DOHMH operates the Health Bucks program, which provides SNAP recipients with coupons to purchase fresh, locally grown produce. For every \$2 spent at New York City farmers' markets using a SNAP EBT card, an individual automatically receives \$2 in Health Bucks, up to \$10 per day. In 2024, over 800,000 Health Bucks (valued at more than \$1.6 million) were distributed through the farmers' market SNAP incentive program, increasing low-income New York City residents' access to fresh produce.

220. New York City households that disenroll from SNAP would no longer accrue Health Bucks from DOHMH. While the Final Rule and Policy Alert will cause individuals and families to forego SNAP benefits, these individuals must then also forego access to fresh produce through Health Bucks, unless they are able to access small amounts of Health Bucks through the community-based organizations that participate in the Health Bucks program. And even then, it is unclear whether that access will be considered in the public charge determination, which may cause individuals to forgo such access altogether and worsen their health outcomes.

221. Food insecurity is closely associated with a disproportionately high risk of poor health. The effect of the Final Rule and Policy Alert on SNAP enrollment negatively affects the most vulnerable members of a household, including U.S. citizen children. Food insecurity has particularly harmful impacts on the health, development, and overall well-being of children. For example, children in food-insecure households are more likely to be sick and experience increased behavioral and emotional issues, and are less likely to perform well in school.⁵⁴ Indeed, food-insecure children are more likely to experience poor physical and mental health compared to children in food-secure families, including increased risk for anemia, asthma, and depression—

⁵⁴ *The Impact of Poverty, Food Insecurity, and Poor Nutrition on Health and Well-Being*, Food Res. & Action Ctr. 1 (Dec. 2017), <http://frac.org/wp-content/uploads/hunger-health-impact-poverty-food-insecurity-health-well-being.pdf>.

representing just a portion of the long-term implications that loss of SNAP benefits will have on citizen and noncitizen children growing up in these households.⁵⁵

222. WIC is a federally funded nutrition program for women who are pregnant, breastfeeding, or have recently had a baby, and for infants and children under five years of age. As established by Congress, the WIC program provides essential food supplements to all eligible low-income women and children regardless of immigration status.

223. NYC Health + Hospitals operates 10 WIC sites at hospitals and clinics across NYC, within an aggregate target case load of over 50,000 recipients per year.

224. King County also administers WIC, supporting approximately 39,000 mothers and children through healthy foods, nutrition education, breastfeeding support and connections to additional resources and programs.

225. San Francisco, Chicago, and Santa Clara operate WIC programs as well.

226. Because fewer noncitizen mothers and their children will participate in WIC, both will be at risk of birth complications, malnutrition, and even death. Moreover, noncitizen mothers will not receive other health supports that WIC provides, like breastfeeding support services. By deterring noncitizen mothers from accessing these services, the Final Rule and Policy Alert will put children at greater risk of short- and long-term adverse health effects that are correlated with reductions in breastfeeding, including diabetes, obesity, and chronic disease, as well as reduced cognitive development.

⁵⁵ Clare E. Holley and Carolynne Mason, *A Systematic Review of the Evaluation of Interventions to Tackle Children's Food Insecurity*, 8 Current Nutrition Reports 1 (Mar. 4, 2019) <https://pmc.ncbi.nlm.nih.gov/articles/PMC6426823/>.

C) The Final Rule and Policy Alert Will Increase Housing Instability and Increase the Risk of Homelessness.

227. The Final Rule and Policy Alert's inclusion of all means-tested public benefits, including housing subsidies (whether federal, state, or local), in the public charge determination will deter eligible individuals and their families from participating in affordable housing programs. Those deterred from participating in housing programs because of the Final Rule and Policy Alert will face substantial challenges in securing affordable housing and avoiding homelessness. These harms are particularly acute in Plaintiffs' jurisdictions, where the housing markets are plagued by extremely low vacancy rates and high rents.

228. Housing programs help stabilize families financially to better achieve self-sufficiency and maintain their health and wellbeing. Some state and local housing benefits are also targeted to specific populations such as survivors of domestic or intimate partner violence, and the housing benefit acts not as income maintenance, but a necessary avenue to establish a new household free from an abusive partner.

229. By causing individuals and families to disenroll from public housing benefits, the Final Rule and Policy Alert will lead to a rise in homelessness among noncitizen and mixed-status families.

230. Housing subsidies help reduce the risk of becoming homeless for at-risk families and help ensure that families living in subsidized housing are much less likely to remain in a homeless shelter or on the street than families without a housing subsidy.

231. Further, housing insecurity has negative health impacts. Scarcity in affordable housing can cause families to cohabitate in crowded, multi-family households, which can have negative health effects from overcrowding and stress.

232. Housing instability and homelessness further contribute to severe stress and mental health issues, including depression and anxiety—health issues that may follow children into adulthood. Indeed, homelessness has a particularly adverse impact on children and youth including poor physical, social, and mental health outcomes, cognitive development, and educational outcomes. In addition, schooling for homeless children is often interrupted and delayed, with homeless children being twice as likely to have a learning disability, repeat a grade, or be suspended from school. Additionally, children who experience housing instability are more likely to experience economic insecurity in adulthood.

233. Housing programs that Plaintiffs administer are essential to reducing homelessness and promoting stability, safety, and health by ensuring housing accommodations that families can afford.

234. For example, Section 8 Housing Choice Vouchers Program (“HCV”) funded by the U.S. Department of Housing and Urban Development provides rent subsidies to vulnerable residents in Plaintiffs’ jurisdictions, including very low-income families, the elderly, individuals with disabilities, and those in shelters or at risk of becoming homeless, including survivors of domestic violence, so that they can afford safe and sanitary housing in the private market.

235. The Chicago Housing Authority (“CHA”) currently receives 95 percent of its funding from HUD, most of which supports housing voucher programs.

236. The San Francisco Housing Authority administers public housing, including for the HCV program. As of June 2026, there were over 4,000 individuals residing in households receiving public housing benefits where at least one household member was a noncitizen.

237. In Seattle, the Homelessness Prevention Program administered by the City of Seattle Human Services Department serves income-eligible households, providing short-term

rental assistance, case management, and eviction prevention services, as well as referrals to other services.⁵⁶

238. Housing costs have risen sharply in recent years. For example, in New York and San Francisco, where even middle-class families struggle to find affordable housing options, programs like Section 8 and public housing offer tools to correct the effects of skewed market forces.

239. By causing individuals and families to disenroll from federal public housing benefits, the Final Rule and Policy Alert will put Plaintiffs at greater risk of homeless populations and housing insecurity.

240. Ultimately, the Final Rule and Policy Alert ignore the robust evidence that housing assistance does not render families reliant on the government but rather helps to stabilize them and put them on the path to self-sufficiency.

D) The Final Rule’s Chilling Effect Impedes Access to Education and Will Harm Many Children.

241. Public early childhood programs maximize educational opportunities for children, ensure that children are prepared for school, help prevent against summer learning loss and help support families in their professional and educational pursuits.

242. For example, NYC Public Schools (“NYCPS”) meets early childhood needs by offering Extended Day and Year (“EDY”) seats to eligible children in its 3-K and Pre-K programs⁵⁷; these seats are funded through the Child Care and Development Block Grant Act of

⁵⁶ The City of Seattle also administers the Utility Discount Program (UDP), providing discounts on utilities such as electricity, water service, sewer service, and garbage collection to income-eligible households holding a Seattle Public Utilities or Seattle City Light account. The Utility Discount Program offers a savings of 60 percent on electric bills and 50 percent on water, sewer, and garbage bills.

⁵⁷ New York City’s 3-K and Pre-K programs are free, publicly funded early childhood education programs for three- and-four years old, respectively.

1990 (“CCDBG”). Families must demonstrate eligibility to qualify for a 3-K or Pre-K EDY seat, which include proving that they are low-income. NYCPS also uses CCDBG funding to offer early childhood education to eligible infants and toddlers, enabling them to receive services for 8–10 hours per day, year-round. Because these Infant/Toddler seats are supported by CCDBG funds, families must satisfy the same eligibility criteria as for the 3-K and Pre-K EDY programs.

243. All Infant/Toddler and 3-K/Pre-K EDY programs in NYC are required to conduct developmental screenings within 45 days of a child’s enrollment. This tool serves to identify potential risks for developmental delays, which helps inform individuals of the appropriate resources, supports, and/or interventions for students and families. Programs and families may use this information to determine whether a referral to NYC’s Early Intervention program (children ages 0–3) or a referral for Preschool Special Education Services (ages 3–5) might be appropriate. Children referred to these programs receive free evaluations to determine whether they are eligible to receive special education services, and, if they are, arrangements are made for them to begin receiving those services.

244. San Francisco’s Department of Children, Youth and Their Families (“SF DCYF”) funds afterschool programs that offer children athletic, artistic, and academic support and enrichment after the end of the school day and connect families to healthcare resources, clinicians, and other city programs. For those DCYF-funded afterschool programs that charge fees, low-income residents are eligible for waivers of the fees. Children from low-income families are also able to take advantage of free afterschool meals.

245. Seattle offers the Seattle Preschool Program (SPP) through its Department of Education and Early Learning and is a partnership with a network of independent preschool providers and Seattle Public Schools. SPP provides free or low-cost preschool to all Seattle

families with children between 3 and 5 years old, or until eligible for kindergarten. Tuition is calculated by annual income, with many families receiving free preschool tuition. The educational opportunities offered by these programs benefit not only the individual students enrolled, but also their future elementary schools, teachers, and classmates.

246. King County operates a comprehensive support program called Best Starts for Kids (Best Starts). Best Starts is a King County voter-approved initiative intended to support every baby born or child raised in King County to reach adulthood happy, healthy, safe, and thriving. To date, Best Starts has served more than half a million King County children, youth, young adults, and families. Best Starts includes a means-tested childcare subsidy program which provides access for children who are not otherwise eligible for existing federal, state, or local subsidy programs or for whom these programs are insufficient. The educational and health opportunities offered by Best Starts benefit not only the individual children and families enrolled, but also their future elementary schools, teachers, classmates and co-workers. Best Starts also enables parents to enter and remain in the labor force, support development of healthy minds and bodies, and represents deep King County taxpayer commitment to and investment in building a thriving community now and in the future.

247. Many low-income families who avail themselves of these programs have limited public alternatives to ensure that their children can access early childhood education.

248. A chilling effect on the use of educational and childcare support programs will undermine the ability of programs to reach families most in need of these services, causing harm to their children. It would also undermine those programs' ability to plan for the equitable provision of high-quality early childhood services for all children and families and would waste valuable resources that have been committed.

249. Based on DHS's conservative 10.3 percent disenrollment projection, NYCPS estimates that families would withdraw over 1,000 children from these early education and infant/toddler programs. This result would cause tremendous harm to those children and impede NYCPS's mission.

250. San Francisco also works diligently to tailor afterschool programming to meet the needs of individual communities, including offering newcomer services to provide children with additional English-language and academic support. As a result of the Final Rule, immigrant families—particularly low-income families—are likely to disenroll from these afterschool programs, depriving children of critical social, athletic, and academic development opportunities, and leaving working parents without afterschool childcare.

251. Seattle and King County also expect the Final Rule and Policy Alert to create a chilling effect on enrollment in the Seattle Preschool Program and King County's Best Starts program.

252. These early childhood programs perform a crucial function in helping identify children's developmental delays early and allowing families to avail themselves of services, including free evaluations and services for eligible students with disabilities. In identifying students who may have a disability early on, these programs perform essential work: they arm families with knowledge and the ability to seek services aimed at preventing developmental gaps from widening. Forgoing participation in these programs due to fear will result in families and children missing important opportunities for support, which could be to the long-term detriment of their children.

3. **The Final Rule and Policy Alert Will Harm Plaintiffs' Economic Interests.**

253. The Final Rule and Policy Alert will cause Plaintiffs to suffer massive federal funding cuts, significant economic ripple effects, and thousands of lost jobs.

254. Noncitizens account for a significant share of the United States and Plaintiffs' workforce, contribute billions of dollars in income tax revenue each year, and provide billions of dollars to the economy in spending power. Immigrant families and communities are vital to economic growth and supporting Plaintiffs' and other local economies.⁵⁸

255. The Final Rule and Policy Alert will result in significant financial losses to Plaintiffs and their hospitals, negatively impact Plaintiffs' workforce, and decrease economic productivity.

A) The Final Rule and Policy Alert Will Result in Financial Losses to Plaintiffs' Hospitals and Increase their Costs.

256. The Final Rule and Policy Alert will increase healthcare costs and reduce revenue for Plaintiffs' hospitals by shifting those costs away from health coverage programs and onto hospitals and state and local governments. Specifically, the Final Rule and Policy Alert will cause individuals who are eligible for Medicaid or Emergency Medicaid to decline to enroll, with the result that when those individuals do eventually seek care, there will be no payor and Plaintiffs' hospitals will need to absorb the costs of uncompensated care. And because individuals without health care are much more likely to forgo cost-effective preventative care and wait longer to seek care, the care residents eventually receive in emergency rooms is more costly.

257. NYC Health + Hospitals estimates that if DHS's conservative projection of 10.3 percent of potentially affected Medicaid enrollees were to drop their health insurance, more than

⁵⁸ See, e.g., Office of the New York City Comptroller, *Facts, Not Fear: How Welcoming Immigrants Benefits New York City* (Jan. 4, 2024), <https://comptroller.nyc.gov/reports/facts-not-fear-how-welcoming-immigrants-benefits-new-york-city/> [archived at <https://perma.cc/T5EK-TLD7>].

16,000 insured patients would become uninsured and NYC Health + Hospitals would face a significant financial loss as a result in the first year of the Final Rule being in effect. Due to the Final Rule and Policy Alert, NYC Health + Hospitals estimates that it could lose tens of millions of dollars in direct patient care revenue as a result of providing uncompensated care to these newly uninsured patients. MetroPlus, the managed care plan that is a wholly-owned subsidiary of NYC Health + Hospitals, serves over 600,000 New York residents, and would also experience a negative financial impact related to decreased enrollment.

258. San Francisco's Department of Public Health operates two hospitals. Zuckerberg San Francisco General Hospital ("ZSFGH") is a licensed general acute care hospital and Level I trauma center, and provides care to approximately one in eight San Franciscans a year, regardless of immigration status or ability to pay. Laguna Honda Hospital is a skilled nursing and rehabilitation center that provides a full range of skilled nursing services to adult residents of San Francisco who are disabled or chronically ill. SFDPH also operates clinics that provide medical care to San Francisco residents. Assuming Defendants' understated disenrollment projection of 10 percent, San Francisco expects that there will be a decline in Medicaid expenditures of approximately \$26 million associated with disenrolled SFDPH patients. Because SFDPH receives a portion of these expenditures as revenue, it expects to experience a significant decline in revenue attributable to the Final Rule.⁵⁹

259. As a provider of last resort, SFDPH offers care to low-income and other vulnerable residents regardless of their ability to pay. SFDPH is mandated by law to provide emergency care to all persons in need of medical care, regardless of ability to pay. If the individuals who disenroll

⁵⁹ This estimate is based on the U.S. Centers for Medicare & Medicaid Service (CMS) report on Medicaid Per Capita Expenditure that overall 2023 Medicaid per capita expenditure in California was \$8,420. Expenditure estimates exclude direct state administrative expenditures, but administrative overhead for Medicaid Managed Care Organizations is included.

from Medicaid as a result of the Final Rule are required to seek medical care, SFDPH estimates that it will incur about \$7 million (at 10 percent disenrollment) in uncompensated charity care costs.

260. Uninsured residents in Chicago require massive expenditures from the City of Chicago. In 2024, the City of Chicago provided approximately 50,000 ambulance transports to Chicago residents for whom no insurance was identified resulting in net charges of approximately \$170 million, for which the City of Chicago collected only about \$5 million—a loss of over \$168 million. The Final Rule and Policy Alert will only exacerbate this loss further.

261. The Santa Clara Health System includes four general acute-care hospitals, 15 major health centers providing a comprehensive array of services, and specialty care clinics. Santa Clara’s hospitals and clinics serve a disproportionate number of low-income patients and provide care in underserved areas and to vulnerable populations. In many cases, the cost of providing patient care is wholly or partially uncompensated and therefore absorbed by the County itself, especially where patients cannot or do not enroll in Medicaid.

262. The Santa Clara Health System will directly experience the harmful financial impacts of the Final Rule, including increased uncompensated care. In fact, the Santa Clara Health System’s average cost per patient day is substantially higher for uninsured patients than for insured patients because of the higher acuity and intensity of the needs that uninsured patients present in emergency departments after having forgone routine and preventive care. For example, last year the Health System’s cost per day to treat patients admitted to the hospital was approximately 15 percent higher for uninsured patients than for all patients taken as a whole.

263. Santa Clara itself absorbs the overwhelming majority of the costs of treating uninsured patients in the form of uncompensated care—meaning Santa Clara incurs those costs

but receives no offsetting revenue. Well over 90 percent of the hospitals' total cost to provide care to uninsured patients on an outpatient basis is uncompensated, and the percentage is even higher for those admitted to the hospitals.

264. Moreover, because the Santa Clara Health System serves as the safety-net hospital system for the Santa Clara Valley region, applicable law and policy dictate that the Health System will provide care to all patients who present in its hospitals' emergency departments—regardless of their ability to pay, and regardless of whether they are eligible for and complete enrollment in health coverage once they present.

265. Residents' disenrollment due to fear of public charge will financially injure Santa Clara in other concrete ways. Santa Clara owns and operates the Valley Health Plan ("VHP"), which is a publicly sponsored health plan that provides healthcare coverage to almost a quarter of a million members, the vast majority of whom are enrolled in a Medicaid managed care plan. Valley Health Plan is financially responsible for all of these members' covered healthcare costs, regardless of their magnitude, and in exchange it receives a specified, set, per-capita ("capitated") sum. As individuals and families disenroll from Medicaid managed care plans, Santa Clara will experience a direct and specific reduction in revenue. If 10.3 percent of VHP members enrolled in managed care plans disenroll, Santa Clara's revenue will decline by more than \$6 million per month, or \$72 million per year. Yet notwithstanding that decline, Santa Clara will still incur and absorb the cost of treating those patients when they present in the hospitals' emergency departments for medical and behavioral healthcare.

266. More broadly, when considering the entire population (not just those enrolled in the Valley Health Plan), Santa Clara estimates that if 10.3 percent of Medicaid enrollees who are noncitizens or live in households with at least one noncitizen were to drop their health insurance,

approximately 19,000 insured patients would become uninsured, resulting in both lower revenue and higher costs across the Santa Clara Health System and other components of the county organization.

267. PHSKC expects increases in direct costs from uncompensated care as a result of the Final Rule and Policy Alert. Pursuant to state law and regulations, PHSCK must provide health care services to all at its health centers, including medical and dental care. PHSKC cannot withhold these services even if the patient cannot pay for them. PHSKC bills Medicaid and other payors for clinical services provided to insured patients. However, as explained above, a reduction in insurance enrollment will likely result in an increase in uncompensated care. Thus, PHSCK anticipates that it will need to bear the cost of providing this care.

B) The Final Rule and Policy Alert Will Shift Other Costs for Healthcare, Food, and Shelter to Plaintiffs.

268. The Final Rule and Policy Alert will shift the costs of providing necessary care and emergency food and shelter to Plaintiffs. Plaintiffs will directly incur the costly consequences of the Final Rule and its chilling effect—including in the forms of higher rates of uncompensated medical and behavioral healthcare; a population with poorer nutritional, educational, and economic outcomes and opportunities and correspondingly more intensive and acute needs; a shift away from cost-effective and community-protective preventive and routine care toward more expensive, more intense, and less effective emergency treatment; increase in food banks or food pantries due to the chilling effect on SNAP; and reduced revenue.

269. Plaintiffs will also be responsible for the substantial financial burden of increased health care costs associated with the decline in SNAP and WIC usage. Children who grow up with resulting higher rates of disease and malnutrition will likely need to rely on health care provided by Plaintiffs to treat these long-term issues.

270. For example, NYC DOHMH expects increases in direct costs to the agency from uncompensated care as a result of the Final Rule and Policy Alert. Pursuant to New York law and regulations, DOHMH must provide health care services through its own staff (or third parties), including for children's vaccinations and for testing and treatment for sexually transmitted infections and tuberculosis. DOHMH cannot withhold these services even if the patient cannot pay for them.

271. DOHMH bills Medicaid and other payers for clinical services provided to insured patients. However, as explained above, a reduction in insurance enrollment will likely result in an increase in uncompensated care. Thus, DOHMH anticipates that it will need to bear the cost of providing this care. Furthermore, as patients decline to seek medical services at early intervention stages and instead seek care as their symptoms become more acute, DOHMH will bear the increased burden of treating advanced stages of disease.

272. Relatedly, there is an attendant and compounded cost that is ultimately borne by Plaintiffs when community members are reluctant to access or avoid basic infectious disease testing and care. In these circumstances, infection continues to spread within the community, thereby increasing the number of individuals in need of medical care and whom Plaintiffs must treat.

273. The lack of participation in affordable housing programs will also increase emergency shelter use, which will place a substantial financial strain on states and local governments, including Plaintiffs. It is significantly more expensive to house a family in an emergency shelter than to provide long-term housing through either public housing or Section 8.

274. By way of example, an August 2025 analysis indicates that for every 100 households earning less than or equal to 30 percent of the area median income in Chicago, there

were only 24 affordable and available units (a deficit of over 100,000 units). Absent stable housing, costs are passed on to the City of Chicago in the form of increased emergency shelter use, longer hospital stays, and mental-health service burdens.⁶⁰

275. As another example, as discussed above, by causing individuals and families to disenroll from federal public housing benefits, the Final Rule and Policy Alert will put hundreds of San Francisco residents at greater risk of homelessness and housing insecurity. These individuals will become increasingly reliant on City-funded services—including temporary shelter and crisis interventions (such as food, hygiene, and overnight safe parking), time-limited rapid-rehousing subsidies, and permanent supportive housing. San Francisco estimates that it would incur millions of dollars in additional costs to meet the needs of these families.

C) The Final Rule and Policy Alert Will Negatively Affect the Labor Force.

276. Deterring noncitizens from enrolling in Medicaid and other health insurance programs will negatively affect the workforce. Without routine, preventive health care, employees will be more likely to miss work because of their own illnesses or because they have to care for sick family members. This instability in the workforce will diminish economic productivity.

277. The increase in uninsured workers will significantly affect the health care industry, which disproportionately employs immigrants in positions such as nursing and home-health aides. In New York, currently more than 50 percent of employees in these fields are immigrants.⁶¹ Harms to this workforce will have cascading impacts in the fields and markets where these workers are employed.

⁶⁰ Jonathan D. Ware, *No Room to Rent: Chicago's Affordable Housing Crisis for Extremely Low-Income Families*, Chi. Housing Authority Research Lab at 4 (August, 2025), https://www.thecha.org/sites/default/files/2025-08/No-Room-to-Rent-CHA_08.25_Transparency.pdf [archived at <https://perma.cc/R7M7-JFXH>].

⁶¹ Step Two Policy Project, *The Importance of Immigrants in New York's Healthcare Workforce* (Aug. 4, 2025), <https://www.steptwopolicy.org/post/the-importance-of-immigrants-in-new-york-s-healthcare-workforce>.

278. Because home health agencies and nursing homes often do not provide employer-sponsored insurance, their employees are more likely to be enrolled in Medicaid. A sicker health-care workforce may result in a labor shortage, harming the workers and the individuals cared for by the workers.

279. The decrease in Medicaid, SNAP, and WIC enrollment for children, which will worsen health outcomes, will also impede their academic success, and thus limit their economic contributions in the future.

280. Additionally, the decrease in safe and stable housing interferes with children's educational and financial prospects.

D) By Chilling SNAP Enrollment, The Final Rule and Policy Alert Will Decrease Economic Productivity.

281. Research has shown that SNAP helps to stimulate state and local economies. The SNAP program has a direct economic multiplier effect. For every one dollar in SNAP benefits received, there is an approximate \$1.54 to \$1.79 in increased economic activity.⁶²

282. The Final Rule and Policy Alert will cause Plaintiffs to suffer massive federal funding cuts, and significant economic ripple effects, including thousands of lost jobs. Because of the direct economic multiplier effect, and the amount of SNAP dollars spent in Plaintiffs' economies, Plaintiffs will feel a direct financial impact from loss of revenue.

283. Indeed, SNAP benefits stimulate economic activity when they are spent and circulate in the local economy. The U.S. Department of Agriculture concluded in 2019 that SNAP

⁶² U.S. Department of Agriculture: Economic Research Service, *Supplemental Nutrition Assistance Program (SNAP) – Key Statistics and Research* (Aug. 31, 2026), <https://www.ers.usda.gov/topics/food-nutrition-assistance/supplemental-nutrition-assistance-program-snap/key-statistics-and-research> [archived at <https://perma.cc/47TX-TJQ3>]; Kenneth Hanson, *The Food Assistance National Input-Output Multiplier (FANIOM) Model and Stimulus Effects of SNAP*, U.S. Dep't of Agric., at iv (Oct. 2010), <https://www.ers.usda.gov/publications/44749> [archived at <https://perma.cc/4ZWV-CK23>].

had a substantial beneficial multiplier effect on the economy: every dollar spent on SNAP benefits increased Gross Domestic Product by \$1.54.⁶³ And more recent, peer-reviewed research found that SNAP benefits had a marginal value of *sixty-two*—meaning that the net benefit of SNAP for recipients—measured in terms of immediate nutritional health and longer-term effects on behavioral, health, economic, educational, and other outcomes—is *sixty-two times* the net cost of the program.⁶⁴ These beneficial multiplier effects will disappear as individuals forgo or disenroll from SNAP.

284. For example, in 2024, nearly \$7.5 billion in federal SNAP dollars were spent in New York State at thousands of authorized retailers, including supermarkets, grocery stores, and convenience stores.⁶⁵ New York City estimates that approximately 175,000 eligible noncitizens receive SNAP. Even estimating that only 10 percent of households headed by a noncitizen would disenroll in SNAP, the Final Rule and Policy Alert’s chilling effect will cost New York City millions of dollars in federal funding, thousands of jobs lost, and millions of dollars in reduced economic activity in New York City overall. Similarly, the average Illinois SNAP recipient received about \$192 a month (or \$6.33 a day) in fiscal year 2022, and thus, Chicago, for example, would also feel a direct, financial impact from loss of revenue.⁶⁶

⁶³ Patrick Canning and Rosanna Mentzer Morrison, U.S. Dep’t of Agric., Econ. Rsch. Serv., *Quantifying the Impact of SNAP Benefits on the U.S. Economy and Jobs* (July 18, 2019), <https://www.ers.usda.gov/amber-waves/2019/july/quantifying-the-impact-of-snap-benefits-on-the-u-s-economy-and-jobs>.

⁶⁴ Martha J. Bailey, et al., *Is the Social Safety Net a Long-Term Investment? Large-Scale Evidence From the Food Stamps Program*, Nat’l Lib. of Med.: Nat’l Ctr. For Biotech. Info. (Sep. 13, 2024), <https://pmc.ncbi.nlm.nih.gov/articles/PMC11395512/>.

⁶⁵ New York State Comptroller, *Federal Funding and New York: Nutritional Assistance* {Sep. 11, 2026), <https://www.osc.ny.gov/reports/budget/fed-funding-ny/nutritional-assistance> [archived at <https://perma.cc/TDF7-LF6S>].

⁶⁶ U.S. Dep’t of Agric., Food & Nutrition Admin., *SNAP Retailer Management Year End Summary FY 2024*, (Sep. 11, 2026), <https://www.fns.usda.gov/data-research/data-visualization/snap-retailer-management-dashboard-fy24> [archived at <https://perma.cc/B4XK-QSY4>].

285. Similarly, based on Defendants' conservative 10.3 percent disenrollment projection, San Francisco's economy is projected to lose approximately \$7 million as thousands of residents disenroll from

4. The Final Rule and Policy Alert Imposes Programmatic and Administrative Burdens on Plaintiffs.

286. The Final Rule and Policy Alert have imposed and will impose significant programmatic, administrative, and financial burdens on Plaintiffs. Local government agencies administer public benefits programs implicated by the Final Rule, and the Final Rule and Policy Alert severely undermine their goals. For example, NYC Department of Social Services will no longer be able to consistently forecast workload or make projections about public benefits caseloads due to the significant chilling effect. NYC DSS will likely experience high volumes of sudden case closures along with increased application volatility, inhibiting the agency's ability to accurately project staffing needs, which could impact service delivery and error rates.

287. The Final Rule and Policy Alert have already negatively impacted several of Plaintiffs' agencies, given the staff time and resources required in attempting to parse the language in the Final Rule and Policy Alert and their impacts on the agency, the programs the agency operates, and the residents who benefit from them.

288. Plaintiffs will need to undertake significant efforts and investments to educate agency staff and conduct outreach to the public on the Final Rule and Policy Alert. Indeed, although DHS significantly underestimates the costs of familiarizing individuals with the Final Rule and Policy Alert, it acknowledges these costs exist and will burden a wide variety of Plaintiffs' entities. For example, NYC Health + Hospitals will incur significant costs to implement the Final Rule and the Policy Alert, which will include costs for staff training, outreach, preparation of materials, and potentially additional financial counseling to support its patients.

289. Plaintiffs' agencies will have to divert staff resources to educate vulnerable communities and address increased call volume and traffic from concerned residents because of the Final Rule and Policy Alert.

290. For example, training will be critical for NYC DSS staff to address potential public charge implications to applicants before they complete the eligibility process. NYC DSS will have to invest significant resources and employee time to train the approximately 9,000 agency staff as well as approximately 10,000 provider staff working directly with applicants or recipients of benefits such as Medicaid and SNAP that NYC DSS offers. NYC DSS anticipates that due to the vague and confusing nature of the Final Rule and Policy Alert, all staff that work directly with applicants or recipients are likely to receive questions about public charge and will need to receive training. Additionally, NYC Mayor's Office of Immigrant Affairs had to use substantial resources to combat the 2019 Rule's chilling effect during the COVID period and likewise will need to do the same here to address the confusion from the ambiguity and flawed nature of the Final Rule and Policy Alert.

291. San Francisco will also devote significant city resources and employee time to address the effects of the Final Rule and Policy Alert. The Final Rule and Policy Alert have exacerbated fear and distrust among individuals accessing City services and has thus increased the barriers that staff must overcome in order to connect immigrant residents with necessary services. For example, a recent multiple-year long outreach pilot program conducted by San Francisco's Human Services Agency identified public charge as an ongoing area of significant concern and confusion for immigrant clients. SFHSA estimates that the department would need to spend over a thousand hours training the approximately 500 staff responsible for handling public benefits like SNAP and Medicaid. Likewise, San Francisco's Department of Public Health will need to provide

specific training about the Final Rule and Policy Alert to 350 staff who perform Medicaid screening and eligibility, 150 staff conducting other patient-facing activities, and approximately 80 managers and supervisors. And the department also expects to provide basic education about the Final Rule and Policy Alert to all 6,500 staff across SFDPH-run clinics and hospitals, and community-based clinics that contract with the department.

292. Public Health – Seattle & King County anticipates having to provide training to over 350 benefit enrollment navigators and over 500 patient-facing staff regarding the Final Rule and Policy Alert. Additionally, PHSKC anticipates difficulty forecasting workload, a need to divert staff resources to educate the public and respond to questions and concerns, and a need to manage high volumes of sudden case closures.

293. The Final Rule either fails to consider or fails to adequately address the foregoing harms, dismissing them in a conclusory, arbitrary, and capricious manner.

FIRST CAUSE OF ACTION

(Administrative Procedure Act—Contrary to Law and Exceeds Statutory Authority)

294. Plaintiffs incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

295. Under the APA, courts must “hold unlawful and set aside” agency action that is “not in accordance with law.” 5 U.S.C. § 706(2)(A).

296. Under the APA, courts must also “set aside agency action” that is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(C).

297. DHS and USCIS are “agencies” under the APA, 5 U.S.C. § 551(1), and the Final Rule and Policy Alert each constitute a final agency action subject to review under the APA.

298. Defendants may only exercise authority conferred by statute. *City of Arlington v. FCC*, 569 U.S. 290, 297–98 (2013).

299. In interpreting statutes, courts exercise independent judgment rather than defer to administrative agencies’ interpretations. *Loper Bright Enterprises*, 603 U.S. at 391–92.

300. The Final Rule and Policy Alert are contrary to law and exceed statutory authority for the reasons described above. The Final Rule and Policy Alert effectuate a radical change to the definition of “public charge” that conflicts with the term’s plain meaning, congressional intent, statutory context, longstanding administrative interpretation, history, and case law, including multiple federal appellate decisions.

301. The Final Rule and Policy Alert disregard that the statutory term “public charge” has a longstanding and established meaning: being primarily dependent on the government for subsistence. In its place, the Final Rule and the Policy Alert provide that “public charge” could include persons who receive *any* means-tested public benefits and fail to provide clear limits. These changes leave both the definition of public charge and the process of determining who is a public charge, unbounded in a manner not authorized by the relevant federal statutes.

302. The Final Rule and Policy Alert unlawfully conflate their incorrect interpretation of PRWORA with the definition of “public charge” in INA Section 212(a)(4).

303. The Final Rule and Policy Alert conflict with the SNAP statute, which provides that “[t]he value of benefits that may be provided under this chapter shall not be considered income or resources for any purpose under any Federal, State, or local laws, including, but not limited to, laws relating to taxation, welfare, and public assistance program.” 7 U.S.C. § 2017(b). The Final Rule and Policy Alert are also in tension with the statutory exemptions from the term “means-tested public benefits” for purposes of sponsor affidavits. *See* 8 U.S.C. § 1183a note.

304. The Final Rule and Policy Alert are therefore not in accordance with law and “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right,” in violation of the APA. 5 U.S.C. §§ 706(2)(A), (C).

305. Defendants’ violations caused and are causing ongoing harm to Plaintiffs.

SECOND CAUSE OF ACTION

(Administrative Procedure Act—Arbitrary and Capricious)

306. Plaintiffs incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

307. The APA provides that courts must “hold unlawful and set aside” agency action that is “arbitrary, capricious, [or] an abuse of discretion.” 5 U.S.C. § 706(2)(A).

308. DHS and USCIS are “agencies” under the APA, 5 U.S.C. § 551(1), and the Final Rule and the Policy Alert constitute final agency actions subject to review under the APA.

309. An agency action is arbitrary or capricious where it is not “reasonable and reasonably explained.” *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). An agency must provide “a satisfactory explanation for its action[,] including a rational connection between the facts found and the choice made.” *Motor Vehicle*, 463 U.S. at 43 (citation modified). Moreover, although “[a]gencies are free to change their existing policies,” they must “‘provide a reasoned explanation for the change,’ ‘display awareness that [they are] changing position,’ and ‘consider serious reliance interests.’” *FDA v. Wages & White Lion Invs.*, 604 U.S. 542, 544 (2025) (quoting *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016)).

310. The Final Rule and Policy Alert are arbitrary and capricious for the reasons discussed above, *see supra* at ¶¶ 107–161, including because Defendants rescind clear regulatory text and replace it with an overly broad framework that fails to provide meaningful guardrails.

Defendants provide this open-ended framework without reasoned explanation, do not rationally connect DHS's conclusion to the facts, and disregard material facts and evidence. The Final Rule and Policy Alert are also internally inconsistent and counter to the evidence before DHS.

311. The Final Rule and Policy Alert are arbitrary and capricious because Defendants fail to reasonably justify their departure from decades of settled practice with respect to the scope and definition of the term "public charge" and to the public charge determination process, which would allow for the consideration of information not shown to be a predictor of becoming primarily dependent on the government for subsistence.

312. The Final Rule and Policy Alert are also arbitrary and capricious because they fail to adequately consider their retroactive effects. *See Bowen*, 488 U.S. at 220 (Scalia, J., concurrence); *see generally Landgraf*, 511 U.S. at 290. Certain means-tested public benefits cannot be "disenrolled" from, and many other programs only offer opportunities to disenroll on an annual basis. The Final Rule and Policy Alert "take[] away or impair[] vested rights" and "attach[] a new disability in respect to . . . considerations already past." *Nat'l Mining Ass'n*, 177 F.3d at 8. The Final Rule and Policy Alert have secondary retroactivity that alters the future "in a manner that makes worthless substantial past investment incurred in reliance upon the prior rule." *Bowen*, 488 U.S. at 220 (Scalia, J., concurrence). Because the Final Rule and Policy Alert operate retroactively, and fail to recognize or consider their retroactive impacts, the Final Rule and Policy Alert are arbitrary and capricious.

313. Defendants have acted arbitrarily and capriciously because they do not adequately consider the extent of the harm the Final Rule and Policy Alert will cause to vulnerable populations, including children. Defendants fail to adequately quantify the harm to public health and state and local economies, and the financial and administrative burdens on Plaintiffs and other

localities. Moreover, Defendants fail to adequately consider the serious reliance interests of Plaintiffs, their residents, their communities, and individuals and families around the country.

314. The Final Rule and Policy Alert are arbitrary and capricious because they rely on incorrect legal interpretations of case law and administrative interpretation.

315. The Final Rule and Policy Alert are therefore “arbitrary, capricious, [or] an abuse of discretion” in violation of the APA. 5 U.S.C. § 706(2)(A).

316. Defendants’ violations caused and are causing ongoing harm to Plaintiffs.

THIRD CAUSE OF ACTION

(Administrative Procedure Act— Failure to Comply with Notice-and-Comment Requirements)

317. Plaintiffs incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

318. Under the APA, when agencies are promulgating substantive and legislative rules, they are required to provide notice of proposed rulemaking and an opportunity for interested persons to participate through submission of written data, views, and arguments. 5 U.S.C. § 553(b)-(c). The APA further provides that courts must “hold unlawful and set aside” agency action taken without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

319. DHS and USCIS are “agencies” under the APA, 5 U.S.C. § 551(1), and the Policy Alert constitutes final agency action subject to review under the APA.

320. Defendants did not publish the Policy Alert as a proposed rule or provide Plaintiffs or other interested members of the public with notice and an opportunity to comment before its issuance.

321. Although Defendants label the Policy Alert as “guidance,” it is legislative or substantive in nature to the extent it imposes new rights, obligations, or consequences,

substantively amends an existing regulatory regime, or otherwise has the force and effect of law with respect to applicants and sponsors, immigration officers, and others. *See, e.g., City of Billings v. Transp. Sec. Admin.*, 153 F.4th 46 (D.C. Cir. 2025); *Mayor & City Council of Baltimore v. Trump*, 416 F. Supp. 3d 452 (D. Md. 2019). To the extent Defendants promulgated and implemented a legislative rule without observing the necessary procedures, including those required by the APA, they violated 5 U.S.C. §§ 553 and 706(2)(D).

322. Defendants' actions caused and will continue causing ongoing harm to Plaintiffs.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that this Court:

1. Declare that the Final Rule and Policy Alert are not in accordance with law within the meaning of 5 U.S.C. § 706(2)(A) and are in excess of DHS's and USCIS's statutory jurisdiction, authority, or limitations, or short of statutory right within the meaning of 5 U.S.C. § 706(2)(C);
2. Declare that the Final Rule and Policy Alert are arbitrary, capricious, and an abuse of discretion within the meaning of 5 U.S.C. § 706(2)(A);
3. Declare that the Policy Alert was promulgated without observance of procedure required by law, including the notice-and-comment requirements of 5 U.S.C. § 553 and the meaning of 5 U.S.C. § 706(2)(D);
4. Vacate and set aside the Final Rule and the Policy Alert;
5. Permanently enjoin Defendants and all of their officers, employees, and agents, and anyone acting in concert with them, from implementing, applying, or taking any action whatsoever under the Final Rule and the Policy Alert;

6. Permanently enjoin Defendants from retaliating against any Plaintiff for participating in this lawsuit or taking any adverse action based on any Plaintiff's participation in this lawsuit;

7. Award Plaintiffs their reasonable attorneys' fees and costs; and

8. Grant other such relief as this Court may deem proper.

Dated: New York, New York
September 14, 2026

Respectfully submitted,

CITY OF NEW YORK

STEVEN BANKS

Corporation Counsel of the City of New York

By: /s/ Hope Y. Lu

HOPE Y. LU

Senior Counsel for Complex & Strategic Litigation

DORIS BERNHARDT

ELIZABETH SLATER

SAIENA SHAFIEZADEH

Senior Counsels

MELANIE C. T. ASH

Deputy Chief

Office of the Corporation Counsel for the City of
New York

100 Church Street

New York, New York 10007

(212) 356-1642

hlu@law.nyc.gov

dbernhar@law.nyc.gov

eslater@law.nyc.gov

sashafie@law.nyc.gov

mash@law.nyc.gov

Attorneys for Plaintiff City of New York

COUNTY OF SANTA CLARA

TONY LOPRESTI*

County Counsel for the County of Santa Clara

By: /s/ Tony LoPresti

TONY LOPRESTI*

County Counsel

KAVITA NARAYAN*

Chief Assistant County Counsel

MEREDITH A. JOHNSON*

Lead Deputy County Counsel

RAPHAEL N. RAJENDRA*

Deputy County Counsel
LEILY ARZY*
Social Justice and Impact Litigation Fellow
Office of the County Counsel
County of Santa Clara
70 West Hedding Street, East Wing, 9th Fl.
San José, CA 95110-1770
(408) 299-5900
kavita.narayan@cco.sccgov.org
meredith.johnson@cco.sccgov.org
raphael.rajendra@cco.sccgov.org
leily.arzy@cco.sccgov.org

* Motion forthcoming for admission *pro hac vice*

Attorneys for Plaintiff County of Santa Clara

CITY AND COUNTY OF SAN FRANCISCO

DAVID CHIU*
City Attorney for the City and County of San Francisco

By: /s/ David Chiu

DAVID CHIU*
City Attorney
YVONNE R. MERÉ*
Chief Deputy City Attorney
SARA J. EISENBERG*
Chief of Complex and Affirmative Litigation
KARUN TILAK*
CARA R. MEYER*
Deputy City Attorneys
Fox Plaza
1390 Market Street, 7th Floor
San Francisco, California 94102-508
(415) 355-3308
yvonne.mere@sfcityatty.org
sara.eisenberg@sfcityatty.org
karun.tilak@sfcityatty.org
cara.meyer@sfcityatty.org

*Motion forthcoming for admission *pro hac vice*

Attorneys for Plaintiff City and County of San Francisco

MARTIN LUTHER KING, JR. COUNTY

LEESA MANION
King County Prosecuting Attorney

By: /s/ Cristy J. Craig
CRISTY J. CRAIG*, WA Bar No. 27451
Senior Deputy Prosecuting Attorney
CHRISTOPHER M. SANDERS*, WA Bar No.
47518
Chief Legal Officer & General Counsel for
King County Executive Girmay Zahilay
701 Fifth Avenue, Ste 600
Seattle, Washington 98104
(206) 477-1120
chrsanders@kingcounty.gov
cristy.craig@kingcounty.gov

*Motion forthcoming for admission *pro hac vice*

*Counsel for Plaintiff Martin Luther King, Jr.
County*

CITY OF CHICAGO

By: /s/ Katherine Hubbard
KATHERINE HUBBARD (DC Bar No. 1500503)*
Managing Attorney
NAOMI TSU (Oregon Bar No. 242511)*††
Senior Staff Attorney
KAYLA SVIHOVEC (S.D.N.Y Bar No. pending)†
Staff Attorney
Public Rights Project
490 43rd Street, Unit #115
Oakland, CA 94609
Telephone: (510) 738-6788
katherine.hubbard@publicrightsproject.org
naomi.tsu@publicrightsproject.org
kayla.svihovec@publicrightsproject.org

*Motion forthcoming for admission *pro hac vice*

†Admitted to SDNY pending swearing in
Admitted in DC. Not admitted in California.

††Admitted in Oregon and Georgia. Admitted but
not active in California.

Counsel for Plaintiff City of Chicago

CITY OF SEATTLE

ERIKA J. EVANS*
Seattle City Attorney

By: /s/ Ghazal Sharifi
GHAZAL SHARIFI, WSBA# 47750*
Section Director
Constitutional and Complex Litigation Section
NATASHA R. KHANNA, WSBA# 52870*
Assistant City Attorney
REBECCA S. COHEN, WSBA# 31767*
Civil Division Chief
Assistant City Attorneys
Seattle City Attorney's Office
701 Fifth Avenue, Suite 2050
Seattle, WA 98104
Phone: (206) 684-8200
Ghazal.Sharifi@seattle.gov
Natasha.Khanna@seattle.gov
Becca.Cohen@seattle.gov

*Motion forthcoming for admission *pro hac vice*

By: /s/ Katherine Hubbard
KATHERINE HUBBARD (DC Bar No. 1500503)*
Managing Attorney
NAOMI TSU (Oregon Bar No. 242511)*††
Senior Staff Attorney
KAYLA SVIHOVEC (S.D.N.Y Bar No. pending)†
Staff Attorney
Public Rights Project
490 43rd Street, Unit #115
Oakland, CA 94609
Telephone: (510) 738-6788

katherine.hubbard@publicrightsproject.org
naomi.tsu@publicrightsproject.org
kayla.svihovec@publicrightsproject.org

*Motion forthcoming for admission *pro hac vice*

†Admitted to SDNY pending swearing in
Admitted in DC. Not admitted in California.

††Admitted in Oregon and Georgia. Admitted but
not active in California.

Counsel for Plaintiff City of Seattle

Exhibit A

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director
Camp Springs, MD 20588-0009



U.S. Citizenship
and Immigration
Services

August 18, 2026

PA-2026-09

Policy Alert

SUBJECT: Public Charge Ground of Inadmissibility

Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to address the public charge ground of inadmissibility under section 212(a)(4) of the Immigration and Nationality Act (INA). This revised guidance stems from the rescission of the Public Charge Ground of Inadmissibility (“2022 Final Rule”).¹

Background

Under INA 212(a)(4), any alien applying for a visa, admission, or adjustment of status (unless exempt) who is likely at any time to become a public charge is inadmissible. The public charge ground of inadmissibility and this policy guidance fulfill Congress’ longstanding national policy on immigration and welfare that aliens inside the United States are self-sufficient and do not depend on public benefits to meet their needs.

This guidance, contained in Volume 8 of the Policy Manual, is effective on September 18, 2026, and applies to all applications for adjustment of status (unless exempt) postmarked or electronically submitted on or after that date.

The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance, including the 1999 Interim Field Guidance and any related guidance addressing public charge inadmissibility.²

Policy Highlights

¹ See 87 FR 55472 (Sept. 9, 2022) (final rule). The 2022 Final Rule was rescinded by the Public Charge Ground of Inadmissibility, 91 FR 45324 (Jul. 20, 2026) (final rule). DHS issued the 2026 Final Rule following notice and comment rulemaking.

² See Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 FR 28689 (May 26, 1999) (notice). Due to a printing error, the Federal Register version of the field guidance appears to be dated “March 26, 1999” even though the guidance was actually signed May 20, 1999, became effective May 21, 1999, and was published in the Federal Register on May 26, 1999. Note that adjustment of status applications postmarked or electronically submitted on or after December 23, 2022 but before September 18, 2026, are adjudicated under the 2022 regulations and related policy manual guidance. For adjustment of status applications postmarked or electronically submitted prior to December 23, 2022, follow the 1999 Interim Field Guidance.

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- Removes references to regulatory terms and concepts associated with the rescinded 2022 Final Rule.
- Provides updated guidance for making public charge inadmissibility determinations under INA 212(a)(4).
- Reiterates the categories of aliens who are exempt from, or may obtain a waiver of, the public charge inadmissibility ground.
- Provides scenarios to illustrate the practical application of the totality of the circumstances analysis used in the public charge inadmissibility determination.
- Explains the consideration of mandatory statutory factors and other relevant information, such as current or past receipt of means-tested public benefits, including which means-tested public benefits received before September 18, 2026, will be considered and which means-tested public benefits received on or after September 18, 2026, will be considered, consistent with the 2026 Final Rule.
- Reiterates that no one factor, other than the lack of a sufficient Affidavit of Support Under Section 213A of the INA (Form I-864 or Form I-864EZ), if required, can be the sole basis for determining whether an alien is likely at any time to become a public charge.
- Describes the public charge bond process for an alien who applied for adjustment of status, who has been found inadmissible only under the public charge ground, and who has been invited to post a public charge bond.
- Provides officers with guidance to determine appropriate bond amounts when inviting aliens to post a public charge bond.
- Provides guidance on maintenance, breach, and cancellation of public charge bonds.

Summary of Changes

Affected Section: Volume 8 > Part G, Public Charge Ground of Inadmissibility

- Revises Part G in its entirety.

USCIS may also make other minor technical, stylistic, and conforming changes consistent with this update.

Citation

Volume 8: Admissibility, Part G, Public Charge Ground of Inadmissibility [[8 USCIS-PM G](#)].

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Additional Considerations

Administrative Procedure Act (APA)

As indicated above, this revised guidance stems from the rescission of the 2022 Final Rule and provides guidance to help officers make public charge inadmissibility determinations that are consistent with the statute and Congressional intent. The previous guidance reflected the regulatory framework established by the 2022 Final Rule. USCIS does not believe that the regulated public has significant reliance interests related to the previous iteration of the public charge ground of inadmissibility guidance that are separate from the reliance interests DHS already addressed at length in the 2026 Final Rule³ and that are related to the rescinded regulatory framework contained in the 2022 Final Rule. However, even if such reliance interests exist, DHS believes that its interest in removing references to rescinded regulatory concepts and providing officers with information and examples to help them faithfully and consistently make public charge inadmissibility determinations in their discretion outweigh any reliance interests the regulated public may have.

³ See 91 FR 45324, 45344 through 45346 (Jul. 20, 2026).

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This policy is effective on September 18, 2026, and will be incorporated into the Policy Manual accordingly.

USCIS Policy Manual, Volume 8: Admissibility
Part G – Public Charge Ground of Inadmissibility

Chapter 1. Purpose and Background

A. Purpose

Under section 212(a)(4) of the Immigration and Nationality Act (INA), an alien who is applying for a visa, admission, or adjustment of status and who is likely at any time to become a public charge, is inadmissible,¹ unless exempt from this ground of inadmissibility. DHS has the authority to waive this ground of inadmissibility for certain applicants for admission² and, in limited circumstances, also has the authority to waive this ground of inadmissibility for certain applicants for adjustment of status.³

B. Background

1. Public Charge Ground of Inadmissibility General Overview

The INA provides that an alien applying for a visa, admission, or adjustment of status is inadmissible if in the opinion of the consular officer, immigration officer, or immigration judge at the time of application for a visa, admission, or adjustment of status, the alien is likely at any time to become a public charge.⁴

The public charge ground of inadmissibility, therefore, applies to any alien applying for a visa to come to the United States temporarily or permanently, for admission at a port of entry, or for adjustment of status to that of a lawful permanent resident (LPR).⁵ Congress has exempted by statute certain applicants for a visa, admission, or adjustment of status from the public charge ground of inadmissibility.⁶

The INA does not define public charge. It does, however, specify that consular officers, immigration officers, and immigration judges must, at a minimum, consider certain factors when determining whether an alien is likely at any time to become a public charge.⁷

¹ See INA 212(a)(4)(A).

² See INA 212(d)(3)(A).

³ See INA 245(j). See 8 CFR 245.11.

⁴ See INA 212(a)(4).

⁵ See INA 212(a)(4).

⁶ See Chapter 3, Applicability, Section C, Exemptions [8 USCIS-PM G.3(C)].

⁷ See INA 212(a)(4)(B).

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2. National Policy on Immigration and Welfare Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

In 1996 and close in time to the enactment of current INA section 212(a)(4), Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which is commonly known as the 1996 welfare reform law. PRWORA set national policy on immigration and welfare, acknowledging that self-sufficiency has been a basic principle of U.S. immigration law since its earliest statutes and that aliens inside the United States should not depend on public resources to meet their needs, but rather, should rely on their own capabilities and the resources of their families, sponsors, and private organizations.⁸ Additionally, under PRWORA, Congress made clear that the availability of public benefits should not constitute an incentive for immigration to the United States.⁹ Moreover, PRWORA significantly restricted an alien's eligibility for federal, state, local, and tribal public benefits.¹⁰

3. History of Public Charge Inadmissibility Statutory and Regulatory Changes

Self-sufficiency has been a basic principle of United States immigration law since its earliest immigration laws.¹¹ In recognition of this principle, Congress has provided, since 1882, a public charge ground of inadmissibility to address this lack of self-sufficiency when aliens apply for visas, admission, or adjustment of status.¹²

Illegal Immigration Reform and Immigrant Responsibility Act of 1996

In 1996 Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).¹³ IIRIRA amended INA section 212(a)(4), which introduced the mandatory statutory factors and created the enforceable Affidavit of Support Under Section 213A of the INA (Form I-864).¹⁴

⁸ See Section 400 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, (August 22, 1996) (codified at 8 U.S.C. 1601).

⁹ See 8 U.S.C. 1601(2)(B).

¹⁰ See 8 U.S.C. 1601-1646, as amended.

¹¹ See Section 400 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, (August 22, 1996) (codified at 8 U.S.C. 1601).

¹² Immigration Act of 1882, 22 Stat. 214 (Aug. 3, 1882) (excluding "any person unable to take care of himself or herself without becoming a public charge."). Immigration Act of March 3, 1891 (26 Stat. 1084) ("any alien who becomes a public charge within one year after his arrival in the United States from causes existing prior to his landing therein shall be deemed to have come in violation of law and shall be returned as aforesaid.").

¹³ See Division C of Pub. L. 104-208, 110 Stat. 3009 (September 30, 1996).

¹⁴ See Division C of Pub. L. 104-208, 110 Stat. 3009 (September 30, 1996). Congress added requirements for certain immigrant categories by creating INA 213A, making a sponsor's affidavit of support submitted on behalf of an alien legally enforceable under IIRIRA. See Division C, Title V of Pub. L. 104-208, 110 Stat. 3009, 3009-670 (September 30, 1996).

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More specifically, IIRIRA codified the following minimum factors that must be considered when making public charge inadmissibility determinations: age; health; family status; assets, resources, and financial status; and education and skills.¹⁵

Additionally, with IIRIRA, Congress made the legally enforceable Form I-864 a requirement for most family-sponsored and certain employment-based immigrants,¹⁶ and indicated that it may be considered as a factor in a public charge inadmissibility determination.¹⁷

1999 Interim Field Guidance

On May 26, 1999, the legacy Immigration and Naturalization Service (INS) issued interim guidance, titled “Field Guidance on Deportability and Inadmissibility on Public Charge Grounds” (1999 Interim Field Guidance).¹⁸ This guidance identified how the agency would determine if an alien is likely at any time to become a public charge¹⁹ for admission or adjustment of status purposes, and when an alien would be deportable²⁰ as a public charge.²¹

INS incorporated the policies contained in the 1999 Interim Field Guidance in a proposed rule published on May 26, 1999.²² However, INS never finalized the proposed rule. INS, and later DHS, continued to apply the public charge ground consistent with the 1999 Interim Field Guidance for two decades.

Under the 1999 Interim Field Guidance and the 1999 proposed rule, “public charge” for purposes of a public charge inadmissibility determination was defined as an alien who is likely to become primarily dependent on the government for subsistence, as demonstrated by either:

- Receipt of public cash assistance for income maintenance; or
- Institutionalization for long-term care at government expense.²³

Regulatory Changes in 2019

¹⁵ See INA 212(a)(4)(B). See Section 531 of Division C of Pub. L. 104-208, 110 Stat. 3009-546, 3009-674 (September 30, 1996) (amending INA 212(a)(4)).

¹⁶ See INA 212(a)(4)(C), INA 212(a)(4)(D), and INA 213A.

¹⁷ See INA 212(a)(4)(B)(ii). See Chapter 6, Affidavit of Support Under Section 213A of the INA [8 USCIS-PM G.6].

¹⁸ See 64 FR 28689 (May 26, 1999). Due to a printing error, the Federal Register version of the field guidance appears to be dated “March 26, 1999” even though the guidance was actually signed May 20, 1999, became effective May 21, 1999, and was published in the Federal Register on May 26, 1999.

¹⁹ See INA 212(a)(4).

²⁰ See INA 237(a)(5).

²¹ See 64 FR 28689 (May 26, 1999).

²² See 64 FR 28676 (May 26, 1999).

²³ See 64 FR 28689 (May 26, 1999). See 64 FR 28676 (May 26, 1999).

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On August 14, 2019, DHS issued a final rule regarding the public charge ground of inadmissibility, titled “Inadmissibility on Public Charge Grounds” (2019 Final Rule).²⁴ The 2019 Final Rule provided new and expanded definitions for certain terms and provided a multi-factor framework along with associated evidentiary requirements.

The 2019 Final Rule also added provisions that rendered certain nonimmigrants ineligible for extension of stay or change of status if they received specific public benefits for a certain period. Additionally, it revised DHS regulations governing the Secretary’s discretion to accept a public charge bond for those seeking adjustment of status.

The 2019 Final Rule was set to take effect on October 15, 2019. Before it did, numerous plaintiffs filed suits challenging the 2019 Final Rule in five district courts, across four circuits.²⁵ The 2019 Final Rule was ultimately implemented on February 24, 2020. However, following a series of preliminary injunctions and stays or reversals of those injunctions, a partial final judgment vacating the 2019 Final Rule went into effect nationwide on March 9, 2022.²⁶ DHS subsequently formally removed the 2019 Final Rule from the Code of Federal Regulations (CFR).²⁷

After the 2019 Final Rule was vacated and removed from the CFR, DHS returned to making public charge inadmissibility determinations in accordance with the statute and the 1999 Interim Field Guidance.²⁸

Regulatory Changes in 2022

On August 23, 2021, DHS published an Advance Notice of Proposed Rulemaking (ANPRM) to seek broad public feedback on the public charge ground of inadmissibility to inform its development of a future regulatory proposal.²⁹ DHS reviewed the comments and considered them in developing a Notice of Proposed Rulemaking (NPRM).³⁰

²⁴ See 84 FR 41292 (Aug. 14, 2019), as amended by 84 FR 52357 (Oct. 2, 2019).

²⁵ See *CASA de Maryland, Inc., et al. v. Trump*, 19-cv-2715 (D. Md.). See *City and County of San Francisco, et al. v. DHS, et al.*, 19-cv-04717 (N.D. Ca.). See *City of Gaithersburg, et al. v. Trump, et al.*, 19-cv-02851 (D. Md.). See *Cook County et al. v. McAleenan et al.*, 19-cv-06334 (N.D. Ill.). See *La Clinica De La Raza, et al. v. Trump, et al.*, 19-cv-4980 (N.D. Ca.). See *Make the Road New York, et al. v. Cuccinelli, et al.*, 19-cv-07993 (S.D.N.Y.). See *New York, et al. v. DHS, et al.*, 19-cv-07777 (S.D.N.Y.). See *State of California, et al. v. DHS, et al.*, 19-cv-04975 (N.D. Cal.). See *State of Washington, et al. v. DHS, et al.*, 19-cv-05210 (E.D. Wa.).

²⁶ See *Cook County v. Wolf*, 498 F.Supp.3d 999 (N.D. Ill. 2020).

²⁷ See 86 FR 14221 (Mar. 15, 2021).

²⁸ See 64 FR 28689 (May 26, 1999).

²⁹ See 86 FR 47025 (Aug. 23, 2021) (advance notice of proposed rulemaking).

³⁰ See 87 FR 10570, 10597 (Feb. 24, 2022) (proposed rule).

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On February 24, 2022, DHS published an NPRM.³¹ Following consideration of public comments received in response to the NPRM, DHS published a final rule titled, “Public Charge Ground of Inadmissibility,” on September 9, 2022 (2022 Final Rule).³²

The 2022 Final Rule implemented a different policy than the 2019 Final Rule. Under the 2022 Final Rule and similar to the 1999 Interim Field Guidance that was in place before the 2019 Final Rule, aliens were considered likely at any time to become a public charge if they were likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense.

The 2022 and 2019 Final Rules only addressed the public charge ground of inadmissibility and did not address the public charge ground of deportability, which was addressed in the 1999 Interim Field Guidance and 1999 NPRM.

Regulatory Changes in 2026

On November 19, 2025, DHS published an NPRM.³³ Following review and consideration of public comments received in response to the NPRM, DHS published a final rule titled, “Public Charge Ground of Inadmissibility,” on July 20, 2026 (2026 Final Rule).³⁴ The 2026 Final Rule rescinded the 2022 Final Rule as it pertained to public charge inadmissibility determinations and revised the breach and cancellation of public charge bonds regulations.

C. Implementation and Scope

This guidance is intended to faithfully implement INA 212(a)(4) in a manner that is consistent with Congress’ statement of the immigration policy of the United States in 8 U.S.C. 1601(2)(A) and precedent decisions. This guidance is intended to ensure that aliens seeking adjustment of status who are subject to the public charge ground of inadmissibility are self-sufficient. Such aliens should not depend on means-tested public benefits to meet their needs but rather rely on their own capabilities, as well as the resources of private organizations, family members, and sponsors.³⁵ Officers make prospective public charge inadmissibility determinations on a case-by-case basis in the totality of the alien’s circumstances.³⁶

³¹ See 87 FR 10570 (Feb. 24, 2022) (proposed rule).

³² See 87 FR 55472 (Sept. 9, 2022) (final rule).

³³ See 90 FR 52168 (Nov. 19, 2025) (proposed rule).

³⁴ See 91 FR 45324 (Jul. 20, 2026) (final rule).

³⁵ See INA 213A.

³⁶ See 8 U.S.C. 1601. See *Matter of Vindman*, 16 I&N Dec. 131, 132 (BIA 1977) (“In summation, it is felt that everything in the statutes, the legislative comments, and prior decisions point to one conclusion, that Congress intends that an applicant for a visa be excluded *who is without sufficient funds to support himself*, who has no one under any obligation to support him, and whose chances of *becoming self-supporting* decrease as time passes.”) (emphasis added). *Matter of A-*, 19 I&N Dec. 867, 869 (BIA 1988) (“The traditional test applied by the Service to determine

This guidance is intended to inform, but not prescribe, the outcome of USCIS officers' individual public charge inadmissibility determinations made in their discretion.

This guidance is effective on September 18, 2026, and applies to Applications to Register Permanent Residence or Adjust Status (Form I-485) that are postmarked or electronically submitted on or after September 18, 2026. Applications postmarked or electronically submitted before September 18, 2026, will be adjudicated consistent with the statute, regulations, and guidance in place at the time they were filed or electronically submitted.

Officers must adjudicate Forms I-485 postmarked on or after December 23, 2022, but before September 18, 2026, consistent with the 2022 Final Rule. 87 FR 55472 (Sept. 9, 2022). Officers must adjudicate Forms I-485 postmarked before December 23, 2022, consistent with the 1999 Interim Field Guidance. 64 FR 28689 (May 26, 1999).

When applying this guidance, with respect to means-tested public benefits the alien received before September 18, 2026, USCIS officers only consider the alien's receipt of public cash assistance for income maintenance and long-term institutionalization at government expense.³⁷ With respect to means-tested public benefits the alien received on or after September 18, 2026, USCIS officers consider the alien's receipt of any and all such benefits.³⁸

The discussion of public charge bonds in Part G is limited to public charge bonds administered and managed by USCIS, including the management of those submitted by immigrant visa applicants with the Department of State (DOS).³⁹

D. Guiding Principles

USCIS' public charge inadmissibility policy is guided by the following longstanding principles.

Dependence on Means-Tested Public Benefits to Meet Needs

USCIS believes that Congress intended to address an alien's dependence on any means-tested public benefits to meet his or her needs when it enacted the public charge ground of

whether an alien is likely to become a public charge is 'a prediction based on the totality of the alien's circumstances' as presented in the individual case . . . Even though the test is prospective, the Service has considered evidence of receipt of prior public assistance as a factor in making the public charge determination. Other factors that have been considered are the alien's age, capacity to earn a living, health, family situation, work history, affidavits of support, and other relevant factors.").

³⁷ See 91 FR 45324 (Jul. 20, 2026) (final rule).

³⁸ See 91 FR 45324 (Jul. 20, 2026) (final rule). For more information about how USCIS officers consider the alien's receipt of public benefits, see Chapter 7, Consideration of Any Current or Past Application for, Approval or Certification to Receive, and Receipt of Means-Tested Public Benefits [8 USCIS-PM G.7].

³⁹ For more information, see Chapter 11, Public Charge Bonds [8 USCIS-PM G.11].

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inadmissibility as it has existed since the IIRIRA. The INA does not define “public charge” or “likely at any time to become a public charge.”⁴⁰ Likewise, USCIS has not defined “likely at any time to become a public charge.”⁴¹

Although Congress was clearly focused on an alien’s dependence on means-tested public benefits, neither the statute nor case law prescribe the degree to which an alien must receive means-tested public benefits to be considered likely at any time to become a public charge.⁴² Given that neither the statute nor relevant precedent decisions prescribe a primary dependence standard or consideration of only a narrow and specific list of public benefits for public charge inadmissibility determinations, USCIS believes that placing limits on the types of benefits and the time frame of receipt of such benefits is not the best implementation of the public charge inadmissibility statute given Congress’ clear statement that “aliens...not depend on public resources to meet their needs.”⁴³ Therefore, USCIS believes that it is appropriate to allow for consideration of the receipt of any means-tested public benefit irrespective of the time frame when determining whether an alien is likely at any time to become a public charge, as this receipt may be indicative of the alien’s dependence on the government to meet their needs.⁴⁴

Prospective Determination in the Totality of the Circumstances

⁴⁰ See INA 212(a)(4).

⁴¹ See *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) (overruling *Chevron* deference to agency interpretations of ambiguous statutes and acknowledging that courts rather than agencies are in the position to determine the best interpretation of an ambiguous statute. The case acknowledges that in some circumstances, an agency interpretation of a statute may nonetheless have the power to persuade the court consistent with the standard enunciated in *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), especially to the extent that the agency views are within its area of expertise. In addition, the Court recognized situations in which a statute’s meaning may be that an agency is authorized to exercise a degree of discretion, or a statute empowers an agency to “fill up the details” of a statutory scheme.)

⁴² See *Matter of Harutunian*, 14 I&N Dec. 583, 589 (Reg’l Comm’r 1974) (“Congress intends that an applicant for a visa be excluded who is without sufficient funds to support himself, who has no one under any obligation to support him and who, being older, has an increasing chance of *becoming dependent*, disabled and sick.”) (emphasis added).

⁴³ See 8 U.S.C. 1601(2)(A).

⁴⁴ See *Matter of Harutunian*, 14 I&N Dec. 583, 589 (Reg’l Comm’r 1974) (“Congress intends that an applicant for a visa be excluded who is without sufficient funds to support himself, who has no one under any obligation to support him and who, being older, has an increasing chance of becoming dependent, disabled and sick.”). See *Matter of A-*, 19 I&N Dec. 867, 869 (BIA 1988) (acknowledging consideration of evidence of receipt of any prior public assistance as a factor in making the public charge inadmissibility determination); *Matter of Vindman*, 16 I&N Dec. 131, 132 (BIA 1977) (finding that aliens who are receiving SSI and public funds from the New York Department of Social Services “fall clearly within the confines of section 212(a)(15) of the Act and are excludable as public charges.”). Note that Congress implicitly recognized that past receipt of any public benefit can be considered in determining the alien’s likelihood of becoming a public charge when it prohibited consideration of the receipt of any public benefit that is authorized under 8 U.S.C. 1641(c) for certain battered aliens. See INA 212(s), 8 U.S.C. 1182(s). For more information about how USCIS officers consider the alien’s receipt of public benefits, see Chapter 7, Consideration of Any Current or Past Application for, Approval or Certification to Receive, and Receipt of Means-Tested Public Benefits [8 USCIS-PM G.7].

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An officer's decision as to whether an alien is, in the officer's opinion, likely at any time to become a public charge is an inherently prospective evaluation made in the totality of the circumstances at the time of the alien's application for admission or adjustment of status.⁴⁵ No one factor, other than the lack of a sufficient Form I-864, where required, is outcome determinative. Note that past or current receipt of means-tested public benefits may not be indicative of future receipt.⁴⁶ Such receipt is considered in conjunction with the other factors present in the alien's case in the totality of the circumstances.

An Alien's Willingness and Ability to Work

In applying the public charge ground of inadmissibility, the courts have long focused on whether an alien has the ability to earn a living or meet his or her basic needs through employment. These decisions suggest that an alien who is of working age and who is in good physical and mental condition is capable of earning a living or working to meet his or her basic needs, even if the alien receives certain means-tested benefits. Such an alien would not generally be found inadmissible under the public charge ground.⁴⁷ Even where an alien has a low income, if the alien is healthy, willing, and able to work, he or she is likely to be self-sufficient and therefore, generally not likely at any time to become a public charge.⁴⁸

⁴⁵ See *Matter of A-*, 19 I&N Dec. 867, 869 (BIA 1988) ("The traditional test applied by the Service to determine whether an alien is likely to become a public charge is 'a prediction based on the totality of the alien's circumstances' as presented in the individual case Even though the test is prospective, the Service has considered evidence of receipt of prior public assistance as a factor in making the public charge determination. Other factors that have been considered are the alien's age, capacity to earn a living, health, family situation, work history, affidavits of support, and other relevant factors.").

⁴⁶ See *Matter of Perez*, 15 I&N Dec. 136, 137 (BIA 1974) ("The determination of whether an alien is likely to become a public charge . . . is a prediction based upon the totality of the alien's circumstances at the time he or she applies for an immigrant visa or admission to the United States. The fact that an alien has been on welfare does not, by itself, establish that he or she is likely to become a public charge.").

⁴⁷ See *Matter of A-*, 19 I&N Dec. 867, 869 (Comm'r 1988) (33-year-old employed mother of three not likely to become a public charge notwithstanding having previously received public benefits. The BIA considered other relevant factors, including that a mother's temporary absence from the workforce to care for her children is not by itself sufficient basis to find the mother likely to become a public charge. There may be circumstances beyond the control of the alien which temporarily prevent an alien from joining the workforce. For example, as the applicant states in her appeal, she lives in an area where jobs are scarce and she had been unable to find a job.). See *Matter of Harutunian*, 14 I&N Dec. 583, 588 (Reg'l Comm'r 1974) (Although all factors should be considered in their totality, administrative authorities have also held that "the alien's physical and mental condition, as it affects ability to earn a living, is of major significance."). See *Matter of C-*, 3 I&N Dec. 96, 97 (BIA 1947) (finding that the alien was not likely to become a public charge because "he is in good health and is able and willing to go to work.").

⁴⁸ See *Matter of C-*, 3 I&N Dec. 96, 97 (BIA 1947) (finding that the alien was not likely to become a public charge because "he is in good health and is able and willing to go to work."). See *Matter of Martinez-Lopez*, 10 I&N Dec. 409, 421 (BIA 1962; Att'y Gen. 1962) (considering whether the alien had an employment offer in making a public charge inadmissibility determination and determining that a young alien with low financial means and no job offer who nonetheless had work experience and was willing to work was not excludable.) See *Matter of Perez*, 15 I&N Dec. 136, 137 (BIA 1974) (considering the alien's capability of finding employment and prospective employment opportunities in making public charge determination). See also *Matter of A-*, 19 I&N Dec. 867, 869 (Comm'r 1988) (considering past employment and job prospects in the public charge determinations); *Matter of Vindman*, 16 I&N

However, aliens who are incapable of earning a livelihood may be more likely to become public charges.⁴⁹ For example, an alien who is older, unable to work, and has limited financial resources may be more likely at any time to become a public charge.⁵⁰ Similarly, an alien who has a disability or a medical condition that requires extensive medical treatment or care, is unable to work, and has limited financial resources may also be more likely at any time to become a public charge.⁵¹ In both instances, however, the alien's inability to earn a living is not outcome determinative, but rather, is considered along with all relevant factors present in the alien's case.

Consideration of an Alien's Support from a Sponsor

Congress has made an alien's reliance on the resources of his or her family members, sponsors, and private organizations in addition to his or her own capabilities the cornerstone of the national policy on immigration and welfare. In 1996, Congress made a sponsor's affidavit of support a binding legal contract, which remains the case today.⁵² Under the statute, if an alien has submitted a sufficient Form I-864, USCIS may consider that affidavit as part of the public charge inadmissibility determination.⁵³ Based on the language in PRWORA, USCIS believes that Congress was focused on ensuring that aliens have adequate support as a way to avoid burdening the public benefits system.⁵⁴ This concern suggests that Congress intended for officers to have discretion to consider more than the presence of a sufficient Form I-864, where such is required. Indeed, where the Form I-864 meets the minimum requirements, officers may also consider whether the sponsor is actually willing to provide financial assistance to the alien, the number of additional aliens that the sponsor is obligated to support, and whether the sponsor has faithfully fulfilled his or her past or present financial obligations to other sponsored aliens.

E. Legal Authorities

Dec. 131 (Reg'l Comm'r 1977). See *Matter of T-*, 3 I&N Dec. 641, 644 (BIA 1949) ("We find that the female appellant is quite capable of earning her own livelihood independent of her husband and that the minor male appellant has had considerable training in the tailoring industry which presents a wide field for employment in this country.")

⁴⁹ See *Matter of Vindman*, 16 I&N Dec. 131 (Reg'l Comm'r 1977) (finding aliens who are older and had never worked in the United States and were receiving SSI inadmissible). See *Matter of T-*, 3 I&N Dec. 641, 644 (BIA 1949) ("In order to sustain the [public charge inadmissibility] ground...there must be substantial evidence that these aliens are likely to be supported at the expense of the public because of poverty or some physical handicap.")

⁵⁰ See *Matter of Vindman*, 16 I&N Dec. 131 (Reg'l Comm'r 1977) (finding aliens who are older and had never worked in the United States and were receiving SSI inadmissible).

⁵¹ See *Matter of Harutunian*, 14 I&N Dec. 583, 588 (Reg'l Comm'r 1974) (Although all factors should be considered in their totality, administrative authorities have also held that "the alien's physical and mental condition, as it affects ability to earn a living, is of major significance.").

⁵² See INA 213A. See INA 212(a)(4)(C) and (D).

⁵³ See INA 212(a)(4)(B).

⁵⁴ See 8 U.S.C. 1601(4) and (5).

- INA 212(a)(4); 8 CFR 212 – Public charge inadmissibility
- INA 213A; 8 CFR 213a – Requirements for sponsor’s affidavit of support
- INA 213; 8 CFR 213.1 – Admission of aliens on giving bond or undertaking; return upon permanent departure; admission under bond or cash deposit
- 8 CFR 103.6 – Immigration bonds
- INA 245; 8 CFR 245 – Adjustment of status of nonimmigrant to that of person admitted for permanent residence
- 31 U.S.C. 9304-9308 – Surety corporations

Chapter 2. Key Concepts

The following descriptions and explanations of key concepts are vital to making public charge inadmissibility determinations under INA 212(a)(4)(A).

A. Likely at Any Time to Become a Public Charge

The INA does not define the phrase “likely at any time to become a public charge” or the term “public charge.”⁵⁵ As discussed in Chapter 1 of this Part, there is no judicially established or uniformly consistent historical understanding of the term public charge. For purposes of this guidance, USCIS generally considers an alien likely at any time to become a public charge if the alien is likely to become dependent on the government to meet his or her basic needs, for example shelter, food, or healthcare,⁵⁶ typically demonstrated through dependence on means-tested public benefits.

For purposes of a public charge inadmissibility determination under INA 212(a)(4), officers must determine whether an alien is likely *at any time* to become a public charge, that is, likely at any time to depend on means-tested public benefits. Officers do this by considering the mandatory statutory factors, any current and/or past receipt of means-tested public benefits, and any other information and evidence relevant to the determination in the totality of the alien’s circumstances.

This guidance addresses the prospective nature of public charge inadmissibility determinations in Chapter 4 and the elements of the totality of the circumstances analysis in Chapters 5 through 7.

⁵⁵ See INA 212(a)(4)(A).

⁵⁶ See 8 U.S.C. 1601(2)(A).

B. Means-Tested Public Benefits

There is no statutory or regulatory definition of means-tested public benefits for the purpose of public charge inadmissibility determinations under INA 212(a)(4)(A).⁵⁷ When applying this guidance and the public charge ground of inadmissibility, officers should consider the following when determining if a particular program is a means-tested public benefit:

- A benefit is generally considered to be means-tested if eligibility for the benefit is determined based on the applicant's income or assets falling below a certain threshold;
- A benefit is generally a "public" benefit if the payments or assistance are provided by an agency of the government or by appropriated funds of the government;
- Examples of public benefits that could potentially be means-tested public benefits relevant to a public charge inadmissibility determination include but are not limited to cash assistance, public or assisted housing, financial aid for postsecondary education, food assistance, government-funded health coverage, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit; and
- Earned benefits such as Social Security and Medicare are not means-tested public benefits. Unemployment insurance benefits are similarly not means-tested public benefits.

C. Receipt (of Means-Tested Public Benefits)

Receipt (of means-tested public benefits) only occurs when the alien is listed as a beneficiary of the benefit.

USCIS does not attribute to the alien the receipt of means-tested public benefits if the benefit is received by the applicant's relatives, including children, or received by the applicant solely on behalf of third parties (for example, where the alien is a legal guardian or custodian of another). Officers should also not attribute to the alien the fact that the alien applied for a means-tested public benefit on behalf of another.

While not constituting "receipt," the alien's own application for, or certification or approval to receive, a benefit in the future may be considered in the totality of the alien's circumstances along with any evidence that the alien withdrew his or her application or notified the benefit

⁵⁷ DHS has established, by regulation, a definition for "means-tested public benefit" for purposes of the Affidavit of Support Under Section 213A of the INA (Form I-864). See 8 CFR 213a.1. This definition is distinct from, and should not be confused with, "means-tested public benefits" in the context of public charge inadmissibility determinations, for which no regulatory definition has been established.

granting agency that he or she wished to disenroll from a benefit he or she was receiving or was approved or certified to receive in the future. Additionally, if an alien's children or any other relative or household member the alien is legally obligated to support receives means-tested public benefits based on the alien's income or assets falling below a certain level, then officers should consider the alien's income or assets falling below the threshold as part of the assets, resources, and financial status factor.⁵⁸

D. Dependence on Means-Tested Public Benefits

Central to the national immigration policy set forth in PRWORA is that aliens within the United States not depend on public resources to meet their needs. In codifying this immigration policy close in time to the enactment of the current iteration of INA 212(a)(4), USCIS believes that Congress intended these two statutes to address aliens' dependence on means-tested public benefits to meet their needs.

Neither PRWORA, INA 212(a)(4), nor case law prescribe the degree to which an alien must receive public benefits to be considered dependent on them and therefore a public charge. Given that neither the statute nor relevant precedent decisions prescribe a primary dependence standard or consideration of only a narrow and specific list of public benefits for public charge inadmissibility determinations, USCIS believes that it is appropriate for officers to consider an alien's dependence on any means-tested public benefits to meet his or her basic needs when determining whether an alien is likely at any time to become a public charge. Therefore, through this policy and consistent with Congress' clear statement that "aliens...not depend on public resources to meet their needs,"⁵⁹ USCIS officers will consider the alien's potential dependence on means-tested public benefits when making public charge inadmissibility determinations.

E. Government

The term "government," for the purpose of implementing the public charge ground of inadmissibility, is generally understood to refer to any federal, state, tribal, territorial, or local government entity or entities of the United States.

F. Household

The concept of an alien's household is relevant to several aspects of public charge inadmissibility determinations, including the alien's family status and assets, resources, and financial status. For the purpose of a public charge inadmissibility determination, it is

⁵⁸ See Chapter 5, Statutory Minimum Factors, Section D, Assets, Resources, and Financial Status [8 USCIS-PM G.5(D)].

⁵⁹ See 8 U.S.C. 1601(2)(A).

reasonable for officers to consider the following individuals as members of an alien's household:

- The alien;
- The alien's spouse, if physically residing with the alien;
- The alien's parents, if physically residing with the alien;
- The alien's unmarried siblings under 21 years of age, if physically residing with the alien;
- The alien's children,⁶⁰ if physically residing with the alien;
- Any other individuals who are listed as dependents on the alien's federal income tax return;⁶¹ and
- Any other individuals who list the alien as a dependent on their federal income tax return.

Chapter 3. Applicability

The public charge ground of inadmissibility at section 212(a)(4) of the Immigration and Nationality Act (INA) applies to an alien who is applying for a visa, admission, or adjustment of status.⁶² An alien applying for a visa, admission, or adjustment of status must establish that he or she is not inadmissible under any ground of inadmissibility including the public charge ground.⁶³ If an alien is exempt from the public charge ground of inadmissibility, this ground of inadmissibility does not apply to the alien.⁶⁴

As indicated above, this guidance is limited to USCIS public charge inadmissibility determinations conducted in the context of adjudicating the Application to Register Permanent Residence or Adjust Status (Form I-485). This guidance does not apply to applicants for admission at ports of entry, which are adjudicated by U.S. Customs and Border Protection (CBP), or aliens applying for immigrant and nonimmigrant visas before the Department of State (DOS). It also does not apply to the adjudication of adjustment of status applications by the Executive Office of Immigration Review (EOIR) of the Department of Justice (DOJ).

⁶⁰ As defined in INA 101(b)(1).

⁶¹ Including a spouse or child as defined in INA 101(b)(1) not physically residing with the alien.

⁶² See INA 212(a)(4)(A).

⁶³ See INA 291 and INA 212(a)(4).

⁶⁴ See Section C, Exemptions [8 USCIS-PM G.3(C)].

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A. Applicants for Admission

The public charge ground of inadmissibility⁶⁵ generally applies to applicants for admission⁶⁶ as an immigrant⁶⁷ or a nonimmigrant unless the applicant is specifically exempted by statute or regulations.⁶⁸ CBP inspects applicants for admission to the United States. When an applicant for admission demonstrates that he or she is admissible, the applicant may be permitted to enter the United States as an immigrant or nonimmigrant.⁶⁹

1. Nonimmigrants

Under INA 212(a)(4), any alien who is applying for a visa or for admission to the United States as a nonimmigrant is inadmissible if he or she is likely at any time to become a public charge. An alien applies directly to a U.S. consulate or embassy abroad for a nonimmigrant visa to travel to the United States temporarily for a limited purpose, such as to visit for business or tourism.⁷⁰ DOS consular officers assess whether the alien is inadmissible and therefore ineligible for a visa, including under the public charge ground of inadmissibility, as applicable.⁷¹ Eligible aliens may also apply for admission as a nonimmigrant without a visa under, for example, the Visa Waiver Program (VWP).⁷²

Once DOS issues the nonimmigrant visa, or the prospective traveler has obtained any required pre-travel authorization from CBP, the alien generally may travel to the United States using that visa or travel authorization, if applicable, and apply for admission at a port of entry. CBP then determines whether the applicant for admission is inadmissible under any ground, including public charge.⁷³

2. Immigrants

An alien who is abroad and is the beneficiary of an approved immigrant visa petition may apply to DOS for an immigrant visa to allow him or her to travel to the United States and seek

⁶⁵ See INA 212(a)(4).

⁶⁶ See INA 101(a)(4) and INA 101(a)(13)(A).

⁶⁷ An alien, who is a lawful permanent resident (LPR), who travels abroad and seeks to enter the United States again is generally not seeking admission under the Immigration and Nationality Act (INA). See INA 101(a)(13)(C).

⁶⁸ For more information, see Section C, Exemptions [8 USCIS-PM G.3(C)].

⁶⁹ See INA 235. See 8 CFR 235.

⁷⁰ Certain nonimmigrant classifications are subject to petition requirements, and in such cases USCIS generally must approve a petition before the nonimmigrant applies for a visa. See INA 214. In addition, certain aliens are not subject to a visa requirement in order to seek admission as a nonimmigrant. See INA 217. See 8 CFR 212.1.

⁷¹ See INA 221 and INA 222. See 8 CFR 204.

⁷² Examples of other ways in which eligible aliens may apply for admission as a nonimmigrant without a visa include but are not limited to the Guam-CNMI VWP (see 8 CFR 212.1(q)) as well as certain nationals of Canada, Bermuda, the Bahamas, the British Virgin Islands, and Mexico in certain situations (see 8 CFR 212.1(a)-(c)).

⁷³ The public charge ground of inadmissibility does not apply to nonimmigrants seeking extension of stay or change of status in the United States.

admission to the United States as an immigrant.⁷⁴ As part of the immigrant visa process, DOS determines whether the applicant is eligible for the visa, which includes a determination of whether the alien has demonstrated that he or she is not inadmissible under any of the applicable grounds in INA 212(a).

Once DOS issues the immigrant visa, the alien may travel to the United States and seek admission as an immigrant at a port of entry. CBP determines whether the applicant for admission as an immigrant is inadmissible under any ground, including public charge.

3. Certain Lawful Permanent Residents Returning to the United States

Note that certain lawful permanent residents (LPRs) generally are not considered to be applicants for admission when they present themselves for inspection at a port of entry after a trip abroad and therefore are not subject to inadmissibility determinations. However, in certain limited circumstances, an LPR is considered an applicant for admission and, therefore, subject to an inadmissibility determination upon the LPR's return to the United States.⁷⁵ This inadmissibility determination includes whether the alien is inadmissible under the public charge ground.

B. Aliens Applying for Adjustment of Status

The public charge ground of inadmissibility applies to all aliens applying for adjustment of status unless they are specifically exempt from the public charge ground of inadmissibility.⁷⁶

The tables below indicate which aliens applying for adjustment of status are subject to the public charge ground of inadmissibility:⁷⁷

⁷⁴ See INA 221 and INA 222. See 8 CFR 204.

⁷⁵ See INA 101(a)(13)(C). See Volume 7, Adjustment of Status, Part B, 245(a) Adjustment, Chapter 2, Eligibility Requirements, Section A, "Inspected and Admitted" or "Inspected and Paroled," Subsection 2, Admission [7 USCIS-PM B.2(A)(2)]. An LPR who travels abroad does not undergo another public charge inadmissibility determination upon return to the United States unless CBP determines that the returning LPR is an applicant for admission based on one of the criteria set forth in INA 101(a)(13)(C) (for example, CBP determines that the alien has been absent from the United States for more than 180 days).

⁷⁶ See INA 212(a)(4).

⁷⁷ The tables provided include footnotes indicating the immigrant classes of admission as well as the associated codes that appear on applicants' USCIS-issued documents and in USCIS systems. For additional information about the applicability of the public charge ground of inadmissibility, and in particular whether a Form I-864 is required based on the immigration classification under which an alien is applying for adjustment of status, see the Appendices [8 USCIS-PM G, Appendices Tab] and Chapter 6, Affidavit of Support Under Section 213A of the INA [8 USCIS-PM G.6].

Family-Based Adjustment of Status Applicants Subject to the Public Charge Ground of Inadmissibility
Spouses, children, and parents of U.S. citizens ⁷⁸
Unmarried sons and daughters of U.S. citizens and their children ⁷⁹
Spouses, children, and unmarried sons and daughters of LPRs ⁸⁰
Married sons and daughters of U.S. citizens and their spouses and children ⁸¹
Brothers and sisters of U.S. citizens ⁸²
Fiancé(e)s of U.S. citizens ⁸³

⁷⁸ Immediate relatives, including the following categories: IR-6 Spouses; IR-7 Children; CR-7 Children, conditional; IH-8 Children adopted abroad under the Hague Adoption Convention; IH-9 Children coming to the United States to be adopted under the Hague Adoption Convention; IR-8 Orphans adopted abroad; IR-9 Orphans coming to the United States to be adopted; IR-0 Parents of adult U.S. citizens. Children adopted abroad generally do not apply for adjustment of status.

⁷⁹ Family-sponsored 1st preference applicants, including the following categories: A-16 Unmarried Amerasian sons/daughters of U.S. citizens; F-16 Unmarried sons/daughters of U.S. citizens; A-17 Children of A-11 or A-16; F-17 Children of F-11 or F-16; B-17 Children of B-11 or B-16.

⁸⁰ Family-sponsored 2nd preference applicants, including the following categories: F-26 Spouses of alien residents, subject to country limits; C-26 Spouses of alien residents, subject to country limits, conditional; FX-6 Spouses of alien residents, exempt from country limits; CX-6 Spouses of alien residents, exempt from country limits, conditional; F-27 Children of alien residents, subject to country limits; C-28 Children of C-26 or C-27, subject to country limits, conditional; B-28 Children of B-26 or B-27, subject to country limits; F-28 Children of F-26 or F-27, subject to country limits; C-20 Children of C-29, subject to country limits, conditional; B-20 Children of B-29, subject to country limits; F-20 Children of F-29, subject to country limits; C-27 Children of alien residents, subject to country limits, conditional; FX-7 Children of alien residents, exempt from country limits; CX-8 Children of CX7, exempt from country limits, conditional; FX-8 Children of FX-7 or FX-8, exempt from country limits; CX-7 Children of alien residents, exempt from country limits, conditional; F-29 Unmarried sons/daughters of alien residents, subject to country limits; C-29 Unmarried children of alien residents, subject to country limits, conditional.

⁸¹ Family-sponsored 3rd preference applicants, including the following categories: A-36 Married Amerasian sons/daughters of U.S. citizens; F-36 Married sons/daughters of U.S. citizens; C-36 Married sons/daughters of U.S. citizens, conditional; A-37 Spouses of A-31 or A-36; F-37 Spouses of married sons/daughters of U.S. citizens; C-37 Spouses of married sons/daughters of U.S. citizens, conditional; B-37 Spouses of B-31 or B-36; A-38 Children of A-31 or A-36, subject to country limits; F-38 Children of married sons/daughters of U.S. citizens; C-38 Children of C-31 or C-36, subject to country limits, conditional; B-38 Children of B-31 or B-36, subject to country limits.

⁸² Family-sponsored 4th preference applicants, including the following categories: F-46 Brothers/sisters of U.S. citizens, adjustments; F-47 Spouses of brothers/sisters of U.S. citizens, adjustments; F-48 Children of brothers/sisters of U.S. citizens, adjustments.

⁸³ Applicants admitted as a K-1 or K-2 nonimmigrant, including the following categories: CF-1 Spouses, entered as fiancé(e), adjustments conditional; IF-1 Spouses, entered as fiancé(e), adjustments.

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Family-Based Adjustment of Status Applicants Subject to the Public Charge Ground of Inadmissibility
Amerasians based on preference category, born on or after December 31, 1950, and before October 22, 1982 ⁸⁴
Spouses, widows, or widowers of U.S. citizens ⁸⁵

Employment-Based Adjustment of Status Applicants Subject to the Public Charge Ground of Inadmissibility
Priority workers ⁸⁶
Professionals with advanced degrees or aliens of exceptional ability ⁸⁷
Skilled workers, professionals, and other workers ⁸⁸
Investors ⁸⁹

⁸⁴ Includes the following categories: Immediate Relative AR-6 Children, Amerasian, First Preference: A-16 Unmarried Amerasian sons/daughters of U.S. citizens; Third Preference A-36 Married Amerasian sons/daughters of U.S. citizens. See INA 204(f). Note that although this program does not have a specific sunset date, it is likely that all potential applicants have already applied.

⁸⁵ Includes the following categories: IW-6 Widows or widowers of U.S. citizens; IW-7 Children of IW-6.

⁸⁶ Employment-sponsored 1st preference applicants, including the following categories: E-16 Immigrants with extraordinary ability; E-17 Outstanding professors or researchers; E-18 Certain Multinational executives or managers; E-19 Spouses of E-11, E-12, E-13, E-16, E-17, or E-18; E-10 Children of E-11, E-12, E-13, E-16, E-17, or E-18.

⁸⁷ Employment-sponsored 2nd preference applicants, including the following categories: E-26 Professionals holding advanced degrees; ES-6 Soviet scientists; E-27 Spouses of E-21 or E-26; E-28 Children of E-21 or E-26.

⁸⁸ Employment-sponsored 3rd preference applicants, including the following categories: EX-6 Schedule - A worker; EX-7 Spouses of EX-6; EX-8 Children of EX-6; E-36 Skilled workers; E-37 Professionals with baccalaureate degrees; E-39 Spouses of E-36 or E-37; E-30 Children of E-36 or E-37; EW-8 Other workers; EW-0 Children of EW-8; EW-9 Spouses of EW-8; EC-6 Chinese Student Protection Act (CSPA) principals; EC-7 Spouses of EC-6; EC-8 Children of EC-6.

⁸⁹ Employment-sponsored 5th preference applicants, including the following categories: C-56 Employment creation, not in targeted area, adjustments, conditional; E-56 Employment creation; I-56 Employment creation, targeted area, pilot program, adjustments, conditional; T-56 Employment creation, targeted area, conditional; R-56 Investor pilot program, not targeted, conditional; NU-6 Investor, non-regional center, unreserved; RU-6 Investor, regional center, unreserved; NR-6 Investor, non-regional center, set aside, rural; NH-6 Investor, non-regional center, set aside, high unemployment; RR-6 Investor, regional center, set aside, rural; RH-1 Investor, regional center, set aside, high unemployment; RI-6 Investor, regional center, set aside, infrastructure; C-57 Spouses of C-51 or C-56, conditional; E-57 Spouses of E-51 or E-56; I-57 Spouses of I-51 or I-56, conditional; T-57 Spouses of T-51 or T-56, conditional; R-57 Spouses of R-51 or R-56, conditional; NU-7 Spouses of NU-1 or NU-6; RU-7 Spouses of RU-1 or RU-6; NR-7 Spouses of NR-1 or NR-6; NH-7 Spouses of NH-1 or NH-6; RR-7 Spouses of RR-1 or RR-6; RH-7 Spouses of RH-1 or RH-6; RI-7 Spouses of RI-1 or RI-6; C-58 Children of C-51 or C-56, conditional; E-58 Children of E-51 or E-56; I-58

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Special Immigrant Adjustment of Status Applicants Subject to the Public Charge Ground of Inadmissibility
Religious workers ⁹⁰
Certain employees or former employees of the U.S. government abroad ⁹¹
Panama Canal Zone employees ⁹²
Foreign medical school graduates ⁹³
Retired employees of international organizations ⁹⁴
U.S. armed forces personnel ⁹⁵
International broadcasters ⁹⁶

Children of I-51 or I-56, conditional; T-58 Children of T-51 or T-56, conditional; R-58 Children of R-51 or R-56, conditional; NU-8 Children of NU-1 or NU-6; RU-8 Children of RU-1 or RU-6; NR-8 Children of NR-1 or NR-6; NH-8 Children of NH-1 or NH-6; RR-8 Children of RR-1 or RR-6; RH-8 Children of RH-1 or RH-6; RI-8 Children of RI-1 or RI-6.

⁹⁰ Includes the following categories: SD-6 Ministers; SD-7 Spouses of SD-6; SD-8 Children of SD-6; SR-6 Religious workers; SR-7 Spouses of SR-6; SR-8 Children of SR-6.

⁹¹ Includes the following categories: SE-6 Employees of U.S. government abroad, adjustments; SE-7 Spouses of SE-6; SE-8 Children of SE-6.

⁹² Includes the following categories: SF-6 Former employees of the Panama Canal Company or Canal Zone Government; SF-7 Spouses or children of SF-6; SG-6 Former U.S. government employees in the Panama Canal Zone; SG-7 Spouses or children of SG-6; SH-6 Former employees of the Panama Canal Company or Canal Zone government, employed on April 1, 1979; SH-7 Spouses or children of SH-6. Note that although this program does not have a specific sunset date, it is likely that all potential applicants have already applied.

⁹³ Includes the following categories: SJ-6 Foreign medical school graduate who was licensed to practice in the United States on Jan. 9, 1978; SJ-7 Spouses or children of SJ-6. Note that although this program does not have a specific sunset date, it is likely that all potential applicants have already applied.

⁹⁴ Includes the following categories: SK-6 Retired employees of international organizations; SK-7 Spouses of SK-1 or SK-6; SK-8 Certain unmarried children of SK-6; SK-9 Certain surviving spouses of deceased international organization employees.

⁹⁵ Also known as the Six and Six Program, includes the following categories: SM-6 U.S. armed forces personnel, service (12 years) after 10/1/91; SM-9 U.S. armed forces personnel, service (12 years) by 10/91; SM-7 Spouses of SM-1 or SM-6; SM-0 Spouses or children of SM-4 or SM-9; SM-8 Children of SM-1 or SM-6.

⁹⁶ Includes the following categories: BC-6 Broadcast (IBCG of BBG) employees; BC-7 Spouses of BC-1 or BC-6; BC-8 Children of BC-6.

Other Adjustment of Status Applicants Subject to the Public Charge Ground of Inadmissibility
Diplomats or high-ranking officials unable to return home (Section 13 of the Act of September 11, 1957)
Diversity visa immigrants ⁹⁷
Certain entrants before Jan. 1, 1982 ⁹⁸
S (Alien witness or informant) ⁹⁹

C. Exemptions

The public charge ground of inadmissibility does not apply, based on statutory or regulatory authority, to the following applicants for visas, admission, and adjustment of status (or other immigration benefit requests that require admissibility):

- Asylees¹⁰⁰ and refugees;¹⁰¹
- Amerasian immigrants at admission;¹⁰²
- Afghan and Iraqi interpreters or Afghan and Iraqi nationals employed by or on behalf of the U.S. government;¹⁰³
- Cuban and Haitian entrants at adjustment of status under section 202 of the Immigration

⁹⁷ Includes the following categories: DV-1 Diversity immigrant; DV-2 Spouses of DV-1; DV-3 Children of DV-1.

⁹⁸ Includes the following categories: W-16 Previously granted temporary resident status (legalization) who entered United States without inspection before Jan. 1, 1982; W-26 Previously granted temporary resident status (legalization) who entered United States as a nonimmigrant and overstayed visa before Jan. 1, 1982.

⁹⁹ S nonimmigrants applying for adjustment of status may apply for a waiver of the public charge ground of inadmissibility using Inter-Agency Alien Witness and Informant Record (Form I-854). See Chapter 9, Waivers of Inadmissibility Based on Public Charge Ground [8 USCIS-PM G.9].

¹⁰⁰ See INA 208. See 8 CFR 209.2.

¹⁰¹ See INA 207 and INA 209. See 8 CFR 209.1.

¹⁰² See Sections 101(e) and 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, Pub. L. 100-202, 101 Stat. 1329-183 (December 22, 1987), as amended.

¹⁰³ See Section 1059(a)(2) of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109-163, 119 Stat. 3136, 3444 (January 6, 2006), as amended, and Section 602(b), Title VI of the Omnibus Appropriations Act, 2009, Pub. L. 111-8, (March 11, 2009), as amended, and Section 1244(g) of the National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181, 122 Stat. 3, 396 (January 28, 2008), as amended.

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Reform and Control Act of 1986;¹⁰⁴

- Applicants seeking adjustment under the Cuban Adjustment Act;¹⁰⁵
- Nicaraguans and other Central Americans who are adjusting status to LPR;¹⁰⁶
- Haitians who are adjusting status to LPR under the Haitian Refugee Immigration Fairness Act of 1998;¹⁰⁷
- Lautenberg parolees;¹⁰⁸
- Special immigrant juveniles;¹⁰⁹
- Applicants for registry;¹¹⁰
- Applicants seeking temporary protected status (TPS);¹¹¹
- Certain nonimmigrant ambassadors, ministers, diplomats, and other foreign government officials, and their families;¹¹²
- Victims of human trafficking (T nonimmigrants);¹¹³

¹⁰⁴ See Section 202 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603, 100 Stat. 3359, 3404 (November 6, 1986), as amended.

¹⁰⁵ See Cuban Adjustment Act, Pub. L. 89-732 (November 2, 1966), as amended.

¹⁰⁶ See Sections 202(a) and 203 of the Nicaraguan Adjustment and Central American Relief Act, Pub. L. 105-100, 111 Stat. 2160, 2193 (November 19, 1997), as amended.

¹⁰⁷ See Section 902 of the Haitian Refugee Immigration Fairness Act of 1998, Pub. L. 105-277, 112 Stat. 2681, 2681-538 (October 21, 1998), as amended.

¹⁰⁸ See Section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Pub. L. 101-167, 103 Stat. 1195, 1263 (November 21, 1989), as amended.

¹⁰⁹ See INA 245(h).

¹¹⁰ Registry is a section of immigration law that enables certain aliens who have been present in the United States since January 1, 1972, the ability to apply for lawful permanent residence even if currently in the United States unlawfully. See INA 249. See 8 CFR 249.

¹¹¹ See 8 CFR 244.3. INA 244(c)(2)(ii) authorizes DHS to waive any INA 212(a) ground, except for those that Congress specifically noted could not be waived.

¹¹² See INA 101(a)(15)(A)(i), INA 101(a)(15)(A)(ii), and INA 102. See 22 CFR 41.21(d). See INA 101(a)(15)(G)(i), INA 101(a)(15)(G)(ii), INA 101(a)(15)(G)(iii), and INA 101(a)(15)(G)(iv).

¹¹³ See INA 245(l). If the applicant is adjusting based on an employment-based petition where the petition is filed by either a qualifying relative or an entity in which such relative has a significant ownership interest (5 percent or more), and the applicant, at both the time of filing and adjudication of the Application to Register Permanent Residence or Adjust Status (Form I-485), is still in valid T nonimmigrant status, the applicant is not subject to INA 212(a)(4) but is still required to file an Affidavit of Support Under Section 213A of the INA (Form I-864). See 8 CFR 213a.2(b)(2).

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- Victims of qualifying criminal activity (U nonimmigrants);¹¹⁴
- Self-petitioners under the Violence Against Women Act (VAWA);¹¹⁵
- Certain battered aliens who are “qualified aliens” under PRWORA;¹¹⁶
- Applicants adjusting status who qualify for a benefit as surviving spouses, children, or parents of military members;¹¹⁷
- American Indians born in Canada who are not U.S. citizens;¹¹⁸
- Certain members of the Texas Band of Kickapoo Indians of the Kickapoo Tribe of Oklahoma;¹¹⁹
- Nationals of Vietnam, Cambodia, and Laos applying under the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 2001;¹²⁰
- Polish and Hungarian Parolees;¹²¹
- Certain Syrian nationals;¹²²
- Applicants adjusting under the Liberian Refugee Immigration Fairness (LRIF) law;¹²³ and

¹¹⁴ See INA 101(a)(15)(U) and INA 212(a)(4)(E)(ii). See Section 804 of the Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4, 127 Stat. 54, 111 (March 7, 2013). If the applicant is adjusting based on an employment-based petition where the petition is filed by either a qualifying relative or an entity in which such relative has a significant ownership interest (5 percent or more), and the applicant, at both the time of filing and adjudication of the Form I-485, is still in valid U nonimmigrant status, the applicant is not subject to INA 212(a)(4) but is still required to file Form I-864. See 8 CFR 213a.2(b)(2).

¹¹⁵ See INA 212(a)(4)(E)(i).

¹¹⁶ See INA 212(a)(4)(E)(iii). See Section 804 of the Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4, 127 Stat. 54, 111 (March 7, 2013). See Section 431(c) of Pub. L. 104-193, 110 Stat. 2105, 2274 (August 22, 1996). See 8 U.S.C. 1641(c).

¹¹⁷ See Section 1703 of the National Defense Authorization Act, Pub. L. 108-136, 117 Stat. 1392 (November 24, 2003) (posthumous benefits to surviving spouses, children, and parents).

¹¹⁸ See INA 289.

¹¹⁹ See Pub. L. 97-429 (January 8, 1983).

¹²⁰ See Section 586 of Pub. L. 106-429, 114 Stat. 1900, 1900A-57 (November 6, 2000) under 8 CFR 245.21.

¹²¹ Includes certain Polish and Hungarian parolees who were paroled into the United States from November 1, 1989 to December 31, 1991. See Section 646(b) of IIRIRA, Division C of Pub. L. 104-208, 110 Stat. 3009-546, 3009-709 (September 30, 1996).

¹²² See Pub. L. 106-378 (October 27, 2000).

¹²³ See Section 7611 of the National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92, 113 Stat. 1198, 2309 (December 20, 2019) (Liberian Refugee Immigration Fairness), later extended by Section 901 of Division O, Title IX of the Consolidated Appropriations Act of 2021, Pub. L. 116-260, 134 Stat. 1182, 2155 (December 27, 2020) (Adjustment of Status for Liberian Nationals Extension).

- Any other categories of aliens exempt from the public charge ground of inadmissibility under any other law.

D. Categories of Aliens Exempt from the Public Charge Ground of Inadmissibility Who Must Still Submit Form I-864

Under INA 212(a)(4)(D), certain aliens applying to adjust status in an employment-based category are required to submit an Affidavit of Support Under Section 213A of the INA (Form I-864). This includes aliens whose employment-based petition was filed by a relative of the alien¹²⁴ or by an entity in which the alien's relative has a significant ownership interest.¹²⁵

Congress did not include an exemption from this requirement for aliens applying to adjust status in the employment-based categories, even for certain categories of aliens who are otherwise exempt from the public charge ground of inadmissibility.¹²⁶

Therefore, if an alien in one of the following categories applies for adjustment of status based on an employment-based petition that requires a Form I-864, the alien must submit a Form I-864 executed by his or her petitioning relative (or the relative with significant ownership interest in the petitioning entity):

- Aliens who have a pending application that sets a prima facie case for eligibility for T nonimmigrant status;
- Aliens who have been granted T nonimmigrant status and are in valid T nonimmigrant status at the time the adjustment of status application is properly filed with USCIS and at the time the adjustment of status is adjudicated;
- Petitioners for U nonimmigrant status;
- Aliens who have been granted U nonimmigrant status and are in valid U nonimmigrant status at the time the adjustment of status application is properly filed with USCIS and at the time the adjustment of status is adjudicated;
- Self-petitioners under the Violence Against Women Act (VAWA); and

¹²⁴ Relatives include spouse, parents, children, adult sons or daughters, brothers, and sisters. See 8 CFR 213a.1. An affidavit of support under this section is not required, however, if the relative is a brother or sister of the intending immigrant, unless the brother or sister is a citizen. See 8 CFR 213a.2(a)(2)(i)(C).

¹²⁵ Significant ownership interest means an ownership interest of 5 percent or more in a for-profit entity that filed an immigrant visa petition to accord a prospective employee an immigrant status under INA 203(b). See 8 CFR 213a.1.

¹²⁶ See INA 212(a)(4)(E).

- Certain aliens who have been battered or subjected to extreme cruelty by a family member in the United States.¹²⁷

Chapter 4. Prospective Determination Based on the Totality of the Circumstances

The public charge inadmissibility determination is a prospective determination based on the totality of an alien's circumstances.¹²⁸ The public charge inadmissibility determination is inherently subjective and discretionary in nature given the express wording of section 212(a)(4)(A) of the Immigration and Nationality Act (INA), which states that the public charge inadmissibility determination is "in the opinion of" DHS.¹²⁹

In making a public charge inadmissibility determination in the context of an adjustment of status application, USCIS reviews all relevant evidence and information in the alien's record.¹³⁰ This evidence includes, but is not limited to, the alien's Application to Register Permanent Residence or Adjust Status (Form I-485), Report of Immigration Medical Examination and Vaccination Record (Form I-693), if required, or any other report of medical examination in the record,¹³¹ any other forms and evidence contained in the alien's record, and statements by the alien during an interview, if applicable. USCIS considers all information and evidence in the record that is relevant to assessing an alien's likelihood at any time of becoming a public charge in the totality of the circumstances.

For all aliens applying for adjustment of status who are subject to the public charge ground of inadmissibility,¹³² the officer will consider the statutory minimum factors: the alien's age;¹³³

¹²⁷ See INA 212(a)(4)(E)(iii). The list of "qualified aliens" included in this exemption is described in 8 U.S.C. 1641(c).

¹²⁸ See INA 212(a)(4). See *Matter of A-*, 19 I&N Dec. 867, 869 (BIA 1988) ("The traditional test applied by the Service to determine whether an alien is likely to become a public charge is 'a prediction based on the totality of the alien's circumstances' as presented in the individual case . . . the test is prospective . . .").

¹²⁹ See *Matter of Harutunian*, 14 I&N Dec. 583, 588 (Reg. Comm. 1974) ("[T]he determination of whether an alien falls into that category [as likely to become a public charge] rests within the discretion of the consular officers or the Commissioner . . . Congress inserted the words 'in the opinion of' (the consul or the Attorney General) with the manifest intention of putting borderline adverse determinations beyond the reach of judicial review." (citation omitted)). See *Matter of Martinez-Lopez*, 10 I&N Dec. 409, 421 (A.G. 1964) ("[U]nder the statutory language the question for visa purposes seems to depend entirely on the consular officer's subjective opinion.").

¹³⁰ See *Matter of Vindman*, 16 I&N Dec. 131, 132 (BIA 1977) ("The elements constituting likelihood of an alien becoming a public charge are varied. They are not defined by statute, but rather are determined administratively upon consideration of all the factors bearing on the alien's ability or potential ability to be self-supporting.").

¹³¹ Note that some aliens applying for adjustment of status who are subject to the public charge ground of inadmissibility may not be required to submit a Form I-693. Instead, they may use the Form DS-7794 or Form DS-2054, and related worksheets, completed by a panel physician abroad. In such cases, officers should review the information contained on those medical forms as part of the public charge inadmissibility determination.

¹³² See INA 212(a)(4).

¹³³ See Chapter 5, Statutory Minimum Factors, Section A, Age [8 USCIS-PM G.5(A)].

health;¹³⁴ family status;¹³⁵ assets, resources, and financial status;¹³⁶ and education and skills.¹³⁷ The officer may consider a sufficient Affidavit of Support Under Section 213A of the INA (Form I-864) (when required)¹³⁸ and any other factor in the alien's case that is relevant to determining whether the alien is likely at any time to become a public charge.¹³⁹ Among other factors that an officer should consider, any current or past receipt of means-tested public benefits¹⁴⁰ by the alien will almost always be highly relevant to assessing an alien's likelihood at any time of becoming a public charge.¹⁴¹ An alien's application for means-tested public benefits as well as his or her approval or certification to receive means-tested public benefits will generally also be relevant and should be considered.¹⁴²

There is no "bright-line" test in making a public charge inadmissibility determination. As noted previously, no one factor considered by an officer is outcome determinative except for the lack of a sufficient Form I-864 when one is required. The officer must determine whether the alien's individual facts and circumstances, assessed in their totality, suggest that the alien is more likely than not to become a public charge.¹⁴³

Chapter 5. Statutory Minimum Factors

Under section 212(a)(4)(B) of the Immigration and Nationality Act (INA), officers are required to consider specific minimum factors in determining whether an alien applying to adjust status to that of lawful permanent resident is likely at any time to become a public charge. These statutory minimum factors include the alien's:

- Age;
- Health;

¹³⁴ See Chapter 5, Statutory Minimum Factors, Section B, Health [8 USCIS-PM G.5(B)].

¹³⁵ See Chapter 5, Statutory Minimum Factors, Section C, Family Status [8 USCIS-PM G.5(C)].

¹³⁶ See Chapter 5, Statutory Minimum Factors, Section D, Assets, Resources, and Financial Status [8 USCIS-PM G.5(D)].

¹³⁷ See Chapter 5, Statutory Minimum Factors, Section E, Education and Skills [8 USCIS-PM G.5(E)].

¹³⁸ See Chapter 6, Affidavit of Support Under Section 213A of the INA [8 USCIS-PM G.6].

¹³⁹ See *Matter of Vindman*, 16 I&N Dec. 131, 132 (BIA 1977) ("The elements constituting likelihood of an alien becoming a public charge are varied. They are not defined by statute, but rather are determined administratively upon consideration of *all the factors bearing on the alien's ability or potential ability to be self-supporting.*" (emphasis added)).

¹⁴⁰ See Chapter 2, Key Concepts, Section B, Means-Tested Public Benefits [8 USCIS-PM G.2(B)].

¹⁴¹ See Chapter 7, Consideration of Any Current or Past Application for, Approval or Certification to Receive, and Receipt of Means-Tested Public Benefits [8 USCIS-PM G.7].

¹⁴² See Chapter 7, Consideration of Any Current or Past Application for, Approval or Certification to Receive, and Receipt of Means-Tested Public Benefits [8 USCIS-PM G.7].

¹⁴³ DHS interprets the term "likely" to mean "more likely than not".

- Family status;
- Assets, resources, and financial status; and
- Education and skills.¹⁴⁴

This chapter discusses the statutory minimum factors. Subsequent chapters discuss the Affidavit of Support Under Section 213A of the INA (Form I-864) and consideration of any current and/or past receipt of means-tested public benefits.¹⁴⁵

A. Age

An officer must consider an alien's age in a public charge inadmissibility determination.¹⁴⁶ The alien provides his or her date of birth on the Form I-485.

USCIS considers the alien's age in relation to its potential impact on the other factors, for example, the health and assets, resources, and financial status factors.¹⁴⁷ For example, in the case of an alien who is a child and who, due to his or her age, is unable to earn a living through employment, the assets, resources, and financial status of his or her parents or guardians, who are part of the alien's household, would be of particular importance in the public charge inadmissibility determination. However, as noted previously, an alien's age alone is not outcome determinative.

Also, individuals depart the workforce at different ages. An officer should scrutinize an alien's plans for current and future employment in the United States. If an alien has already retired, is nearing retirement, or otherwise indicates no employment plans or only short-term employment plans based on the alien's age, an assessment of retirement plans, accounts, benefits, and household assets and resources takes on a more critical role in the public charge inadmissibility determination.

B. Health

An officer must consider an alien's health in a public charge inadmissibility determination.¹⁴⁸

¹⁴⁴ See INA 212(a)(4)(B)(i).

¹⁴⁵ See Chapter 6, Affidavit of Support Under Section 213A of the INA [8 USCIS-PM G.6]. See Chapter 7, Consideration of Any Current or Past Application for, Approval or Certification to Receive, and Receipt of Means-Tested Public Benefits [8 USCIS-PM G.7].

¹⁴⁶ See INA 212(a)(4)(B)(i).

¹⁴⁷ For more information about the totality of the circumstances determination, see Chapter 4, Prospective Determination Based on the Totality of the Circumstances [8 USCIS-PM G.4]. For more information about the totality of circumstances specifically relating to children, see Chapter 10, Adjudicating Public Charge Inadmissibility for Adjustment of Status Applications, Section A, Evidence in the Record [8 USCIS-PM G.10(A)]. See Chapter 8, Other Relevant Factors [8 USCIS-PM G.8].

¹⁴⁸ See INA 212(a)(4)(B)(i).

1. Report of Immigration Medical Examination and Vaccination Record

In considering an alien's health in a public charge inadmissibility determination, an officer must not make health diagnoses and should generally defer to the immigration medical examination report completed and signed by a civil surgeon or a panel physician. A civil surgeon records the results of the immigration medical examination on the Report of Immigration Medical Examination and Vaccination Record (Form I-693). A panel physician records the results of the immigration medical examination on the following Department of State forms: Medical Examination for Immigrant or Refugee Applicant (1991 TB Technical Instructions) (Form DS-2053), the Medical Examination for Immigrant or Refugee Applicant (2007 TB Technical Instructions) (Form DS-2054), or the Electronic Medical Examination for Visa Applicant (DS-7794), and related worksheets.¹⁴⁹

Civil surgeons and panel physicians are instructed to comply with the Centers for Disease Control and Prevention's (CDC) Technical Instructions.¹⁵⁰ As noted in the Technical Instructions, the purpose of the immigration medical examination is to determine whether the alien has:

- A physical or mental disorder (including a communicable disease of public health significance or drug abuse/addiction) that renders him or her ineligible for admission or adjustment of status (Class A condition); or
- A physical or mental disorder that represents a departure from normal health or well-being that is significant enough to possibly interfere with the person's ability to care for him- or herself, to attend school or work, or that may require extensive medical treatment or institutionalization in the future (Class B condition).¹⁵¹

The civil surgeon or panel physician, therefore, should account for any diagnoses of Class A¹⁵² or Class B medical conditions.¹⁵³ As noted above, Class A medical conditions are medical conditions listed in INA 212(a)(1)(A) that render an alien inadmissible and ineligible for a visa or adjustment of status under the health-related grounds.

¹⁴⁹ As of October 1, 2013, panel physicians only use DS-2054 or DS-7794, the DS-2053 is no longer in use. Applicants for adjustment of status generally submit Form I-693; however, immigrants applying for adjustment of status as a refugee, a derivative of an asylee, or a K or V nonimmigrant visa holder, as well as some Afghan nationals who entered the United States as part of Operation Allies Welcome and have already had a medical examination overseas, may submit a medical examination performed by a panel physician.

¹⁵⁰ See Technical Instructions for Civil Surgeons (May 15, 2024) and Technical Instructions for Panel Physicians (May 15, 2024).

¹⁵¹ See "Scope of the Examination" in Technical Instructions for Civil Surgeons (May 15, 2024) and Technical Instructions for Panel Physicians (May 15, 2024).

¹⁵² See 42 CFR 34.2(d).

¹⁵³ See 42 CFR 34.4(b)(2) and 42 CFR 34.4(c)(2). For more information about Class A and Class B conditions, see Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [8 USCIS-PM B].

Class B medical conditions, on the other hand, do not render the alien inadmissible. However, such conditions may possibly impact the alien's ability to work, to provide for himself or herself, or require or will likely require extensive medical care or institutional care. As a result, such conditions may be relevant to assessing the alien's likelihood at any time of becoming a public charge. In the case of Class B medical conditions, civil surgeons and panel physicians are required to determine and report:

- The nature and extent of the abnormality;
- The degree to which the alien is incapable of normal physical activity;
- The extent to which the condition is remediable; and
- The likelihood that the alien will require extensive medical care or institutionalization because of the condition.¹⁵⁴

An officer should consider the alien's health, as reflected on the civil surgeon or panel physician's report, and how the alien's health impacts other factors in the totality of circumstances. For example, even if the alien's medical condition prevents the alien from working or requires extensive medical care or institutional care, an alien may still be able to demonstrate sufficient household income, assets, and resources to cover the alien's projected basic needs and medical costs. The alien could also present evidence that he or she is covered under a health insurance policy (that is not a means-tested public benefit) that is sufficient to address the alien's medical costs when considered in combination with the alien's household income, assets, and resources.

When considering the alien's health, an officer may also consider medical reports and information the alien has submitted with previous applications or requests that are part of the alien's administrative record.¹⁵⁵

USCIS may request additional information regarding an applicant's health if the information provided in the report of immigration medical examination is incomplete.

2. Relationship Between Health and Disability

An officer's consideration of an alien's health under INA 212(a)(4)(B)(i) may also include consideration of any disabilities, as defined by Section 504 of the Rehabilitation Act. An alien's

¹⁵⁴ See 42 CFR 34.4(c) and "Other Physical or Mental Abnormality, Disease or Disability - Required Evaluation Components" in Technical Instructions for Civil Surgeons (May 15, 2024).

¹⁵⁵ While USCIS is generally not a covered entity bound by the Health Insurance Portability and Accountability Act (HIPAA), USCIS complies with the Privacy Act of 1974 in safeguarding information in the applicable system of records. Such information is generally confidential and is used primarily for immigration purposes. See 45 CFR 160.103. See also 5 U.S.C. 552.

disability or disabilities may be identified in the alien's report of immigration medical examination. An alien's disability alone is not a sufficient basis to determine that the alien is likely at any time to become a public charge, and an officer may not find an alien inadmissible on the public charge ground solely based on an applicant's disability.

Many disabilities do not prevent an alien from working and do not require extensive medical care or institutional care. Research, including multiple studies published by the U.S. Department of Health and Human Services, indicates that the majority of people with disabilities do not use institutional care.¹⁵⁶

Therefore, an officer should not presume that an alien having a disability alone means that the alien is in poor health or is likely at any time to become a public charge. Likewise, USCIS does not presume that the alien's disability in and of itself negatively impacts any of the other statutory minimum factors, but rather USCIS considers the disability in the totality of the circumstances.

C. Family Status

USCIS must consider an alien's family status in a public charge inadmissibility determination.¹⁵⁷ An alien's family status is understood to include consideration of the alien's household size. Officers may consider the following individuals as part of an alien's household for purposes of a public charge inadmissibility determination:

- The alien;
- The alien's spouse, if physically residing with the alien;
- The alien's parents, if physically residing with the alien;
- The alien's unmarried siblings under 21 years of age, if physically residing with the alien;
- The alien's children,¹⁵⁸ if physically residing with the alien;

¹⁵⁶ See Population Estimates of Disability and Long-Term Care, HHS Office of the Assistant Secretary for Planning and Evaluation (Jan 31, 1995), available at <https://aspe.hhs.gov/reports/population-estimates-disability-long-term-care-0>. See also 30 Years of Community Living, HHS Administration for Community Living (2021), available at <https://acl.gov/sites/default/files/Aging%20and%20Disability%20in%20America/30%20Years%207-13-21.pdf>. See also von Reichert, Christiane, Disability and the household context: Findings for the United States from the public Use Microdata Sample of the American Community Survey, Frontiers in Research Sciences (Aug. 12, 2022), available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC9397927/>.

¹⁵⁷ See INA 212(a)(4)(B)(i).

¹⁵⁸ As defined in INA 101(b)(1).

- Any other individuals who are listed as dependents on the alien's federal income tax return;¹⁵⁹ and
- Any other individuals who list the alien as a dependent on their federal income tax return.

As seen in this list, an alien's household may include certain individuals living with the alien (who may or may not contribute financially to the household) as well as certain relatives and close relations who may contribute financially to the alien's household while not residing with the alien. Financial contributions from these non-cohabitating household members are included in the consideration of the alien's assets, resources, and financial status factor, as described below.

D. Assets, Resources, and Financial Status

USCIS must consider an alien's assets, resources, and financial status in a public charge inadmissibility determination.¹⁶⁰ In considering an alien's assets, resources, and financial status, USCIS examines the alien's household's income, assets, and liabilities.

Income

Aliens indicate their household's annual income, which may include income provided to the household from sources who are not members of the household, such as alimony or child support. A household's annual income may also include any cash payments that have been earned, such as Title II Social Security benefits, government pension benefits, unemployment insurance payments, and veterans' benefits. Considering that the purpose of a public charge inadmissibility determination is to determine the alien's likelihood of at any time becoming a public charge, the source of an alien's income is a highly relevant consideration. Specifically, if an alien's income comes exclusively or partially from means-tested public benefits, such income cannot be considered positively in the totality of the circumstances. Therefore, officers should exclude from positive consideration any income from means-tested public benefits. Similarly, officers will exclude from consideration any income from illegal activities or sources such as proceeds from illegal gambling or drug sales.

USCIS does not limit the consideration of income only to income that appears on federal income tax forms and considers all evidence of income from lawful sources. Examples of income that may not appear on income tax forms include child support and alimony. Some households may also have regular income, such as Social Security income, that does not reach the

¹⁵⁹ Including a spouse or child as defined in INA 101(b)(1) not physically residing with the alien.

¹⁶⁰ See INA 212(a)(4)(B)(i).

minimum required threshold for filing federal income taxes.¹⁶¹ USCIS also considers any evidence an alien submits pertaining to expected future income.

USCIS does not attribute the receipt of means-tested public benefits by an alien's household members to the alien. However, because USCIS considers an alien's household income as part of this factor, there are certain circumstances in which USCIS may consider the receipt of means-tested public benefits by members of the alien's household when considering the alien's assets, resources, and financial status. The receipt of means-tested public benefits by members of the alien's household is only relevant to the public charge inadmissibility determination if:

- The means-tested public benefits received by the alien's household member are the alien's source of financial support; or
- The alien is legally obligated to support the household member who is receiving the means-tested public benefits.

In both of these cases, the receipt by the household member is relevant to the public charge inadmissibility determination for the alien solely because it is potentially indicative of the alien's assets, resources, or financial status. Such information may be consistent with or undermine information or evidence provided by the alien in connection with his or her application for adjustment of status. Note, however, that USCIS does not collect information about the receipt of means-tested public benefits by household members on Form I-485.

In some instances, the alien's household income may include income that has resulted from unauthorized employment. Whether an alien or a member of the alien's household engaged in unlawful employment, and any immigration consequences flowing from such unauthorized employment, is a separate determination from the public charge inadmissibility determination.¹⁶² Therefore, income derived from unlawful employment is not excluded from the household's income calculation unless the income is derived from illegal activities or sources, such as illegal gambling or drug sales.

Assets and Liabilities

When considering the applicant's financial status, USCIS also considers the assets and resources of the alien's household, for example, investments or home equity, excluding any assets from illegal activities or sources, such as proceeds from illegal gambling or drug sales. USCIS also considers the alien's household's liabilities, both secured and unsecured, such as loans,

¹⁶¹ See the Internal Revenue Service's (IRS) Who Should File a Tax Return webpage for more information on the minimum taxable income threshold.

¹⁶² See INA 245(c)(2) and INA 245(c)(8). For more information about the unauthorized employment determination, see Volume 7, Adjustment of Status, Part B, 245(a) Adjustment, Chapter 6, Unauthorized Employment (INA 245(c)(2) and INA 245(c)(8)) [7 USCIS-PM B.6].

alimony, and child support payments. By taking into account liabilities of an alien's household, USCIS is able to examine the alien's overall financial status in the totality of the circumstances.

USCIS considers financial obligations and debts alongside assets and resources to avoid artificially inflating the calculation of an alien's financial status, as these obligations and debts would decrease the resources that are actually accessible to the alien. However, if an alien has financial obligations and debts, this does not necessarily indicate that the alien is inadmissible under the public charge ground, and USCIS considers this factor in the totality of the circumstances.

E. Education and Skills

USCIS must consider an alien's education and skills in a public charge inadmissibility determination.¹⁶³ In considering an alien's education and skills, USCIS may consider any degrees, certifications, licenses, educational certificates, and skills the alien obtained through work experience or educational programs.

Skills obtained through work experience (including volunteer and unpaid opportunities) include but are not limited to the alien's workforce skills, training, licenses for specific occupations or professions, language skills (including English proficiency), and certificates documenting mastery or apprenticeships in skilled trades or professions. Educational certificates are issued by an educational institution (or a training provider) and certify that an occupation specific program of study was completed.

While some aliens may establish their education and skills through evidence of completed degrees, the statutory education and skills factor does not specify that only formal education is acceptable. USCIS may consider other evidence of attained knowledge and skills, including those skills earned through certifications and licensure, as well as skills obtained through on-the-job training or overall work experience. This consideration allows USCIS to acknowledge those aliens who hold occupations that do not require official licenses or certifications but whose occupations impart skills that otherwise affect the alien's overall employability.

Chapter 6. Affidavit of Support Under Section 213A of the INA

A. Background

The concept of individuals inside the United States agreeing to support intending immigrants has a long history in U.S. immigration. Immigration officers generally considered (among other factors in the totality of the circumstances) whether an alien had family members or friends in the United States who could help support the alien when making public charge exclusion

¹⁶³ See INA 212(a)(4)(B)(i).

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determinations in the early 20th century.¹⁶⁴ This continued to be an important factor for officers considering an alien's request for entry into the United States.¹⁶⁵

Building on that practice, beginning in 1930, each intending immigrant applying for an immigrant visa was generally required to provide evidence of his or her financial status or affidavits of support from sponsoring residents of the United States.¹⁶⁶ As an example, an individual completing the affidavit of support swore, using the 1947 version of the Affidavit of Support (Form I-134), that he or she was "willing and able to receive, maintain, and support the prospective immigrants," and was "ready and willing to deposit a bond, if necessary, with the United States immigration authorities to guarantee that such prospective immigrants will not become public charges during their stay in the United States." Such affidavits carried heavy weight in public charge determinations by the U.S. Department of State (DOS). As the Senate Judiciary Committee wrote in 1950, "[a]n affidavit executed by a responsible party in this country usually is satisfactory evidence that the alien is not likely to become a public charge."¹⁶⁷

In 1952, Congress for the first time established a procedure for certain aliens physically present in the United States to adjust to lawful permanent resident (LPR) status without having to travel abroad and undergo consular processing with DOS.¹⁶⁸ Among other requirements for adjustment of status, the alien must have been "admissible to the United States." As a result, the U.S. Department of Justice (DOJ) began to apply the public charge ground of inadmissibility in the adjustment of status context. Consistent with consular processing and exclusion determinations at ports of entry, in making decisions concerning eligibility for adjustment of status, DOJ considered whether there were persons "in the United States willing and able to assure that [an adjustment of status applicant] will not need public support."¹⁶⁹

However, courts found that the affidavits of support used throughout most of the 20th century were not legally enforceable and did not permit government agencies to seek reimbursement from sponsors when the sponsored aliens received public benefits.¹⁷⁰ The Senate Judiciary Committee, in 1950, wrote that the affidavit of support, "at most, appears to be merely a moral obligation upon the affiant, and the Government apparently could not recover [government

¹⁶⁴ See, for example, *Gegiow v. Uhl*, 239 U.S. 3 (1915) (noting that immigration officers considered, among other factors, that the aliens had "no one legally obligated here to assist them.").

¹⁶⁵ See *United States v. Reimer*, 83 F.2d 166 (2d Cir. 1936), in which the unwillingness of a family member to support the alien, and the willingness of a friend to support the alien, were considered.

¹⁶⁶ See Gordon, Charles, Aliens and Public Assistance, *Immigration and Naturalization Service Monthly Review*, March 1949.

¹⁶⁷ See S. Rep. 81-1515, p. 347 (1950).

¹⁶⁸ See Pub. L. 82-414, sec. 245(a), 66 Stat. 163, 217.

¹⁶⁹ See *Matter of Harutunian*, 14 I&N Dec. 583 (Reg. Comm. 1974).

¹⁷⁰ See *San Diego County v. Vilorio*, 276 Cal. App. 2d 350, 80 Cal. Rptr. 869 (Ct. App. 1969). See *State ex rel. Atty. Gen. v. Binder*, 356 Mich. 73, 96 N.W.2d 140 (1959). See *Dep't of Mental Hygiene of State of Cal. v. Renel*, 10 Misc. 2d 402, 173 N.Y.S.2d 231 (App. Term), aff'd, 6 A.D.2d 782, 175 N.Y.S.2d 556 (1958), aff'd, 6 N.Y.2d 791, 159 N.E.2d 678 (1959).

expenses related to the sponsored alien] on the strength of the document since there is no contractual obligation involved.”¹⁷¹

Congress recognized that the lack of an enforceable affidavit of support limited its utility both for public charge inadmissibility determinations and for ensuring that, as Congress stated in 1996, that “aliens within the Nation’s borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations.”¹⁷² In recognition of the important role that support from families and sponsors plays in preventing aliens from depending on public resources, Congress created the requirement for a legally enforceable affidavit of support to reduce the potential for an intending immigrant to become a public charge in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).¹⁷³ When required, the alien must submit an Affidavit of Support Under Section 213A of the INA (Form I-864 or Form I-864EZ)¹⁷⁴ completed by a sponsor.

Form I-864¹⁷⁵ is a legally enforceable contract that a U.S. citizen, U.S. national, or LPR signs to accept financial responsibility for an alien, usually a relative, who is coming to the United States to live permanently. Form I-864¹⁷⁶ is legally binding and requires a sponsor to maintain the alien at an annual income of no less than 125 percent of the Federal Poverty Guidelines (FPG).¹⁷⁷ The U.S. citizen, U.S. national, or LPR who signs the Form I-864 becomes the alien’s sponsor once the alien becomes an LPR.

For Form I-864 to be sufficient, a sponsor generally must demonstrate that he or she is able to maintain the sponsored alien at an annual income of not less than 125 percent of the FPG.¹⁷⁸ The presence of a sufficient Form I-864 does not eliminate the need to consider all of the factors of a public charge inadmissibility determination, and USCIS only considers it as one factor in the totality of the circumstances. However, the statute requires a finding of inadmissibility on the public charge ground if the alien is required to submit a sufficient Form I-864 and fails to do so.¹⁷⁹

¹⁷¹ See S. Rep. 81-1515, p. 347 (1950).

¹⁷² See 8 U.S.C. 1601.

¹⁷³ See Title V, Subtitle C of Pub. L. 104-208, 110 Stat. 3009, 3009-675 (September 30, 1996).

¹⁷⁴ A sponsor may use Form I-864EZ if the sponsor is the Petition for Alien Relative (Form I-130) petitioner, there is only one beneficiary on the Form I-130 petition, and the income the sponsor is using to qualify is based entirely on the sponsor’s salary or pension and is shown on one or more Forms W-2 provided by the sponsor’s employer(s) or former employer(s). Hereinafter, any references to the Form I-864 also include the Form I-864EZ.

¹⁷⁵ Filed on Form I-864 or Form I-864EZ.

¹⁷⁶ As required under INA 212(a)(4) and INA 213A.

¹⁷⁷ See INA 213A. See 8 CFR 213a.

¹⁷⁸ See INA 213A. A sponsor who is on active duty (other than active duty for training) in the U.S. armed forces and who is petitioning for a spouse or child only has to demonstrate the means to maintain an annual income equal to at least 100 percent of the FPG. See 8 CFR 213a.2(c)(2).

¹⁷⁹ See INA 212(a)(4)(D).

B. Applicants Required to Submit Form I-864

The Immigration and Nationality Act (INA) outlines which aliens are required to submit a Form I-864.¹⁸⁰ Most aliens intending to immigrate or to adjust status as immediate relatives or the family-sponsored preference categories, and in certain employment-based categories after December 19, 1997, are required to submit Form I-864 signed by a sponsor.¹⁸¹

Aliens required to submit a Form I-864, and who are not otherwise exempt, are inadmissible on the public charge ground if they do not submit a sufficient Form I-864.¹⁸²

1. Immediate Relatives and Family-Sponsored Preference Immigrants

In general, most aliens applying for an immigrant visa or adjustment of status based on a family relationship are required to submit Form I-864. The following table outlines categories of applicants by immigrant category who must submit Form I-864 unless otherwise exempt:

Immediate Relatives and Family-Sponsored Preference Immigrants	
Immediate Relatives of U.S. Citizens	U.S. citizens' parents, spouses, and unmarried children under the age of 21, including most orphans and Hague Convention adoptees ¹⁸³
First Preference	Unmarried sons and daughters of U.S. citizens who are 21 years of age or older, including their unmarried children ¹⁸⁴
Second Preference	Spouses, children, and unmarried sons and daughters of LPRs, including their unmarried children ¹⁸⁵
Third Preference	Married sons and married daughters of U.S. citizens, including their spouses and unmarried children ¹⁸⁶
Fourth Preference	Brothers and sisters of adult U.S. citizens, including their spouses and unmarried minor children ¹⁸⁷

¹⁸⁰ See INA 212(a)(4) and INA 213A. A sponsor may use Form I-864EZ if the sponsor is the Form I-130 petitioner, there is only one beneficiary on the Form I-130 petition, and the income the sponsor is using to qualify is based entirely on the sponsor's salary or pension and is shown on one or more Forms W-2 provided by the sponsor's employer(s) or former employer(s).

¹⁸¹ See INA 212(a)(4) and INA 213A.

¹⁸² See INA 212(a)(4).

¹⁸³ See INA 201(b)(2). Certain orphans that become U.S. citizens at time of adjustment of status under INA 320 are exempt from filing Form I-864.

¹⁸⁴ See INA 203(a)(1).

¹⁸⁵ See INA 203(a)(2).

¹⁸⁶ See INA 203(a)(3).

¹⁸⁷ See INA 203(a)(4).

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All of these aliens are required to submit Form I-864, unless exempt from the requirement.

2. Certain Employment-Based Immigrants

In general, most aliens applying for an employment-based immigrant visa or adjustment of status are not required to file Form I-864.¹⁸⁸ Aliens seeking LPR status based on an employment-based petition are required to file Form I-864 if:

- The petitioner is a relative of the applicant;¹⁸⁹ or
- The petitioner is an entity¹⁹⁰ in which the applicant's relative has a significant ownership interest.¹⁹¹

These aliens are required to file Form I-864 unless an exception applies.

3. K Nonimmigrants

Principal K nonimmigrants¹⁹² seeking adjustment of status must submit Form I-864.¹⁹³ This requirement also applies to an alien who seeks adjustment after having been admitted as the child of a principal K nonimmigrant.

Any applicant for adjustment of status based on a K nonimmigrant visa must submit a Form I-864 at the time of adjustment of status. Termination of the marriage between the K-1 beneficiary and the petitioner does not end the K-1 nonimmigrant's eligibility for adjustment.¹⁹⁴

A former spouse can still be the sponsor who submits the Form I-864 for a K-1 and a K-2 nonimmigrant to adjust status. However, if the former spouse does not submit the Form I-864,

¹⁸⁸ Even though an affidavit of support is not required, an officer still makes a public charge inadmissibility determination when assessing the applicant's admissibility, unless the applicant is exempt from the public charge ground of inadmissibility.

¹⁸⁹ For employment-based cases, an affidavit of support is required only if the intending immigrant will work for a relative who is eligible to file a Form I-130 petition, on behalf of the intending immigrant. For purposes of the affidavit of support, a relative is defined as a U.S. citizen or LPR who is the intending immigrant's spouse, parent, child, adult son or daughter; or a U.S. citizen who is the intending immigrant's brother or sister. See 8 CFR 213a.1.

¹⁹⁰ An entity includes any petitioning for-profit entity such as a business or corporation.

¹⁹¹ Owning 5 percent or more of an entity constitutes a significant ownership interest. See 8 CFR 213a.1.

¹⁹² This includes a relative who is either a K-1 fiancé(e), a K-3 spouse, or a K-2 or K-4 child of fiancé(e) or spouse. See 8 CFR 213a.2(a)(2)(i)(A).

¹⁹³ See 8 CFR 213a.2(a)(2)(i)(A). K nonimmigrants include the fiancé(e)s of U.S. citizens and their accompanying children, spouse of a U.S. citizen and their accompanying minor children, and step-children of U.S. citizens. A child has to be under 21 years of age. See INA 101(b).

¹⁹⁴ See *Matter of Sesay*, 25 I&N Dec. 431 (BIA 2011).

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or timely withdraws one already submitted, the K-1 and K-2 nonimmigrants are inadmissible based on the public charge ground unless an exception applies.¹⁹⁵

4. Accompanying Spouse or Child

A spouse or child is considered to be accompanying a principal applicant if:

- The spouse or child applies for an immigrant visa or adjustment of status at the same time as the principal applicant; or
- The spouse or child applies for an immigrant visa or adjustment of status within 6 months after the date the principal applicant acquires LPR status.

If the principal applicant is required to have a Form I-864, then any accompanying spouse or child must also be included on that affidavit of support. To meet the requirement, the accompanying spouse or child must submit a photocopy of the principal applicant's Form I-864. A photocopy of the principal's supporting documentation,¹⁹⁶ however, is not required.

5. Following-to-Join Spouse or Child

When a spouse or a child of a principal applicant applies for an immigrant visa or adjustment of status 6 months or more after the principal applicant, the spouse or child is considered to be following-to-join the principal.

If the principal applicant is required to have a Form I-864, then the following-to-join spouse or child must also have a Form I-864. Each following-to-join spouse or child requires a Form I-864, independent of the principal applicant's Form I-864, at the time of adjustment of status or consular processing.¹⁹⁷

6. T and U Nonimmigrants, VAWA Self-Petitioners, and Certain "Qualified Aliens" Subject to Affidavit of Support Under Section 213A of the INA Requirements

In general, INA 212(a)(4)(E) provides that the following provisions do not apply to "qualified alien" victims:

¹⁹⁵ See *Matter of Song*, 27 I&N Dec. 488, 492 (BIA 2018) (noting that the two exceptions to the requirement that the petitioner execute Form I-864 are when the applicant is or was married to an abusive spouse as set forth in INA 204(a)(1)(A)(iii) and INA 204(a)(1)(A)(iv), or when the petitioner died before the adjustment application was adjudicated and the applicant has a qualifying relative execute a Form I-864 as set forth in INA 213A).

¹⁹⁶ Supporting documentation such as federal income tax returns or transcripts, W-2, and employment verification.

¹⁹⁷ See 8 CFR 213a.2(g).

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- Public charge inadmissibility, in general;¹⁹⁸
- Minimum factors to be considered in the public charge inadmissibility determination;¹⁹⁹ and
- Inadmissibility for lack of sufficient affidavit of support for family-based immigrants.²⁰⁰

A “qualified alien” victim²⁰¹ includes:

- A Violence Against Women Act (VAWA) self-petitioner;
- An alien who is an applicant for, or is granted, U nonimmigrant status;²⁰² or
- A “qualified alien” as described in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA),²⁰³ such as an alien who has a pending application establishing prima facie eligibility for T nonimmigrant status or has been granted T nonimmigrant status.

When Congress created the current version of INA 212(a)(4)(E), it did not exempt qualified “alien victims” from the requirements under INA 212(a)(4)(D). INA 212(a)(4)(D) makes an alien inadmissible on public charge in employment-based cases,²⁰⁴ unless the alien has a properly executed Form I-864 from the alien’s relative if:²⁰⁵

- The alien’s relative filed the employment-based petition; or
- The alien’s relative has a significant ownership interest (of 5 percent or more) in the business or entity that filed the employment-based petition.

If the qualified “alien victim” files for adjustment of status under an employment-based category and his or her petitioning employer meets the above circumstances but does not submit a sufficient Form I-864,²⁰⁶ then the alien is inadmissible on the public charge ground.

C. Applicants Not Required to Submit Form I-864

¹⁹⁸ See INA 212(a)(4)(A).

¹⁹⁹ See INA 212(a)(4)(B).

²⁰⁰ See INA 212(a)(4)(C).

²⁰¹ As outlined in INA 212(a)(4)(E).

²⁰² See INA 101(a)(15)(U).

²⁰³ See Sections 431(b) and 431(c) of PRWORA, Pub. L. 104-193, 110 Stat. 2105, 2274 (August 22, 1996), as amended.

²⁰⁴ See INA 203(b).

²⁰⁵ Under INA 213A. See 8 CFR 213a.

²⁰⁶ As required under INA 212(a)(4)(D) and INA 212(a)(4)(E) and as described in INA 213(a) and 8 CFR 213a.

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Certain aliens are not statutorily required to submit a Form I-864. Other aliens, although generally required to file a Form I-864, may be exempt from this requirement. Being exempt from the Form I-864 requirement is different from being exempt from the public charge inadmissibility ground.

An officer still makes an inadmissibility determination for an alien who is exempt from the Form I-864 filing requirement unless the alien is also exempt from the public charge ground of inadmissibility.²⁰⁷

1. Applicants Exempt from Filing Form I-864

Some categories of adjustment of status applicants are exempt from the Form I-864 requirement but must request an exemption from the Form I-864 requirement when filing their Application to Register Permanent Residence or Adjust Status (Form I-485) to establish that a Form I-864 is not required.²⁰⁸

These categories include children of U.S. citizens who will automatically become U.S. citizens under the Child Citizenship Act of 2000 (CCA)²⁰⁹ upon their admission to the United States, self-petitioning widows and widowers of U.S. citizens, and self-petitioning battered spouses and children. Aliens who have earned (or can be credited with) 40 quarters (credits) of coverage under the Social Security Act may also request an exemption from the Form I-864 requirement to establish that a Form I-864 is not required.²¹⁰

Certain Children of U.S. Citizens

Under the CCA, children born abroad to U.S. citizens may automatically acquire U.S. citizenship if, before their 18th birthday, they are residing in the United States in the legal and physical custody of the U.S. citizen parent pursuant to an admission as an immigrant or adjustment of status to that of an LPR.²¹¹ If qualified for automatic acquisition of citizenship, the child is exempt from the Form I-864 requirement.²¹²

The CCA has specific provisions for alien children adopted by U.S. citizens. An alien child adopted by U.S. citizens, such as orphans or Hague Adoptees (IR-3 or IH-3 classifications)

²⁰⁷ See Chapter 3, Applicability, Section C, Exemptions [8 USCIS-PM G.3(C)].

²⁰⁸ See 8 CFR 213a.2(a)(1)(i)(B). As of December 10, 2024, applicants make a request for an exemption from the Form I-864 requirement using the Application to Register Permanent Residence or Adjust Status (Form I-485).

²⁰⁹ See the Child Citizenship Act of 2000, Pub. L. 106-395 (October 30, 2000). See INA 320.

²¹⁰ See 8 CFR 213a.2(a)(1)(i)(B).

²¹¹ See INA 320. See Volume 12, Citizenship and Naturalization, Part H, Children of U.S. Citizens, Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320) [12 USCIS-PM H.4].

²¹² See INA 320. For more information on children acquiring citizenship under the Child Citizenship Act of 2000, see Volume 12, Citizenship and Naturalization, Part H, Children of U.S. Citizens, Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320) [12 USCIS-PM H.4].

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automatically acquires U.S. citizenship if the child enters the United States before the child's 18th birthday and resides with the U.S. citizen parent.²¹³ Therefore, these children are exempt from the affidavit of support requirement.

However, this exception does not apply if:

- The child is “coming to be adopted” as an orphan or Hague Adoptee (IR-4 or IH-4 classification);²¹⁴ or
- The child is admitted as an immediate relative immigrant as the stepchild of a U.S. citizen.²¹⁵

Certain Self-Petitioning Immigrants

The following self-petitioning immigrants are exempt from the Form I-864 requirement:

- An alien who has an approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as a self-petitioning widow or widower;²¹⁶
- An alien who has an approved Form I-360 as a battered spouse or child;²¹⁷ and
- An alien who has an approved Form I-360 as a VAWA self-petitioner.²¹⁸

Aliens Who Have Earned or Can be Credited with 40 Qualifying Quarters of Work

An alien who has earned or can be credited with 40 qualifying quarters (credits) of work in the United States under the Social Security Act (SSA) is exempt from the requirement to file a Form I-864.²¹⁹ A quarter, as defined by the Social Security Administration, is a period of 3 calendar months ending on March 31, June 30, September 30, or December 31.²²⁰

An alien can acquire 40 qualifying quarters through any of the following circumstances:

²¹³ See the Child Citizenship Act of 2000, Pub. L. 106-395 (October 30, 2000).

²¹⁴ An IR-4 or IH-4 immigrant becomes a citizen under INA 320 only when the adoption is finalized after admission and all eligibility requirements are met. See the Before Your Child Immigrates to the United States webpage.

²¹⁵ The stepchild of a U.S. citizen does not acquire citizenship under INA 320. See *Acevedo v. Lynch*, 798 F.3d 1167, 1171 (9th Cir. 2015). See *Matter of Guzman-Gomez*, 24 I&N Dec. 824 (BIA 2009).

²¹⁶ See INA 212(a)(4)(C)(i)(I).

²¹⁷ See INA 212(a)(4)(C). See INA 212(a)(4)(E)(i). See Section 804 of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Pub. L. 113-4, 127 Stat. 54, 111 (March 7, 2013).

²¹⁸ See INA 212(a)(4)(C). See INA 212(a)(4)(E)(i). See Section 804 of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Pub. L. 113-4, 127 Stat. 54, 111 (March 7, 2013).

²¹⁹ Qualifying quarter, as defined under Title II of the Social Security Act, is specifically tied to earnings. For more information, see the Social Security Administration's website.

²²⁰ See 42 U.S.C. 413.

- Any quarter during which the alien works in the United States, as long as the alien received the minimum income established by the Social Security Administration during the entire quarter;²²¹
- Being credited with quarters the alien's spouse worked during the marriage;²²²
- Being credited with any quarters during which the alien was under 18 years of age and the alien's parent worked;²²³ or
- A combination of the above.²²⁴

Since 1978, quarters are based on total wages and self-employment income earned during the year, regardless of the months during the year the actual work was performed.²²⁵ An applicant can earn all four credits for the year in less time if the applicant earns the required income.

For example, in 2014, a person must have earned \$1,200 in covered earnings to earn one Social Security or Medicare work credit and \$4,800 to earn the maximum four credits for the year. A person who earned \$4,800 in 2014 earned all four credits for the year regardless of how long that year it took to earn the income.

An officer does not need to calculate the alien's quarters. Aliens who claim they can be credited with sufficient quarters of coverage must submit official Social Security records to support the claim.²²⁶

2. Adjustment Applications Filed Before December 19, 1997

Any applicant for adjustment of status who filed a Form I-485 before December 19, 1997 is exempt from the requirement to file a Form I-864.²²⁷ The exemption is dependent on the filing date and applies even if USCIS conducts the interview or adjudicates the case after that date.

²²¹ Credits are based on total wages and self-employment income during the year. For more information, see the Social Security Administration's website.

²²² See INA 213A(a)(3)(B). An alien cannot claim credit for any quarter worked by a spouse in which the spouse was receiving federal means-tested public benefits.

²²³ See INA 213A(a)(3)(B). An alien cannot claim credit for any quarter worked by a parent in which the parent was receiving federal means-tested public benefits.

²²⁴ However, quarters cannot be counted more than once even if there are multiple circumstances that apply to make a quarter qualifying.

²²⁵ See 20 CFR 404.142.

²²⁶ See 8 CFR 213a.2(a)(2)(ii)(C).

²²⁷ See 8 CFR 213a.2(a)(2)(i) and 8 CFR 213a.2(a)(2)(ii)(B). See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208 (September 30, 1996).

3. Other Categories of Applicants Not Required to File Form I-864

The following are categories of immigrants who are not required to file a Form I-864 with Form I-485, but who are subject to the public charge ground of inadmissibility:²²⁸

- Diversity immigrants;²²⁹
- Employment-based immigrants, unless the visa petition was filed by a relative or an entity in which the applicant's relative has a significant ownership interest, as described above;²³⁰
- Immigrant investors;²³¹
- Diplomats or high-ranking officials unable to return home (Section 13 of the Act of September 11, 1957);²³²
- Certain entrants before January 1, 1982;²³³
- S nonimmigrants;²³⁴
- Religious workers;²³⁵
- Certain employees or former employees of the U.S. government abroad;²³⁶

²²⁸ For some of these categories, although the applicants are subject to public charge under INA 212(a)(4), the employers generally would not be a relative of the alien or a for-profit entity and therefore the requirement for an affidavit of support under INA 212(a)(4)(D) is inapplicable.

²²⁹ A winner of the diversity visa lottery does not need to file a petition with USCIS. Diversity visas are issued under INA 203(c) which do not fall under INA 212(a)(4)(C) or INA 212(a)(4)(D).

²³⁰ See INA 212(a)(4). This exemption also includes Afghan and Iraqi Interpreters who received a special immigrant visa by filing a petition under INA 203(b)(4).

²³¹ See INA 203(b)(5).

²³² See Section 13 of Pub. L. 85-316 (September 11, 1957), as amended by Pub. L. 97-116 (December 29, 1981). See 8 CFR 245.3.

²³³ See INA 245A(b)(1)(C)(i) and INA 245A(a)(4)(A). See INA 245A(d)(2)(B)(iii) for the special rule for determination of public charge for these applicants. Certain aged, blind, or disabled persons as defined in Section 1614(a)(1) of the Social Security Act, codified at 42 U.S.C. 1382c(a)(1), may apply for a waiver of inadmissibility due to public charge. See INA 245A(d)(2)(B)(ii).

²³⁴ S nonimmigrants may file a waiver of the public charge ground of inadmissibility on Inter-Agency Alien Witness and Informant Record (Form I-854). See INA 245(j) and INA 101(a)(15)(S). See 8 CFR 214.2(t)(2) and 8 CFR 1245.11.

²³⁵ Includes the following categories: SD-6 (ministers), SD-7 (spouses of SD-6), SD-8 (children of SD-6), SR-6 (religious workers), SR-7 (spouses of SR-6), and SR-8 (children of SR-6).

²³⁶ See INA 101(a)(27)(D). See 22 CFR 42.32(d)(2). Includes the following categories: SE-6 (employees of U.S. government abroad, adjustments), SE-7 (spouses of SE-6), and SE-8 (children of SE-6). Note that this program does not have a specific sunset date and technically applicants could apply but should have already applied.

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- Panama Canal Zone employees;²³⁷
- Certain physicians;²³⁸
- G-4 or NATO-6 employees and their family members;²³⁹
- Certain U.S. armed forces members (also known as the Six and Six program);²⁴⁰
- Certain broadcasters;²⁴¹ and
- Immigrants applying under the Amerasian Act of 1982.

The following are categories of immigrants not required to file a Form I-864 with Form I-485, and who are not subject to the public charge ground of inadmissibility:

- Refugees and asylees at time of adjustment of status to lawful permanent resident status;²⁴²
- Immigrants applying under the Amerasian Homecoming Act;²⁴³

²³⁷ See INA 101(a)(27)(E), INA 101(a)(27)(F), and INA 101(a)(27)(G). See 22 CFR 42.32(d)(3). Includes the following categories: SF-6 (former employees of the Panama Canal Company or Canal Zone Government), SF-7 (spouses or children of SF-6), SG-6 (former U.S. government employees in the Panama Canal Zone), SG-7 (spouses or children of SG-6), SH-6 (former employees of the Panama Canal Company or Canal Zone Government, employed on April 1, 1979), and SH-7 (spouses or children of SH-6). Note that this program does not have a specific sunset date and technically applicants could apply but should have already applied.

²³⁸ See INA 101(a)(27)(H) and INA 203(b)(4). Includes the following categories: SJ-6 (foreign medical school graduate who was licensed to practice in the United States on Jan. 9, 1978) and SJ-7 (spouses or children of SJ-6). Note that this program does not have a specific sunset date and technically applicants could apply but should have already applied.

²³⁹ See INA 101(a)(27)(I) and INA 101(a)(27)(L). See 8 CFR 101.5. See 22 CFR 42.32(d)(5). See 22 CFR 41.24 and 22 CFR 41.25. Includes SN-6 (retired NATO-6 civilian employees), SN-7 (spouses of SN-6), SN-9 (certain surviving spouses of deceased NATO-6 civilian employees), and SN-8 (certain unmarried sons and daughters of SN-6).

²⁴⁰ See INA 101(a)(27)(K). Includes the following categories: SM-6 (U.S. armed forces personnel, service (12 years) after October 1, 1991), SM-9 (U.S. armed forces personnel, service (12 years) by October 1991), SM-7 (spouses of SM-1 or SM-6), SM-0 (spouses or children of SM-4 or SM-9), and SM-8 (children of SM-1 or SM-6).

²⁴¹ See INA 101(a)(27)(M). See 8 CFR 204.13. Includes the following categories: BC-6 (broadcast (IBCG of BBG) employees), BC-7 (spouses of BC-1 or BC-6), and BC-8 (children of BC-6).

²⁴² See INA 209(c).

²⁴³ See Section 584 of Pub. L. 100-202, 101 Stat. 1329, 1329-183 (December 22, 1987).

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- Afghan and Iraqi Interpreters, or Afghan and Iraqi nationals employed by or on behalf of the U.S. Government;²⁴⁴
- Cuban and Haitian entrants applying for adjustment of status under section 202 of the Immigration Reform and Control Act of 1986;²⁴⁵
- Immigrants applying under the Cuban Adjustment Act;²⁴⁶
- Nicaraguans and other Central Americans applying under the Nicaraguan Adjustment and Central American Relief Act;²⁴⁷
- Haitians applying under the Haitian Refugee Immigration Fairness Act of 1998;²⁴⁸
- Lautenberg parolees;²⁴⁹
- Special immigrant juveniles;²⁵⁰
- Applicants for Registry;²⁵¹
- Victims of human trafficking (T nonimmigrants);²⁵²

²⁴⁴ See Section 1059(a)(2) of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109-163, 119 Stat. 3136, 3444 (January 6, 2006), as amended, and Section 602(b) of the Afghan Allies Protection Act of 2009, Title VI of Pub. L. 111-8, 123 Stat. 524, 807 (March 11, 2009), as amended, and Section 1244(g) of the National Defense Authorization Act for Fiscal Year 2008, as amended, Pub. L. 110-181, 122 Stat. 3, 396 (January 28, 2008).

²⁴⁵ See Section 202 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603, 100 Stat. 3359, 3404 (November 6, 1986), as amended.

²⁴⁶ See Cuban Adjustment Act, Pub. L. 89-732 (November 2, 1966), as amended.

²⁴⁷ See Sections 202(a) and 203 of Pub. L. 105-100, 111 Stat. 2160, 2193 (November 19, 1997), as amended.

²⁴⁸ See Section 902 of Pub. L. 105-277, 112 Stat. 2681, 2681-538 (October 21, 1998), as amended.

²⁴⁹ See Section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Pub. L. 101-167, 103 Stat. 1195, 1263 (November 21, 1989), as amended.

²⁵⁰ See INA 245(h).

²⁵¹ Registry is a section of immigration law that enables certain aliens who have been present in the United States since January 1, 1972, the ability to apply for lawful permanent residence even if currently in the United States unlawfully. See INA 249. See 8 CFR 249.

²⁵² See INA 245(l). If the applicant is adjusting based on an employment-based petition where the petition is filed by either a qualifying relative, or an entity in which such relative has a significant ownership interest (5 percent or more), and the applicant, at both the time of filing and adjudication of the Form I-485, is still in valid T nonimmigrant status, the applicant is not subject to INA 212(a)(4) but is still required to file Form I-864. See 8 CFR 213a.2(b)(2).

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- Victims of qualifying criminal activity (U nonimmigrants);²⁵³
- Haitians adjusting status under the Help Haiti Act of 2010;²⁵⁴
- Self-petitioners under the VAWA;²⁵⁵
- Certain “qualified aliens” under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA);²⁵⁶
- Applicants adjusting status who qualify for a benefit as surviving spouses, children, or parents of military members;²⁵⁷
- American Indians born in Canada;²⁵⁸
- Nationals of Vietnam, Cambodia, and Laos applying under the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 2001;²⁵⁹
- Polish or Hungarian Parolees;²⁶⁰
- Applicants adjusting under Liberian Refugee Immigration Fairness (LRIF);²⁶¹

²⁵³ See INA 101(a)(15)(U) and INA 212(a)(4)(E)(ii). See Section 804 of the Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4 (March 7, 2013). If the applicant is adjusting based on an employment-based petition where the petition is filed by either a qualifying relative, or an entity in which such relative has a significant ownership interest (5 percent or more), and the applicant, at both the time of filing and adjudication of the Form I-485, is still in valid U nonimmigrant status, the applicant is not subject to INA 212(a)(4) but is still required to file Form I-864. See 8 CFR 213a.2(b)(2).

²⁵⁴ See Help Haitian Adoptees Immediately to Integrate Act of 2010 (Help HAITI Act), Pub. L. 111-293 (December 9, 2010).

²⁵⁵ See INA 212(a)(4)(E)(i).

²⁵⁶ See INA 212(a)(4)(E)(iii). See Section 804 of the Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4 (March 7, 2013). See Section 431(c) of Pub. L. 104-193, 110 Stat. 2105, 2274 (August 22, 1996). See 8 U.S.C. 1641(c).

²⁵⁷ See Section 1703 of the National Defense Authorization Act, Pub. L. 108-136, 117 Stat. 1392, 1693 (November 24, 2003) (posthumous benefits to surviving spouses, children, and parents).

²⁵⁸ See INA 289.

²⁵⁹ See Section 586 of Pub. L. 106-429, 114 Stat. 1900, 1900A-57 (November 6, 2000) under 8 CFR 245.21.

²⁶⁰ Includes certain Polish and Hungarian parolees who were paroled into the United States from November 1, 1989 to December 31, 1991. See Section 646(b) of IIRIRA, Division C of Pub. L. 104-208, 110 Stat. 3009-546, 3009-709 (September 30, 1996).

²⁶¹ See Section 7611 of the National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92, 113 Stat. 1198, 2309 (December 20, 2019) (Liberian Refugee Immigration Fairness), later extended by Section 901 of Division O, Title IX of the Consolidated Appropriations Act of 2021, Pub. L. 116-260, 134 Stat. 1182, 2155 (December 27, 2020) (Adjustment of Status for Liberian Nationals Extension).

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- Certain Syrian nationals;²⁶² and
- Any other categories of aliens exempt under any other law from the public charge ground of inadmissibility provisions under INA 212(a)(4).

D. Consideration of Form I-864 as a Factor in the Totality of the Circumstances Analysis

Under INA 212(a)(4)(B)(ii), USCIS officers “may also consider any affidavit of support under” INA 213A for the purpose of making public charge inadmissibility determinations. USCIS officers may²⁶³ only consider a sufficient Form I-864, in the totality of the circumstances.²⁶⁴

Under the statute, the minimum income the sponsor must demonstrate for a Form I-864 to be deemed sufficient is generally 125 percent of the FPG²⁶⁵ based on the sponsor’s household size.²⁶⁶ Officers should carefully review the Form I-864 to ensure that the sponsor has included in the household size:

- Any person for whom he or she has claimed on his or her Federal income tax return for the most recent tax year, whether or not such persons are living with him or her;
- All aliens that have already sponsored under any other Form I-864 for whom his or her support obligation has not terminated; and
- Any aliens to be sponsored under the current Form I-864.²⁶⁷

If all sponsors provided the statutorily required minimum financial support to the aliens they are obligated to sponsor as required by statute and the legally binding Form I-864, the sponsored aliens would be less likely to turn to the government first for financial support.²⁶⁸ Additionally, Federal and State deeming provisions should reduce the likelihood that a

²⁶² See Pub. L. 106-378 (October 27, 2000).

²⁶³ USCIS officers should generally consider a sufficient Form I-864. A USCIS officer should only decide, in his or her discretion, to not consider a sufficient Form I-864 with supervisory concurrence. If the officer finds the alien inadmissible under INA 212(a)(4) in such a case, he or she should articulate the reason(s) why he or she decided to not consider the sufficient Form I-864 in a Notice of Intent to Deny (NOID) or denial notice, as applicable.

²⁶⁴ Aliens required to submit a Form I-864, and who are not otherwise exempt, are inadmissible on the public charge ground if they do not submit a sufficient Form I-864. In such cases, USCIS does not engage in a totality of the circumstances analysis. If an alien submits more than one Form I-864, only those that meet the requirements of INA 213A are relevant to the public charge inadmissibility determination.

²⁶⁵ See INA 213A. See 8 CFR 213a.

²⁶⁶ See INA 213A(a)(1)(A). A sponsor who is on active duty (other than active duty for training) in the U.S. armed forces and who is petitioning for a spouse or child only has to demonstrate the means to maintain an annual income equal to at least 100 percent of the FPG. See 8 CFR 213a.2(c)(2).

²⁶⁷ See 8 CFR 213a.1.

²⁶⁸ See 8 U.S.C. 1601(5).

sponsored alien would be eligible for a means-tested benefit.²⁶⁹ That was the intent of Congress in establishing the legally-binding affidavit of support requirement.²⁷⁰

However, sponsors have been known to fail to fulfill their obligations due to financial distress or unwillingness to support the alien, as demonstrated by suits filed by sponsored aliens to enforce the statutory requirement that sponsors provide financial support to the sponsored aliens at the level required by statute for the period the obligation is in effect.²⁷¹ USCIS also encounters sponsored aliens who have received means-tested public benefits while their sponsors' support obligations are still in effect.²⁷²

Therefore, when USCIS officers decide in their discretion to consider a sufficient Form I-864 when making a public charge inadmissibility determination, they should give that sufficient Form I-864 weight within the totality of the circumstances analysis based on the likelihood, in their opinion, that the sponsor will actually provide the statutorily-required amount of financial support to the sponsored alien.

In assessing the likelihood that a sponsor will actually provide the statutorily-required amount of financial support to the sponsored alien, officers may consider:

- The sponsor's relationship to the sponsored alien, including whether the sponsor lives with or intends to live with the sponsored alien;
- Whether the sponsor has provided the statutorily-required amount of support to any alien(s) he or she has sponsored in the past or is currently sponsoring;
- The degree to which the sponsor's annual income, assets, and resources exceeds the minimum level required by the statute for him or her to serve as a sponsor;
- Whether the sponsor is currently receiving means-tested public benefits;
- Whether the sponsor has received a fee waiver from USCIS for an immigration benefit request; and

²⁶⁹ See Section 564(f) of IIRIRA, Division C of Pub. L. 104-208, 110 Stat. 3009-546, 3009-684 (September 30, 1996). Under INA 291, the sponsor's income and resources, as well as the income and resources of the sponsor's spouse, is counted as the sponsored immigrant's income for the purposes of determining eligibility for any Federal means-tested public benefits.

²⁷⁰ See 8 U.S.C. 1601(5).

²⁷¹ See *Erlor v. Erlor*, 824 F.3d 1173 (9th Cir. 2016). See *Belevich v. Thomas*, 17 F.4th 1048 (11th Cir. 2021). See *Wenfang Liu v. Mund*, 686 F.3d 418 (7th Cir. 2012).

²⁷² USCIS acknowledges that an alien can be eligible for some means-tested public benefits even if the sponsor has fulfilled his or her obligation and maintained the sponsored immigrant at an annual income that is not less than 125 percent of the FPG. This is because many means-tested public benefits have income-based eligibility thresholds higher than 125 percent of the FPG. Sponsors are still required to reimburse the government for the costs of the benefit provided in such cases. See INA 213A(b).

- The sponsor's financial history, including a history of bankruptcy or failure to meet his or her financial responsibilities.

A sufficient Form I-864 does not, alone, result in a finding that an alien is not inadmissible under the public charge ground due to the statute's requirement to consider the statutory minimum factors and officers' consideration of all relevant factors, circumstances, information, and evidence in the record.²⁷³

Chapter 7. Consideration of Any Current or Past Application for, Approval or Certification to Receive, and Receipt of Means-Tested Public Benefits

The public charge inadmissibility determination is prospective, based on the officer's opinion as to whether the alien is likely at any time in the future to become a public charge.²⁷⁴ Under the statute, every public charge inadmissibility determination must include at a minimum the consideration of the alien's age; health; family status; assets, resources, and financial status; and education and skills. The officer may consider a sufficient Affidavit of Support Under Section 213A of the INA (Form I-864) (when required).²⁷⁵

Officers should also consider, in the totality of the circumstances, all information and evidence in the record that is relevant to assessing an alien's likelihood at any time of becoming a public charge. Such relevant information and evidence includes any showing that the alien has in the past received or is currently receiving any means-tested public benefits, if such benefits were received on or after September 18, 2026. With respect to means-tested public benefits received before September 18, 2026, officers will only consider public cash assistance for income maintenance and long-term institutionalization at government expense.²⁷⁶

Additionally, officers will consider any evidence in the record pertaining to whether the alien has applied for any means-tested public benefits and/or whether the alien has been approved or certified to receive any means-tested public benefits on or after September 18, 2026. Officers will not consider any information in the record that the alien applied for, was certified or approved to receive any means-tested public benefits before September 18, 2026. However, where the officers encounter evidence that the alien has applied for or been approved or certified to receive any means-tested public benefits for a period that extends beyond September 18, 2026, officers would consider the application, certification, and receipt of such benefits in the totality of the circumstances that occurs on or after September 18, 2026, unless the alien provides evidence of disenrollment from such benefits or that he or she withdrew such application or notified the relevant agencies he or she no longer wanted to receive the benefits.

²⁷³ See INA 212(a)(4)(B).

²⁷⁴ See INA 212(a)(4)(A).

²⁷⁵ See Chapter 6, Affidavit of Support Under Section 213A of the INA [8 USCIS-PM G.6].

²⁷⁶ See 91 FR 45324 (Jul. 20, 2026) (final rule).

While the alien's application, approval, or certification to receive any means-tested public benefits does not constitute receipt of such benefits, the fact that an alien has applied for means-tested public benefits or has been determined to be eligible for means-tested public benefits by a benefit granting agency and approved or certified to receive those benefits could indicate the alien's likelihood in the future of needing to receive such benefits. Moreover, the fact that an alien has been approved or certified to receive means-tested public benefits is relevant to assessing an alien's self-sufficiency and overall financial status. Therefore, officers should consider the alien's applications to receive, and approvals and certifications to receive, any means-tested public benefits in determining the alien's likelihood at any time to become a public charge.

In considering an applicant's current and/or past applications, approvals or certifications to receive, and receipt of means-tested public benefits in the totality of the circumstances, officers will consider the amount, duration, and recency of means-tested public benefits the alien actually received.²⁷⁷ Additionally, officers will consider any evidence the alien presents as to whether that underlying basis for applying for or receiving the benefits would continue, as well as any evidence the alien submits that he or she has disenrolled from the means-tested public benefit program or has requested withdrawal or disenrollment from the means-tested public benefit program.

The amount and frequency of benefits are also relevant where there is evidence that the alien was approved or certified to receive benefits in the future, or has applied to receive such benefits and there is no evidence in the record that the alien has withdrawn such application, or requested to cancel the approval/certification of such benefits, as the amount and frequency of receipt will have a bearing (particularly in the case of approval or certification) on whether the alien will be dependent on means-tested public benefits in the future.

USCIS officers should also consider the nature of the means-tested public benefit along with these other surrounding circumstances when determining what weight to give an alien's current and/or past applications, approvals, or certifications to receive, or receipt of, that benefit.²⁷⁸ In considering the purpose of the benefit, officers should consider that Congress in enacting PRWORA established that certain Federal public benefits would have exceptions from the immigration-status-related ineligibility provisions of that law (but not from the public charge ground of inadmissibility).

- Section 8 U.S.C. 1611(b) lays out exceptions from the general eligibility limitation for some Federal public benefits;

²⁷⁷ For more information on the totality of the circumstances assessment, see Chapter 4, Prospective Determination Based on the Totality of the Circumstances [8 USCIS-PM G.4].

²⁷⁸ See 90 FR 52168, 52188 (Nov. 19, 2025). See 91 FR 45324 (Jul. 20, 2026) (final rule).

- Section 8 U.S.C. 1613(c) creates exceptions from that section of law for certain Federal means-tested public benefits; and
- Section 8 U.S.C. 1615(a-b) creates exceptions for the Federal Child Nutrition Programs authorized under the National School Lunch Act and the Child Nutrition Act of 1966.

In addition, under their authority to administer Federal public benefits programs, agencies have also clarified for the public which of the benefits they administer fall within the definition of “Federal public benefit” under 8 U.S.C. 1611(c) for the purposes of the immigration-related eligibility provisions of PRWORA.²⁷⁹

To be clear, exceptions for the purpose of PRWORA implementation do not create exceptions for the purpose of the public charge ground of inadmissibility. If an alien applies for, is approved or certified to receive, or receives any means-tested public benefit, officers will consider that in the totality of the circumstances. However, when determining what weight to give that information in the totality of the circumstances, officers should consider the nature of the benefit and why Congress or the benefit-providing agencies determined that they should be provided to all without limitations based on immigration status.

Officers will also consider any evidence the alien presents regarding the underlying basis for the applications, approvals, certification, or receipt of these means-tested public benefits, such as that the alien received the benefits because he or she, while not a refugee, was eligible for resettlement assistance, entitlement programs, and other benefits available to refugees,²⁸⁰ or that the alien received the means-tested public benefit while present in the United States while in a category that is exempt from the public charge ground of inadmissibility.

For example, if the alien presents evidence that he or she received means-tested public benefits while present in the United States as an asylee, who is exempt from the public charge ground of inadmissibility, the officer will consider that fact in the totality of the circumstances. Similarly, if this alien presents evidence that he or she is no longer an asylee and therefore is no longer eligible for the benefits he or she had previously received while an asylee, USCIS would consider this fact in the totality of the circumstances.

Current and/or past receipt of means-tested public benefits alone, however, is not a sufficient basis to determine that an alien is likely at any time to become a public charge.²⁸¹ Additionally, past applications to receive means-tested public benefits and past approvals or certifications to

²⁷⁹ See, for example, 63 FR 41658 (Aug. 4, 1998), 65 FR 70134 (Nov. 21, 2000), Dept. of Education Dear Colleagues Letter Regarding PRWORA (Nov. 19, 1997), and 63 FR 41662 (Aug. 4, 1998).

²⁸⁰ Refugees as admitted under INA 207. Refugee services as described under INA 412.

²⁸¹ See *Matter of Perez*, 15 I&N Dec. 136, 137 (BIA 1974) (“The fact that an alien has been on welfare does not, by itself, establish that he or she is likely to become a public charge.”). See *Matter of Martinez-Lopez*, 10 I&N Dec. 409, 421-22 (BIA 1962) (“It has been the subject of extensive judicial interpretation. The general tenor of the holdings is that the statute requires more than a showing of a possibility that the alien will require public support.”).

past applications to receive means-tested public benefits and past approvals or certifications to receive means-tested public benefits are not, alone, a sufficient basis to determine that an alien is likely at any time to become a public charge. Similarly, an alien may be found by an officer to be likely at any time to become a public charge even if the alien has never received means-tested public benefits. This is just one piece of information that officers consider in the totality of the circumstances and such receipt, or lack thereof, is insufficient on its own to establish that an alien is or is not inadmissible under section 212(a)(4) of the Immigration and Nationality Act (INA). The public charge inadmissibility determination is always prospective, and officers are to consider the five statutory factors, may consider a sufficient affidavit of support (if required), and all other relevant evidence and information in the record in the totality of the circumstances.

Means-tested Public Benefits Received by Aliens During or After Pregnancy

Aliens who are pregnant or were recently pregnant are not exempt from the public charge ground of inadmissibility based on that pregnancy. If an alien receives means-tested public benefits while pregnant or recently pregnant, officers should consider that receipt in the totality of the circumstances.

Notwithstanding, an officer may take into account the temporary nature of the alien's pregnancy when assessing whether the alien is likely at any time to become a public charge. This includes consideration of the potentially temporary nature of postpartum conditions and how these circumstances may have impacted the alien's receipt of means-tested public benefits in the totality of the circumstances.

Chapter 8. Other Relevant Factors

In addition to the statutory minimum factors discussed in Chapter 5 and the factors discussed in Chapters 6 and 7, officers should also consider, in the totality of the circumstances, any other evidence in the record that is relevant to assessing the alien's likelihood at any time of becoming a public charge.

A. Consideration of an Alien's Willingness and Ability to Work and Employment

While many aliens may demonstrate their ability to work and earn income to meet their needs through their employment history or offers of future employment and associated salaries or wages, some aliens may have periods of unemployment. An officer may consider an alien's employment history in the context of assessing the alien's education and skills and assets, resources, and financial status. Like other factors and considerations, the fact that an alien is currently unemployed or has experienced a period of unemployment, by itself, is insufficient to conclude that an alien will become a public charge in the future. An officer may find it helpful to examine the arc of the alien's education, training, employment history, and employment prospects to determine whether the alien has the necessary skills to reenter the workforce in

the near term and earn income sufficient to meet his or her basic needs. An officer may request evidence of prospective employment, including job offers with estimated salary or wages.²⁸²

B. USCIS Fee Waivers

While USCIS does not collect information about previously received fee waivers on Application to Register Permanent Residence or Adjust Status (Form I-485), an officer may consider the request, receipt, or approval of an immigration benefit fee waiver in the totality of the circumstances.²⁸³ It is possible that some aliens applying for adjustment of status may have previously requested and received a fee waiver for a prior immigration benefit. In such a case, the officer considers this evidence in the totality of circumstances. The officer may account for when the fee waiver was granted, the amount of the fee waiver, and the grounds of eligibility for the fee waiver. If the fee waiver was received more recently, it is likely to be more relevant to the public charge inadmissibility determination.

As a general matter, the most common eligibility criteria for a fee waiver are receipt of a means-tested benefit or household income below 150 percent of the Federal Poverty Guidelines (FPG), both of which would already be evident in the alien's responses to questions on Form I-485. If the alien requested the fee waiver on the basis of financial hardship, then the officer could request additional evidence on the nature and recency of such hardship in the totality of the circumstances.

C. Fee Exemptions

An officer may not consider a fee exemption as part of the determination of whether an alien is likely to become a public charge. A fee exemption has no bearing on whether an alien would likely become a public charge in the future. Fee exemptions are not synonymous with fee waivers. Fee exemptions are not generally requested by an alien based on an inability to pay. Instead, fee exemptions are approved by USCIS for specific forms or nonimmigrant or immigrant categories based on statutory authority, regulations, or agency policy.

D. Alien is a Child

The statute does not exempt children from the public charge ground of inadmissibility.²⁸⁴ When making a public charge inadmissibility determination for aliens who are children, USCIS must

²⁸² See *Matter of Martinez-Lopez*, 10 I&N Dec. 409, 421 (BIA 1962; Att'y Gen. 1962) (Considering whether the alien had an employment offer in making a public charge inadmissibility determination). For more information about the consideration of an alien's totality of the circumstances, see Chapter 4, Prospective Determination Based on the Totality of the Circumstances [8 USCIS-PM G.4].

²⁸³ Officers should only consider such fee waivers in the totality of the circumstances for adjustment of status applications filed on or after February 24, 2020. Prior to that date, the public was not on notice that fee waivers might be considered in a public charge inadmissibility determination.

²⁸⁴ See INA 212(a)(4)(A).

consider all of the required factors, may consider a sufficient Form I-864, and should consider all other relevant factors and information, including the current and/or past receipt of means-tested public benefits. As with any alien, USCIS considers the recency, amount, and duration of receipt of such benefits, the nature of the benefit, the reason for receipt, and whether that reason is likely to persist, when determining whether an alien child is likely at any time to become a public charge.

In the rare case that an alien child has received or is receiving means-tested public benefits, an officer may consider the financial contributions of a child's household and the circumstances that resulted in the child's receipt of such public benefits and the likelihood that those circumstances would continue in the future. The officer should also take into account whether the benefits received were due to temporary parental unemployment or other temporary circumstances.

E. Alien is a Primary Caregiver

Certain aliens may claim that they serve as primary caregivers within their households. Officers should consider an alien who is 18 years of age or older who has significant responsibility for actively caring for and managing the wellbeing of a child or an elderly, ill, or disabled person in the alien's household to be a primary caregiver. Due to these responsibilities, some of these aliens may not be employed outside of the home. They also may lack current or recent employment history due to their unpaid role in their household. When considering whether an alien is serving as a primary caregiver, officers should generally find that only one person in a household can serve as the primary caregiver for an individual. If multiple caregivers share the care of a person in a given household, the officer should consider whether the alien has established that he or she has significant caregiving responsibilities that impact the alien's ability to be employed full-time.

An officer may positively consider household contributions through primary caretaking responsibilities in the totality of the circumstances, because the officer may determine that the alien's primary caretaking responsibilities outweigh any deficiencies related to the alien's education and skills and lack of employment history or current employment.

In determining whether the alien's primary responsibilities are a positive factor in the totality of the circumstances, an officer could consider:

- Whether the person receiving the alien's care is a member of the alien's household;
- Whether other members of the household also claim to be the primary caregiver;
- Whether the person being cared for lives in the same residence as the alien;
- The age of the person being cared for; and

- The medical condition, including any disabilities, of the person being cared for.

Examples where an officer may attribute positive consideration of primary caregiving include:

- A parent who stays at home to care for a newborn child or child in school; and
- An adult son or daughter staying at home to care for his or her elderly parent.

Generally, a parent who has joint custody should have primary physical custody of the child in order to be considered a primary caregiver. If an alien is caring for an elderly parent, the alien may choose to provide evidence such as a certification from a doctor indicating the parent's medical condition or copies of the parent's medical record, and documentation of legal guardianship over the parent to help inform the officer's inadmissibility determination.

An officer may consider other cases less favorably. For instance, an alien may indicate that he or she is the primary caregiver for his or her elderly in-laws, but the elderly parent is not living in the same residence as the alien and the alien's spouse (their son or daughter). Instead, the alien is financially providing for the elderly parent's room and board at a nursing home. In such a case, the alien's responsibilities are financial and not something that would occupy a significant amount of their time or preclude the alien from being employed. In addition, there may be cases where two members of the same household claim to be the primary caregiver. If there is no documentation that establishes that the alien is the primary caregiver, then the officer should give less weight to the alien's claims in the totality of the circumstances analysis.

F. Alien is an Active-duty Servicemember or the Spouse or Child(ren) of an Active-duty Service member

Aliens must generally be LPRs to join the United States military and so active-duty U.S. servicemembers are unlikely to apply for adjustment of status.²⁸⁵ However, if they do apply for adjustment of status, they are not exempt from the public charge ground of inadmissibility based on their service.²⁸⁶

²⁸⁵ See the USA.gov Join the Military webpage. However, under the Military Accessions Vital to National Interest (MAVNI) program, certain aliens who were asylees, refugees, temporary protected status beneficiaries, deferred action beneficiaries, or nonimmigrants in certain categories could enlist. The then-U.S. Department of Defense ceased recruiting service members through the MAVNI program in 2016. While not relevant to the adjudication of adjustment of status applications by USCIS officers, LPRs who are active-duty service members may be subject to the public charge ground of inadmissibility when returning to the United States. See Chapter 3, Applicability, Section A, Applicants for Admission, Subsection 3, Certain Lawful Permanent Residents Returning to the United States [8 USCIS-PM G.3(A)(3)].

²⁸⁶ See INA 212(a)(4)(A).

As a consequence of the unique compensation and tax structure afforded by Congress for service members, it is common for active-duty servicemembers, as well as their spouses and children, to receive certain means-tested public benefits. If an active-duty servicemember, their spouse, or their child(ren) has received any means-tested public benefits, the officer may consider any evidence the alien provides regarding circumstances surrounding the duration, amount, and recency of receipt, and how the alien's receipt may have been impacted by such military service. The officer may also consider any evidence the alien submits relating to skills he or she obtained through his or her military service.

When considering the receipt of any means-tested public benefits by an active-duty U.S. servicemember, their spouse, or their child(ren), officers may also consider, in the totality of the circumstances, the sacrifices of members of the armed forces, which are vital to the public's safety and security. Officers may also consider that many of the aliens who enlist in the military are early in their careers, and therefore, consistent with statutory pay authorities, earn relatively low salaries that are supplemented by certain allowances and tax advantages. These salaries may increase over time and in turn decrease the likelihood that these aliens may require means-tested public benefits in the future.

G. Alien is a Victim of Crime, Domestic Violence, or Other Adverse Circumstances

An alien who has experienced crime, domestic violence, or other adverse circumstances may have received means-tested public benefits as a direct or indirect result of those circumstances.²⁸⁷ An officer may consider information or evidence that such an alien chooses to provide relating to the alien's temporary circumstances that may be relevant to a public charge inadmissibility determination. The reasons why an alien received means-tested public benefits in the past, including these adverse circumstances, are relevant to an officer's determination as to whether the alien is likely to become a public charge in the future.

Chapter 9. Waivers of Inadmissibility Based on Public Charge Ground

The availability of a discretionary waiver of the public charge ground of inadmissibility depends on the immigration benefit the alien is seeking.

A. Immigrant Waivers

In general, the public charge ground of inadmissibility cannot be waived for aliens seeking lawful permanent resident (LPR) status. However, the following aliens seeking LPR status may overcome the public charge ground of inadmissibility if they apply for and USCIS grants a waiver of the public charge ground of inadmissibility:

²⁸⁷ Some of these victims may be exempt from the public charge ground of inadmissibility, depending on their circumstances. For a list of those exempted from the public charge ground of inadmissibility, see Chapter 3, Applicability [8 USCIS-PM G.3].

- Aliens applying for adjustment of status on account of their witness or informant status.²⁸⁸
- Certain aged, blind, or disabled aliens applying for adjustment of status under the legalization program.²⁸⁹

B. Nonimmigrant Waivers

The following nonimmigrants seeking admission may overcome the public charge ground of inadmissibility if the alien applies for and is granted a discretionary waiver of the public charge ground of inadmissibility.

Nonimmigrants seeking admission to the United States

An alien applying for a nonimmigrant visa or seeking temporary admission as a nonimmigrant may seek a temporary waiver of inadmissibility.²⁹⁰ This application for a temporary waiver of inadmissibility is adjudicated by U.S. Customs and Border Protection (CBP) as part of either an alien's application for admission at a port of entry or an alien's application for a nonimmigrant visa at a U.S. consulate or embassy.²⁹¹ If granted, the waiver generally only applies to the nonimmigrant classification for which it was granted.

*Applicants for admission as nonimmigrant witnesses or informants (S nonimmigrants)*²⁹²

A Law Enforcement Agency (LEA) makes a request on behalf of an alien when the LEA seeks to classify the alien as a nonimmigrant witness or informant. The LEA submits the request on the Inter-Agency Alien Witness and Informant Record (Form I-854A) and includes any request for a waiver of a ground of inadmissibility. The waiver is discretionary, and USCIS may grant the waiver if USCIS considers it to be in the national interest to do so.

Chapter 10. Adjudicating Public Charge Inadmissibility for Adjustment of Status Applications

²⁸⁸ See INA 245(j). See 8 CFR 245.11. According to 8 CFR 245.11(c), grounds of inadmissibility that were waived at the time of obtaining S nonimmigrant status are considered waived for purposes of the adjustment.

²⁸⁹ See INA 245A and INA 245A(d)(2)(B). Aged, blind, or disabled applicants, as defined in Section 1614(a)(1) of the Social Security Act, as codified in 42 U.S.C. 1382c(a)(1), for adjustment of status under INA 245A may apply for a waiver of the public charge ground of inadmissibility. The waiver is filed on the Application for Waiver of Grounds of Inadmissibility Under Sections 245A or 210 of the Immigration and Nationality Act (Form I-690) according to the form's instructions.

²⁹⁰ See INA 212(d)(3)(A).

²⁹¹ For more information on applying for a waiver as a nonimmigrant under INA 212(d)(3), visit CBP.gov.

²⁹² See INA 101(a)(15)(S). See 8 CFR 212.23(c)(1). See INA 212(d)(1). See 8 CFR 214.2(t)(5)(i). See 8 CFR 212.4(j)(1). The waiver is granted by USCIS.

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An alien seeking adjustment of status always bears the burden of proof to establish admissibility, including, where applicable, that the alien is not inadmissible under the public charge ground.²⁹³ The burden never shifts to USCIS during the adjudication process.²⁹⁴ After considering all relevant factors, circumstances, and evidence in the totality of the circumstances, the officer determines whether the alien has met his or her burden of proof in establishing that he or she is not likely at any time to become a public charge.²⁹⁵

A. Evidence in the Record

In making a public charge inadmissibility determination, a USCIS officer considers all evidence relevant to the statutory minimum factors. The officer may consider a sufficient Affidavit of Support Under Section 213A of the INA (Form I-864) (when required)²⁹⁶ and any other factor in the alien's case that is relevant to determining whether the alien is likely at any time to become a public charge.²⁹⁷ Among other factors that an officer should consider, any applications, approvals or certifications to receive, or receipt of means-tested public benefits after September 18, 2026,²⁹⁸ by the alien will be highly relevant.²⁹⁹

Evidence that appears or could appear in the record includes:

- The alien's employment history (as stated on the Application to Register Permanent Residence or Adjust Status (Form I-485));³⁰⁰
- Information relating to the statutory minimum factors and receipt of means-tested public benefits collected on Form I-485;
- Information related to an alien's health as reported on Report of Immigration Medical Examination and Vaccination Record (Form I-693) or DOS immigration medical examination report, if required;
- A sufficient Form I-864, if required;

²⁹³ See INA 291. See *Matter of Bett*, 26 I&N Dec. 437 (BIA 2014).

²⁹⁴ See *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978).

²⁹⁵ See INA 212(a)(4).

²⁹⁶ See Chapter 6, Affidavit of Support Under Section 213A of the INA [8 USCIS-PM G.6].

²⁹⁷ See *Matter of Vindman*, 16 I&N Dec. 131, 132 (BIA 1977) ("The elements constituting likelihood of an alien becoming a public charge are varied. They are not defined by statute, but rather are determined administratively upon consideration of *all the factors bearing on the alien's ability or potential ability to be self-supporting.*") (emphasis added).

²⁹⁸ See Chapter 2, Key Concepts, Section B, Means-Tested Public Benefits [8 USCIS-PM G.2(B)].

²⁹⁹ See Chapter 7, Consideration of Any Current or Past Application for, Approval or Certification to Receive, and Receipt of Means-Tested Public Benefits [8 USCIS-PM G.7].

³⁰⁰ See 87 FR 55472, 55497 (Sept. 9, 2022) (final rule).

- Information concerning the alien's applications for, approvals or certifications to receive, and receipt of means-tested public benefits provided by benefit-granting agencies;³⁰¹ and
- Any other relevant information.³⁰²

B. Totality of the Circumstances Scenarios

Below are hypothetical scenarios that are intended to help illustrate an officer's review of an alien's factors, circumstances, and evidence, in the totality of the circumstances. These hypothetical scenarios are not meant to be exhaustive or all-inclusive with respect to the scenarios that may give rise to a public charge inadmissibility finding. They are intended to illustrate the adjudicative process and do not dictate the outcome of any particular case.

Although a USCIS officer may encounter similar fact patterns as those presented in the scenarios below, an officer may reasonably reach a different conclusion than what is described below when making a totality of the individual's circumstances determination in an individual case. Public charge inadmissibility determinations are made in the totality of circumstances for each individual case, on a case-by-case basis.

Additionally, for purposes of the following hypothetical scenarios, it is assumed that:

- The applicant is applying for adjustment of status before USCIS and is otherwise eligible for the benefit;
- The applicant submitted the required forms and all other required supporting evidence; and
- The facts asserted are supported by evidence in the record.

Scenario 1

The alien is a single, 25-year-old recent college graduate living with her parent, and she is currently unemployed. Her parent is currently financially supporting the alien, and they are the only two individuals in the alien's household. The household's income and net worth (assets minus liabilities) are relatively low. A sufficient Form I-864 was submitted on behalf of the alien. There is no information in the record to show that the alien is receiving or has received means-tested public benefits or has any Class A or Class B medical conditions.

³⁰¹ See Chapter 7, Consideration of Any Current or Past Application for, Approval or Certification to Receive, and Receipt of Means-Tested Public Benefits [8 USCIS-PM G.7].

³⁰² See Chapter 8, Other Relevant Factors [8 USCIS-PM G.8].

The officer evaluates each of the factors and concludes that the factors in their totality do not indicate that the alien is likely at any time to become a public charge. The officer finds that the alien's record of current unemployment does not outweigh the other factors and considerations (for example the applicant's education, age, health). As a result, the officer determines that the alien has met her burden of demonstrating she is not inadmissible under section 212(a)(4)(A) of the Immigration and Nationality Act (INA).

Scenario 2³⁰³

The alien, who has a high school-level education, is a single 35-year-old with no evidence of any Class A or Class B medical conditions. The alien has one 10-year-old child who lives with the alien. The alien is currently employed with moderate household income and relatively low household net worth. A sufficient Form I-864 was submitted on behalf of the alien. There is evidence in the record that the alien received a small amount of means-tested public benefits for a period of 1 year, about 10 years before applying for adjustment of status.

The officer evaluates each of the factors in the totality of the circumstances, including the recency, amount, and duration of the alien's past receipt of means-tested public benefits. The officer considers the relatively small value of benefits received by the alien and the reason for that receipt, which was temporary unemployment associated with the birth of her child. The officer determines that the alien, who is of working age, is currently employed, in good health, and received means-tested public benefits for a temporary period 10 years ago, has demonstrated that she is not likely at any time to become a public charge. As a result, the officer finds that the alien has met her burden of demonstrating that she is not inadmissible under INA 212(a)(4)(A).

Scenario 3

The alien is a single 55-year-old, living alone, with no evidence of a Class A or Class B medical condition. The alien is an unemployed college graduate who has not been employed for over a decade. The alien has a low income based solely on the receipt of certain means-tested public benefits and low household net worth. A sufficient Form I-864 was submitted on behalf of the alien, who has been receiving public cash assistance for over 5 years.

The officer evaluates each of the factors in their totality and determines that the combination of factors shows that the alien is likely at any time to become a public charge. The officer bases their determination on the fact that the alien is currently receiving public cash assistance, has received this benefit for an extended period of time, has not worked in over ten years, and has demonstrated no prospect of obtaining employment or generating another source of income.

³⁰³ For purposes of this scenario, USCIS is assuming that the alien filed the application and received means-tested public benefits after September 18, 2026, and after the 2022 Final Rule and regulations have been rescinded.

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As a result, even though the alien has a college degree, is of working age, is in good health, and has a sufficient Form I-864, the officer finds that the alien has not met his burden of proof and determines that the alien is inadmissible under INA 212(a)(4).

Scenario 4

The alien is a 70-year-old who is divorced, no longer in the workforce, and living with her U.S. citizen adult son. The alien's immigration medical examination indicates that the alien has a Class B medical condition that requires extensive medical care and prevents the alien from reentering the workforce. The alien has limited retirement savings, assets, and resources and has no health insurance. The alien has not received any means-tested public benefits. A sufficient Form I-864 was submitted on behalf of the alien by her son. The alien's adult son also has 3 other members of the household for whom he is financially responsible in addition to the alien.

The officer evaluates these factors in their totality and determines that the alien is likely at any time to become a public charge. Even though the alien has a sufficient Form I-864 and the officer is satisfied that the alien's adult son is able to provide adequate food and housing, there is no evidence in the record that the alien has access to sufficient financial resources to cover the medical expenses connected to her Class B medical condition considering the size of the household, the needs of other household members, and the fact that the alien can no longer work. The officer concludes that the alien is likely to become dependent on the government for medical care and finds that the alien is inadmissible under INA 212(a)(4).

Scenario 5

A 30-year-old alien is married to a U.S. citizen. They live together with their two U.S. citizen children. The alien has no medical conditions, has a high-school level education, and is currently employed part-time at a job which requires no certifications or higher education. The petitioner submitted a Form I-864 with the alien's application for adjustment of status. While the petitioner satisfied the income requirements at the time she submitted the Form I-864, by the time an officer reviews the adjustment of status application, the petitioner's employer closed their business and the petitioner is unemployed. The petitioner received unemployment insurance benefits until those expired and then applied for and has begun to receive TANF.

While the petitioner was employed, the household income was slightly above federal poverty guidelines, but now the total household income is below federal poverty guidelines. The alien and petitioner rent their apartment, and they have minimal savings. They receive some financial support from the petitioner's parents in the form of clothing, babysitting, and small cash contributions for the children. Since the petitioner lost their job, the petitioner and children also receive SNAP benefits and Medicaid. There is no evidence that the alien has health insurance. Because the petitioner can no longer maintain the income required of a Form I-864 sponsor, the

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officer issued an RFE for a sufficient Form I-864 from a joint sponsor. One of the petitioner's former colleagues came forward as joint sponsor, and the new Form I-864 is sufficient.

The officer evaluates all relevant evidence and information in the totality of the circumstances and determines that the alien is likely at any time to become a public charge. Considering the statutory factors, the officer acknowledges that the alien is of working age and is in good health. The officer considers the family status of the alien in combination with the assets, resources, and financial status of the alien and finds that evidence in the record suggests that the household is in dire financial straits. The alien's spouse is not employed and the alien is employed at a level that does not provide sufficient income to support the household. As a result, all three U.S. citizens in the household, whom the alien is required to support, are currently receiving a variety of means-tested public benefits.

Given the alien's current employment, low level of education, and lack of skills, the officer finds it unlikely that the alien will be able to obtain full-time employment with an income sufficient to support himself and his family. While there is a sufficient affidavit of support from the petitioner's former colleague, the former colleague does not live in the same city as the alien's family, has only a loose connection to the alien through the petitioning spouse, and has an annual income only slightly higher than the minimum required by INA 213A to serve as a sponsor. The officer determines that the alien is likely to depend on public resources to meet his needs after he becomes an LPR and is eligible for those benefits. As a result, the officer concludes that the alien is likely at any time to become a public charge and finds the alien is inadmissible under INA 212(a)(4).

Scenario 6

A 28-year-old married alien with a bachelor's degree, living with her spouse and two young children, applies for adjustment of status. The alien is employed full-time with a stable income, and the household's net worth is moderate. The alien has never received means-tested public benefits and has no medical conditions. The alien's petitioning spouse submitted a sufficient Form I-864, showing a household income more than twice the federal poverty guidelines for a family of four.

The officer evaluates all relevant evidence and information in the totality of the circumstances. The officer finds that the alien's stable employment, college education, good health, moderate level of assets, support from a gainfully employed spouse, and lack of public benefit make it highly unlikely that the alien will become a public charge. As a result, the officer finds that the alien has met her burden of demonstrating that she is not inadmissible under INA 212(a)(4).

Scenario 7

The alien is a 65-year-old widowed individual, living alone. The alien was inspected and admitted to the United States as an H-1B nonimmigrant worker and worked as a college

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professor for several years. During their employment, the alien met and married a U.S. citizen. The alien's spouse, who was also employed in academia, passed away unexpectedly. The spouse had a substantial life insurance policy, which allowed the applicant to pay off the mortgage on their home and put some money into savings. Following the spouse's death, the alien has been receiving a small pension from their previous employment, Social Security retirement benefits based on their own employment in the United States, and survivor Social Security benefits based on their deceased spouse's work record. The alien has limited retirement savings but owns their home outright and has no Class A or Class B medical conditions. The alien has never received means-tested public benefits. The sister of the deceased spouse of the alien submitted a substitute Form I-864, which was sufficient under INA 213A.

The officer considered the applicant's age, the applicant's stable retirement income, home ownership, lack of medical issues, sufficient Form I-864, and absence of history of receipt of public benefits. The officer also considered the alien's high level of education and skills as well as their employment history, finding it likely that the alien could find employment, if needed. Considering all of this information in the totality, the officer determines that the alien is unlikely to become a public charge and has met her burden of demonstrating that she is not inadmissible under INA 212(a)(4).

Scenario 8

A 45-year-old married alien with three children applied for adjustment of status. The alien has a vocational certificate and works part-time. The spouse is employed full-time and the household income is slightly above the federal poverty guidelines. The family rents their home and has minimal savings. The alien received Medicaid for emergency medical care in 2025 but has not received other means-tested public benefits. The immigration medical examination revealed no Class A or Class B medical conditions. A sufficient Form I-864 was submitted.

The officer evaluates all relevant evidence and information in the totality of the circumstances, including the alien's age, good health, skills, current employment, and household income. The officer also considers the sufficient Form I-864 submitted by a close relative, the alien's spouse. While past benefit use is almost always highly relevant to a public charge inadmissibility determination, the officer recognizes that the alien received the benefit prior to September 18, 2026, and it was not cash assistance for income maintenance or long-term institutionalization at government expense. As a result, the officer does not consider the limited receipt of Medicaid for emergency medical care in the public charge inadmissibility determination.

After considering all of the evidence in the record, the officer finds that the alien is not likely at any time to become a public charge. As a result, the officer finds that the alien has met the alien's burden of demonstrating that the alien is not inadmissible under INA 212(a)(4).

Scenario 9

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On June 1, 2026, a 32-year-old alien was admitted to the United States as a K-1 nonimmigrant with her accompanying 12-year-old alien son from a previous marriage. The alien completed high school in her home country. Prior to issuing the K-1 nonimmigrant visa, the Department of State required that the K-1 petitioner submit a Form I-134, Declaration of Financial Support, on behalf of the alien and accompanying child. DOS found the Form I-134 sufficient. Evidence in the record shows the alien married her U.S. citizen petitioner the day after she arrived in the United States, and the record reflects that the couple married in good faith. On October 1, 2026, the K-1 petitioner filed a Form I-864 in conjunction with the alien's Form I-485, and the Form I-864 was found to be sufficient. At the interview on December 1, 2027, the alien presents a divorce decree, and the evidence shows that the alien and the petitioner have been divorced for 4 months. The petitioner has not withdrawn his Form I-864, but the alien is no longer in contact with him.

Although the divorce decree orders the petitioner to pay alimony to the alien, the alien provides evidence that he has failed to do so. The alien is currently employed full-time at a job that requires no certification or higher education, and she lives in a rented apartment with her son. Her income is at the federal poverty guidelines, and she has minimal savings. The alien's son attends a school that is not part of the Community Eligibility Provision (CEP) for school lunches, but the alien has applied for her son to receive free school lunches, which he now receives. Her son also received emergency Medicaid for an emergency room visit on July 4, 2026. There is no evidence in the record that the alien or her son has health insurance. The alien has no Class A or Class B medical conditions.

The Form I-134 and Form I-864 were sufficient, however, there is no evidence in the record suggesting that the petitioner is inclined to provide the statutorily required amount of support (or any support) to the alien. Although the Form I-864 is legally binding, and the alien could sue to enforce it after adjustment, the divorce and subsequent failure to provide alimony suggest that the petitioner would likely pursue a lengthy and costly court case in his defense. The officer concludes that the petitioner is not likely to provide statutorily or court-ordered support to the alien after adjustment of status. The officer evaluates all relevant evidence and information in the totality of the circumstances, including the alien's age, good health, skills, current employment, and income, assets, and financial status. The officer recognizes that the alien has secured full-time employment, at the federal poverty guidelines, within a short time after receiving employment authorization and is able to pay her rent and provide for herself and her child with minimal government support.

During the interview, the alien shared that she recently received a raise at work and has been recommended for management training. The officer also considers the sufficient Form I-864 but gives it little weight in the totality of the circumstances analysis because the petitioner is unlikely to provide the alien support without being ordered to in litigation. While the alien has not received means-tested public benefits, her son (whom she is legally obligated to support) is currently receiving free school lunches based on the alien's income falling below the eligibility threshold for that benefit. The officer considers the alien's income falling below that threshold

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in the totality of the circumstances. The officer also considers the nature of the free school lunch program and the limited impact of the receipt on the household finances. Since the alien's son received emergency Medicaid before September 18, 2026, the officer did not consider such receipt in the context of the alien's assets, resources, and financial status. After considering all of this evidence and information in the totality of the circumstances, the officer concludes that the alien is not likely at any time to become a public charge. As a result, the officer finds that the alien has met her burden of demonstrating that she is not inadmissible under INA 212(a)(4).

Scenario 10

A 70-year-old alien has applied for adjustment of status under INA 245(a) as a parent of a U.S. citizen. The alien lives together with his U.S. citizen petitioner, his son-in-law, and the alien's three biological grandchildren. The alien has a university diploma from his country of origin, where he retired from his career over a decade ago. Although the alien was of moderate income in his country of origin, he has limited savings and no income in the United States. The household income is slightly above the federal poverty guidelines. The petitioner submitted a Form I-864, and the petitioner's spouse is employed and has submitted Form I-864A. The petitioner does not work, but she provides caretaking for the children and the alien. The alien currently receives Medicaid under 42 U.S.C. 1396b(v)(5)(B), and is being treated for diabetes, high blood pressure, and dementia.

The officer evaluates all of the relevant evidence and information in the totality of the circumstances. After considering the alien's age, poor health, family status in combination with household resources, the alien's education and skills, the alien's extremely poor prospects for future employment, the alien's current receipt of Medicaid, and the affidavit of support, the officer determines that the alien is likely at any time to become a public charge and finds the alien is inadmissible under INA 212(a)(4).

Scenario 11

In 1996, an alien was inspected and admitted to the United States using a B-1/B-2 border crossing card. He has not departed the United States since admission. At 50 years of age, he has applied to adjust status based on a petition filed by his U.S. citizen daughter. The petitioner has also filed a sufficient Form I-864. The alien has a college degree and is employed full-time at a middle-income job. Between 1999-2010, the alien periodically received emergency Medicaid. The alien has not received any other means-tested public benefit. The alien is in good health, lives with his alien spouse, who is still working, and owns his home.

The officer evaluates all of the relevant evidence in the totality of the circumstances. Specifically, the officer considers the applicant's age, good health, family status in combination with his assets, resources, and financial status, current employment, and significant education and skills. The officer also considers the sufficient Form I-864 provided by the alien's daughter. The officer does not consider the alien's receipt of emergency Medicaid more than 16 years ago,

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well before September 18, 2026. The officer concludes that the alien is not likely to become a public charge and does not find the alien inadmissible under INA 212(a)(4).

Scenario 12

In 2006, at age 6, the alien was inspected and admitted into the United States as a B-1 visitor. She has not departed the United States since admission. In 2021, she married a U.S. citizen, and in 2030 she filed a Form I-485 to apply for adjustment of status in conjunction with her spouse's Form I-130 petition. They have one U.S. citizen child, born in 2023. During and following her pregnancy, she applied for and received WIC benefits. She completed a certification as a nursing assistant and was employed in that field until 2028, when she left her job and began to provide full-time care for the petitioner's aging parent, who suffers from Parkinson's disease. The alien has no Class A or Class B medical conditions.

The petitioner's income is slightly below the level required to serve as a sponsor under INA 213A, but the petitioner's brother, who owns a successful small business, has submitted a sufficient Form I-864 for joint sponsorship. The petitioner, alien, and their child live together with the petitioner's aging parent in the aging parent's house, where they do not pay rent. The joint sponsor brother lives next door with his family and the broader family is very close. The aging parent receives SNAP and Medicaid benefits in addition to Medicare and Social Security retirement benefits.

The officer evaluates all of the relevant evidence and information in the totality of the circumstances. While the alien is unemployed, the alien makes significant contributions to the household by caring for her father-in-law. These contributions make it possible for him to live with his family and relieve the potential financial burden of institutionalization. While the household income is lower than the 125% of the Federal Poverty Guidelines level, the fact that the family does not have to pay rent or a mortgage, combined with the legally binding Form I-864 from a very close relative, offsets this low income. The officer considers that the alien has not received any means-tested public benefits, nor has anyone in the household she is obligated to support. The alien is young, educated, and has a past history of employment and a willingness to engage in difficult work, even if that work is unpaid at the moment. The alien's receipt of WIC was temporary, associated with her pregnancy, many years ago, low in value, and occurred prior to September 18, 2026, and was therefore not a consideration in the officer's analysis. The officer also considers the alien's good health. Considering all of this in the totality of the circumstances, the officer finds that she is not likely to become a public charge and is not inadmissible under INA 212(a)(4).

Scenario 13

A 45-year-old alien is the parent of a U.S. citizen and a high school graduate. The alien had periodically been admitted to the United States as an H-2B nonimmigrant and departed without overstaying her period of admission. Twenty years before applying for adjustment of status in

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2047, the alien gave birth to her child in the United States and received both emergency Medicaid and WIC in connection with her pregnancy, birth, and postpartum care. This was the only time she received public benefits. The alien is married to the father of her child, and all three reside together. He works as a cook in a restaurant. The alien has worked seasonally in the seafood industry but after receiving employment authorization in connection with her adjustment of status application now works as a cleaning supervisor in a commercial building. The alien's son works part-time at a school cafeteria. The alien's salary is greater than her son's and covers most of the household's monthly living expenses. They live in an apartment with relatively low rent.

While the petitioning son lacks sufficient income and assets on his own to meet the requirements to serve as a sponsor under INA 213A, he includes the income of his alien mother on Form I-864, along with evidence that her current employment is lawful and that the alien's employer intends to continue employing her in the same position after she adjusts status. The immigration medical examination revealed the alien has one minor Class B condition, high cholesterol.

The officer evaluates all of the relevant evidence and information in the totality of the circumstances. The officer considers the alien's age and the identified Class B condition. Given the alien's employment history and current employment, and the notes from the Civil Surgeon on the Form I-693, the Class B condition has little weight in the totality of the circumstances. The officer then considers the alien's family status and her assets, resources, and financial status. She is gainfully employed and is the top wage earner in a family of three working adults. While the alien lacks formal education beyond high school, she has demonstrated that it has not prevented her from being employed. The officer considers the alien's past receipt of Medicaid and WIC, which occurred after September 18, 2026. The officer considers the reason for the receipt (her pregnancy), the recency of the receipt (20 years ago), and the value of the benefits received (not high). The officer determines that this receipt is unlikely to recur.

Considering all of this in the totality of the circumstances, the officer finds that she is not likely to become a public charge and is not inadmissible under INA 212(a)(4).

Scenario 14

In 2023, the alien, age 25, was inspected and admitted to the United States as an H-1B nonimmigrant, to work as a processing systems engineer for a large petrochemical company. Later in 2023, they married a U.S. citizen. In 2025, the alien enrolled in an evenings and weekends MBA program at their local university. That same year, their USC spouse filed a Form I-130 on the alien's behalf, and the alien filed a Form I-485 application to request adjustment of status. The alien also applied for, and received, employment authorization based on having a pending adjustment of status application. The petitioner is a nurse and is studying to be a physician's assistant, and the alien and petitioner co-own a small condo. The couple have no children, and the alien's Form I-693 reveals no Class A or Class B conditions.

In 2026, about 3 months before their joint interview on the Form I-130/I-485 package, the alien was laid off from their position. Following the lay-off, the alien successfully changed status to an F-1 student. The alien is currently receiving unemployment insurance payments, and the alien's father is paying half of the alien's graduate school tuition. At the interview, the alien presents evidence that they have attended multiple recruitment events through their MBA program's career center, and that they have made it to the second round of interviews for several positions.

The officer evaluates all of the relevant evidence and information in the totality of the circumstances. The officer considers the alien's age, educational attainment, and past employment history. Although the alien is currently unemployed, they show clear evidence that they are financially supported and are actively seeking employment that would result in self-sufficiency. The unemployment insurance benefits the alien is receiving are an earned, not means-tested, benefit, so the officer does not factor these into their assessment of the alien's likelihood to become a public charge. The officer considers the sufficient Form I-864 submitted by the alien's spouse and the likelihood that the spouse will fulfill the support obligations. The officer also considers the ongoing family support, as demonstrated by the father's assistance with the tuition payments. The officer finds that the alien is not likely to become a public charge at any time, and concludes that the alien is not inadmissible under INA 212(a)(4).

C. Summary: Step-by-Step Determination of Public Charge Inadmissibility

The officer should examine all facts and circumstances of the applicant's case when evaluating inadmissibility for public charge.³⁰⁴ The officer should follow the steps in the table below to determine inadmissibility.

Step-By-Step Determination of Public Charge Inadmissibility

Step	If Yes, then ...	If No, then ...	For More Information
Step 1: Is the alien subject to the public charge ground of inadmissibility?	Go to Step 2.	Not inadmissible based on the public charge ground. ³⁰⁵	See Chapter 3, Applicability [8 USCIS-PM G.3].
Step 2: Is the alien required to submit	Go to Step 3.	Go to Step 4.	Chapter 6, Affidavit of Support Under Section

³⁰⁴ See INA 212(a)(4).

³⁰⁵ Self-petitioners under the Violence Against Women Act (VAWA) must request an exemption from the Form I-864 requirement when filing their Application to Register Permanent Residence or Adjust Status (Form I-485) but are not subject to the public charge inadmissibility ground. See INA 212(a)(4)(E)(i). Self-petitioning VAWA applicants (and their derivatives) are therefore not inadmissible under the public charge ground and officers do not make a public charge inadmissibility determination once they determine the applicant qualifies for the exemption.

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Step-By-Step Determination of Public Charge Inadmissibility

Step	If Yes, then ...	If No, then ...	For More Information
an Affidavit of Support Under Section 213A (Form I-864 or Form I-864EZ)?			213A of the INA [8 USCIS-PM G.6].
Step 3: Was the Form I-864 (or Form I-864EZ) submitted and determined sufficient by the officer?	Go to Step 4.	Inadmissible based on the public charge ground. The officer may issue a NOID or deny the application in accordance with USCIS policy.	
Step 4: Was the application postmarked (or, if applicable, submitted electronically) on or after September 18, 2026?	Go to Step 5.	Follow the 2022 Rule and Guidance if the application is postmarked or submitted electronically on or after December 23, 2022, but before September 18, 2026. Follow the 1999 Interim Field Guidance for applications postmarked or electronically submitted prior to December 23, 2022.	Chapter 1, Purpose and Background, Section C, Implementation and Scope [8 USCIS-PM G.1(C)].
Step 5: After reviewing the	Go to Step 6.	Not inadmissible based on the public charge ground.	Chapter 5, Statutory Minimum Factors [8 USCIS-PM G.5] through Chapter 7, Consideration of Any

Step-By-Step Determination of Public Charge Inadmissibility

Step	If Yes, then ...	If No, then ...	For More Information
applicable forms³⁰⁶ and evidence, is the alien likely at any time to become a public charge based on the totality of the circumstances?			Current or Past Application for, Approval or Certification to Receive, and Receipt of Means-Tested Public Benefits [8 USCIS-PM G.7].
Step 6: Is a waiver of inadmissibility available?	The officer may issue a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) to the alien to provide the alien an opportunity to request a waiver, unless already requested. If the waiver is approved, the alien may be admitted despite the public charge ground of inadmissibility. The officer should continue with the adjudication of the application.	Inadmissible based on the public charge ground. Go to Step 7.	Chapter 10, Adjudicating Public Charge Inadmissibility for Adjustment of Status Applications [8 USCIS-PM G.10]. Chapter 9, Waivers of Inadmissibility Based on Public Charge Ground [8 USCIS-PM G.9].
Step 7: Does USCIS offer the alien who is inadmissible only on account of public charge the opportunity to post a public charge bond?	The officer issues a NOID, notifying the alien that the alien may submit a public charge bond. Proceed to Step 8.	The alien is inadmissible on the public charge ground. The officer may issue a NOID or deny the application in	Chapter 11, Public Charge Bonds [8 USCIS-PM G.11].

³⁰⁶ Including Form I-485, Form I-864 or Form I-864EZ, and Report of Immigration Medical Examination and Vaccination Record (Form I-693). Officers may issue a Request for Evidence (RFE) to the applicant to provide the applicant an opportunity to submit additional evidence.

Step-By-Step Determination of Public Charge Inadmissibility

Step	If Yes, then ...	If No, then ...	For More Information
		accordance with USCIS policy.	
Step 8: Was a proper and suitable bond posted on behalf of the alien?	The alien may be admitted despite inadmissibility based on the public charge ground. The officer should continue with the adjudication of the application.	The alien is inadmissible on the public charge ground. The officer should deny the application.	Chapter 12, Public Charge Bonds: Posting and Accepting Bonds [8 USCIS-PM G.12].

D. Decision**1. Request for Evidence or Notice of Intent to Deny**

If the initial evidence submitted by the alien does not establish eligibility or ineligibility, an officer may issue a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) to request more information or evidence from the alien in accordance with USCIS policy.³⁰⁷

If a NOID is issued, the officer must provide an explanation of the consideration of all the factors and why the officer believes that the alien is likely at any time to become a public charge based on the consideration of the totality of the alien's circumstances. If an officer is basing a decision in whole or in part on information of which the alien is unaware or could not reasonably be expected to be aware, the officer must issue a NOID.³⁰⁸

2. Not Inadmissible Based on the Public Charge Ground

After reviewing the application for adjustment of status and supporting evidence, if the officer finds that the alien is not likely at any time to become a public charge based on the consideration of the totality of the alien's circumstances, then the officer should determine that the alien is not inadmissible based on the public charge ground. The officer should continue with the adjudication.

³⁰⁷ See 8 CFR 103.2(b)(8)(i). Generally, USCIS issues written notices in the form of an RFE or NOID to request missing initial or additional evidence. However, USCIS has the discretion to deny a benefit request without issuing an RFE or NOID. See 8 CFR 103.2(b)(8)(iii). For more information, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)], and Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 9, Rendering a Decision, Section B, Denials, Subsection 1, Denials Based on Lack of Legal Basis [1 USCIS-PM E.9(B)(1)].

³⁰⁸ See 8 CFR 103.2(b)(16)(i). See 8 CFR 103.2(b)(8)(iv).

3. Inadmissible Based on the Public Charge Ground

After reviewing the application for adjustment of status and supporting evidence, if the officer finds that the alien is likely at any time to become a public charge, then the officer should determine that the alien is inadmissible under the public charge ground.

In this case, the officer should determine whether the alien may be eligible to apply for a waiver or whether to offer the alien the opportunity to post a public charge bond.³⁰⁹ If the alien is ineligible to apply for a waiver and USCIS has decided not to offer the alien an opportunity to post a public charge bond, then the alien is ineligible for adjustment of status. The officer either issues a NOID or denies the benefit request in accordance with USCIS policy.³¹⁰

Waiver

If the alien is eligible to apply for a waiver, the officer should inform the alien through the issuance of an RFE or NOID in accordance with USCIS policy.³¹¹ If the alien submits a waiver application and the waiver application is approved, the alien is no longer inadmissible under the public charge ground. The officer should then continue with the adjudication of the adjustment of status application in accordance with the guidance.

Bond

An officer, as a matter of discretion, may offer an alien applying for adjustment of status an opportunity to post a public charge bond³¹² if the alien is only inadmissible based on the public charge ground and is otherwise eligible for adjustment of status.³¹³ In this instance, the officer must issue a NOID in accordance with USCIS policy.³¹⁴

If an alien posts the public charge bond as instructed in the NOID and USCIS accepts the bond, the officer should continue with the adjudication of the immigration benefit request in accordance with the guidance.

Denial

³⁰⁹ For more information, see Chapter 9, Waivers of Inadmissibility Based on Public Charge Ground [8 USCIS-PM G.9] and Chapter 11, Public Charge Bonds [8 USCIS-PM G.11].

³¹⁰ See 8 CFR 103.2(b)(8)(iii). See Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)].

³¹¹ See Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)].

³¹² In accordance with 8 CFR 213.1.

³¹³ See 8 CFR 213.1(a).

³¹⁴ See 8 CFR 103.2(b)(8)(iii). See Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)].

USCIS officers must explain the reasons for a finding of inadmissibility under the public charge ground based on the totality of the circumstances in the denial decision issued to the alien.³¹⁵ Every written denial decision issued by USCIS based on the totality of the circumstances analysis must reflect consideration of each of the factors in the public charge inadmissibility determination and specifically articulate the reasons for the officer's determination.³¹⁶

Chapter 11. Public Charge Bonds

If an alien is determined to be inadmissible based on the public charge ground,³¹⁷ but is otherwise admissible and eligible for adjustment of status, he or she may be admitted in the discretion of the Secretary of Homeland Security, after posting a suitable and proper bond.³¹⁸ Before an alien may post a public charge bond, USCIS must invite the alien to do so.³¹⁹ 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.³²⁰

This statutory language is further clarified by language used by the former Immigration and Naturalization Service and DHS on previous versions of public charge bond forms, which consistently stated from as early as the 1940s through to 2017 that a purpose of the bond was to “pay to the people of the United States, or to any state, territory, county, town, municipality, or district thereof...any or all charges or expenses arising” from the alien's use of public benefits.³²¹ The BIA has stated that public charge bonds are intended to ensure “that the alien will not in the future become a public charge.”³²² A public charge bond is issued with conditions prescribed by DHS,³²³ one such condition being that the alien not receive any means-tested public benefits while the bond is in effect.³²⁴

³¹⁵ See 8 CFR 103.3(a)(1)(i). For more information about the consideration of the totality of the circumstances, see Chapter 4, Prospective Determination Based on the Totality of the Circumstances [8 USCIS-PM G.4].

³¹⁶ For more information about the factors considered in a public charge inadmissibility determination, see Chapter 5, Statutory Minimum Factors [8 USCIS-PM G.5], Chapter 6, Affidavit of Support Under Section 213A of the INA [8 USCIS-PM G.6], and Chapter 7, Consideration of Any Current or Past Application for, Approval or Certification to Receive, and Receipt of Means-Tested Public Benefits [8 USCIS-PM G.7].

³¹⁷ See INA 212(a)(4).

³¹⁸ See INA 213. See 8 CFR 103.6 and 8 CFR 213.1.

³¹⁹ See 8 CFR 213.1(a).

³²⁰ See INA 213. See *Matter of Viado*, 19 I&N Dec. 252 (BIA 1985). This language has remained substantively unchanged since the Immigration Act of 1907. See Section 26 of the Act of February 20, 1907, Pub. L. 59-96, 34 Stat. 898, 907.

³²¹ See former Form I-354, Bond That Alien Shall Not Become a Public Charge. See former Form I-352, Immigration Bond (12/2017 version).

³²² See *Matter of Viado*, 19 I&N Dec. 252, 253 (BIA 1985).

³²³ See INA 213.

³²⁴ See 8 CFR 103.6(c)(1)(ii).

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If USCIS decides in its discretion that the alien may post a bond, USCIS will issue a Notice of Intent to Deny (NOID) in which it will invite the alien to submit a bond. No public charge bonds will be accepted from aliens applying for adjustment of status without an invitation from USCIS.

In the case of immigrant visa applicants, a bond will be accepted by USCIS only if USCIS receives notification that a consular officer requires the bond. USCIS may accept a public charge bond before the issuance of an immigrant visa upon the receipt of a request directly from a United States consular officer or upon the presentation by an interested person of a notification from the consular officer requiring the bond.³²⁵

A public charge bond is a type of immigration bond.³²⁶ 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).³²⁷

If the U.S. government invites the alien to post a public charge bond, and the alien posts the bond in the amount specified by USCIS and complies with all other requirements as provided in the form and form instructions, USCIS accepts the public charge bond and adjusts the applicant's status to that of a lawful permanent resident (LPR) despite the alien's inadmissibility.

A. Background

Historically, bond provisions started with states requiring certain amounts of money to be posted as assurance that an alien would not become a public charge.³²⁸ Beginning in 1893, immigration inspectors served on boards of special inquiry that reviewed exclusion cases of aliens who were likely to become public charges because they lacked funds or relatives or friends who could provide support.³²⁹ In these cases, the board of special inquiry usually

³²⁵ See 8 CFR 213.1(b).

³²⁶ There are many types of immigration bonds prescribed in the Immigration and Nationality Act (INA). Most immigration bonds are currently administered by U.S. Immigration and Customs Enforcement (ICE), and not USCIS. For example, ICE administers the voluntary departure bonds, delivery bonds, and order of supervision bonds. For more information on other immigration bonds, contact ICE.

³²⁷ See *Matter of Allied Fid. Ins. Co.*, 19 I&N Dec. 124, 125-26 (BIA 1984) (discussing the contractual nature of delivery bonds submitted under 8 CFR 103.6).

³²⁸ See *Mayor, Aldermen and Commonality of City of N.Y. v. Miln*, 36 U.S. 102 (1837) (upholding a New York statute that required vessel captains to provide certain biographical information about every passenger on the ship and further permitting the mayor to require the captain to provide a surety of not more than \$300 for each alien passenger to indemnify and hold harmless the government from all expenses incurred to financially support the alien and the alien's children).

³²⁹ See Immigration Act of 1892, Pub. L. 51-551, 26 Stat. 1084 (March 3, 1891), which created the Office of the Superintendent of Immigration within the U.S. Department of the Treasury. The Superintendent oversaw a new corps of U.S. immigration inspectors stationed at the country's principal ports of entry. See the USCIS Origins of Federal Immigration Service webpage.

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admitted the alien if someone could post bond or one of the immigrant aid societies would accept responsibility for the alien.

Bond provisions were codified in federal immigration laws in 1903.³³⁰ The present language of section 213 of the Immigration and Nationality Act (INA) has been in the law without significant variation since 1907.³³¹ Under Section 21 of the Immigration Act of 1917, an immigration officer could admit an alien if a suitable bond was posted.³³² Regulations implementing the public charge bond have been in place since at least 1947,³³³ and are currently found at 8 CFR 103.6 and 8 CFR 213.1. In 1970, Congress amended INA 213 to permit the posting of cash received by the U.S. Department of the Treasury (Treasury) and to eliminate specific references to communicable diseases of public health significance.³³⁴

With the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996, Congress amended the section by adding a parenthetical that clarified that a bond may be requested in addition to, and not in lieu of, the Affidavit of Support Under Section 213A of the INA (Form I-864) and the deeming requirement under INA 213A.³³⁵

The 1999 Interim Field Guidance explained the IIRIRA changes to the public charge bond statute and noted that officers can offer public charge bonds as they had done in the past, but did not detail procedures for public charge bonds.³³⁶

The 2022 Final Rule added streamlined provisions to clarify acceptance, forms, and amount of USCIS public charge bonds, as well as cancellation of bonds.³³⁷

³³⁰ See Immigration Act of 1903, Pub. L. 57-162, 32 Stat. 1213 (March 3, 1903).

³³¹ See Section 26 of the Act of February 20, 1907, Pub. L. 59-96, 34 Stat. 898, 907.

³³² See Pub. L. 64-301, 39 Stat. 874, 876 (February 5, 1917).

³³³ See 29 FR 10579 (July 30, 1964) and 31 FR 11713 (Sept. 7, 1966). Prior to this, public charge bond regulations were published in 8 CFR 110.20-21 and 8 CFR 169. See, for example, the 1949 and 1947 versions of the CFR, available at [loc.gov](https://www.ecfr.gov).

³³⁴ See Immigration and Nationality Act Amendments of 1970, Pub. L. 91-313, 84 Stat. 413 (July 10, 1970). See 116 Cong. Rec. S 9957 (daily ed. June 26, 1970).

³³⁵ See Section 564(f) of Division C of Pub. L. 104-208, 110 Stat. 3009, 3009-684 (September 30, 1996). The Examinations Handbook included guidance on public charge bond processes and policies in Part VI, at VI-88 through VI-98 (October 1, 1988). After legacy Immigration and Naturalization Service (INS) retired the Examinations Handbook, INS's Operating Instructions provided guidance on the topic at Section 103.6 and 213.1 (November 1997). In 1998, INS removed the Operating Instructions and transferred the parts relating to immigration bonds to the Inspector's Field Manual, Chapter 45. Neither INS nor USCIS appear to have issued new guidance on the topic since that time. With the creation of the Adjudicator's Field Manual (AFM), USCIS incorporated existing public charge bond guidance into Chapter 61.1, but given the affidavit of support, the authority has rarely been exercised since the passage of IIRIRA.

³³⁶ See 64 FR 28689 (May 26, 1999).

³³⁷ See 87 FR 55472 (Sept. 9, 2022) (final rule). See 8 CFR 103.6 and 8 CFR 213.1.

The 2026 Final Rule amended the regulations governing the cancellation and breach of public charge bonds to reflect the rescission of certain provisions from the 2022 Final Rule,³³⁸ and made amendments to more fully address when a public charge bond is breached and to explicitly address administrative appeals from a determination that the alien breached a bond.

B. Type of Bonds

Public charge bonds may generally be posted as:³³⁹

- A cash bond – This type of bond is posted as cash equivalent as specified by USCIS;³⁴⁰ or
- A surety bond – This type of bond is posted through a surety company certified by the Treasury.³⁴¹

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.³⁴²

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 alien 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 on the date the funds are received.³⁴³

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.

³³⁸ See 91 FR 45324 (Jul. 20, 2026) (final rule) (amending 8 CFR 103.6).

³³⁹ See 8 CFR 103.6.

³⁴⁰ See 8 CFR 213.1.

³⁴¹ See 8 CFR 103.6.

³⁴² See 8 CFR 103.2(a)(1).

³⁴³ See 8 CFR 293.1.

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Before a surety company can do business with any government entity, it must be certified by the Treasury.³⁴⁴ All certified companies are listed in a document entitled Circular 570.³⁴⁵ USCIS only accepts surety bonds from companies certified by the Treasury to post bonds.³⁴⁶

A surety company can execute a bond on its own or it can do so through authorized agents.³⁴⁷ 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 agent³⁴⁸ also seeks to act in the capacity of an attorney or accredited representative of the surety company, the agent must also submit Form G-28.³⁴⁹

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 conditions of the bond, 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-certified surety company. When submitting a public charge bond, Immigration Bonds, Inc. must submit Form I-945 and 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

³⁴⁴ See 31 U.S.C. 9304-9308. As part of the certification process, the Treasury ascertains the company's credit worthiness.

³⁴⁵ Circular 570 is available at the Treasury's Listing of Certified Companies webpage.

³⁴⁶ The Treasury 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.

³⁴⁷ 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.

³⁴⁸ An agent or 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 or co-obligor.

³⁴⁹ If the Form G-28 is missing, but should have been submitted, USCIS should request the Form G-28 before proceeding.

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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, Immigration Bonds, Inc., must sign as a co-obligor on the bond. If Immigration Bonds, Inc. also acts as Bank B's attorney or accredited representative, Immigration Bonds, Inc., would also have to submit a properly completed Form G-28. If the public charge bond is accepted, then 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 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?	- Natural person, including the alien; or - Company or other entity	- Certified surety company; or - The certified surety company's authorized agent
The bond is posted by submitting what documents?	- Form I-945, completed in accordance with the form instructions; - Payment submitted according to the form's instructions; and - Form G-28, if necessary	- Form I-945, completed in accordance with the form instructions; - 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 - Form G-28, if the agent is also acting in the capacity of an attorney or accredited representative
Is a payment submitted with the bond?	Yes, payment is submitted in accordance with Form I-945's instructions	No, no payment accompanies the bond submission
Can the bond have a co-obligor?	No	Yes, if the bond is submitted by an authorized agent of an acceptable surety company,

Differences Between Cash and Surety Bonds

	Cash Bond	Surety Bond
		the authorized agent becomes a co-obligor

C. Bond Amount

A public charge bond must be in an amount, of at least \$1,000, that is sufficient to hold harmless the United States and all states, territories, counties, towns, municipalities, and districts (hereinafter, “the government”) against the bonded alien becoming a public charge.³⁵⁰ USCIS determines the appropriate bond amount for each applicant on a case-by-case basis. The BIA has held that setting public charge bond amounts and conditions requires the same “determination of the likelihood of future events” as the inadmissibility determination and that the purpose of the bonds is “to assure that the alien will not in the future become a public charge.”³⁵¹

D. Bond Duration

USCIS only accepts public charge bonds of unlimited duration. This means that the bond will not expire, but instead remains in effect until one of the following events occurs:

- USCIS approves a substitute bond that replaces the bond originally posted;³⁵²
- USCIS cancels the bond;³⁵³ or
- USCIS determines that the bond is breached.³⁵⁴

E. Bond Stages

The decision to allow an alien who is inadmissible only on the public charge ground, and is otherwise eligible for adjustment of status, to submit a public charge bond is within USCIS’ discretion. The posting of a public charge bond by an applicant who is found to be inadmissible only on account of the public charge ground authorizes USCIS, upon accepting the bond, to

³⁵⁰ See INA 213. See 8 CFR 213.1(c).

³⁵¹ See *Matter of Viado*, 19 I&N Dec. 252, 253 (BIA 1985).

³⁵² For more information on bond substitution, see Chapter 13, Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds, Section B, Substituting a Bond [8 USCIS-PM G.13(B)].

³⁵³ For more information on bond cancellation, see Chapter 13, Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds, Section D, Canceling a Bond [8 USCIS-PM G.13(D)].

³⁵⁴ For more information on bond breach, see Chapter 13, Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds, Section C, Breach of Bond [8 USCIS-PM G.13(C)].

adjust the status of the applicant to that of an LPR. Before posting a public charge bond, USCIS must invite the alien to do so.³⁵⁵ No public charge bonds will be accepted from adjustment of status applicants without an invitation from USCIS.

The public charge bond is posted on such conditions as USCIS prescribes.³⁵⁶ This includes a condition stating that the bond is breached if the bonded alien receives any means-tested public benefit while the bond is in effect.³⁵⁷ If the applicant does not maintain all conditions of the public charge bond, the bond is breached, and the U.S. government will demand payment on the bond.

If the alien does not breach the bond and does comply with all conditions on the bond, and the bond is otherwise eligible for cancellation, then USCIS will cancel the bond upon the request from either the obligor or agent or co-obligor (the one who posted the bond), or the alien.³⁵⁸

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 12, Public Charge Bonds: Posting and Accepting Bonds [8 USCIS-PM G.12]
Maintenance of a public charge bond, including substitution	Chapter 13, Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds, Section A, Maintaining Bonds [8 USCIS-PM G.13(A)] Chapter 13, Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds, Section B, Substituting a Bond [8 USCIS-PM G.13(B)]
Breach of the public charge bond	Chapter 13, Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds, Section C, Breach of Bond [8 USCIS-PM G.13(C)]
Cancellation of the public charge bond	Chapter 13, Public Charge Bonds: Maintaining, Substituting, and Canceling

³⁵⁵ See 8 CFR 213.1(a).

³⁵⁶ See INA 213.

³⁵⁷ See 8 CFR 103.6(c)(1)(ii).

³⁵⁸ See INA 213.

Public Charge Bond Stages

Stage	For More Information
	Bonds, Section D, Canceling a Bond [8 USCIS-PM G.13(D)]

Chapter 12. Public Charge Bonds: Posting and Accepting Bonds

A. Permission to Post Bond

A public charge bond may only be submitted by the alien applying for adjustment of status 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 with an Application to Register Permanent Residence or Adjust Status (Form I-485) or while the application is pending.

Because public charge bonds are only made available in USCIS' discretion³⁵⁹ to aliens inadmissible only under the public charge ground and who are otherwise eligible for adjustment of status,³⁶⁰ the officer should adjudicate all aspects of the adjustment of status application before USCIS will consider whether the alien should be offered the opportunity to post a public charge bond.

B. USCIS Discretion to Offer a Bond

Providing the alien with the opportunity to post a public charge bond is wholly within the discretion of the Secretary of Homeland Security.³⁶¹ 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.³⁶² Not every otherwise eligible alien inadmissible under the public charge ground will receive this opportunity, depending on the facts of the case. Generally, aliens inadmissible under the public charge ground should not be allowed to post a bond and be approved for adjustment of status given Congress' statement of national policy that aliens within the United States should not depend on public resources to meet their needs.³⁶³

An officer should consider all relevant factors and information, including the officer's determination of an appropriate bond amount were they to invite the alien to submit one. If an officer determines that an appropriate bond amount would exceed \$100,000 (based on the

³⁵⁹ See INA 213.

³⁶⁰ See INA 213. See 8 CFR 213.1.

³⁶¹ Or in the case of an immigrant visa applicant, the Secretary of State. See INA 213.

³⁶² See INA 213. See 8 CFR 213.1.

³⁶³ See 8 U.S.C. 1601(2).

estimated value of the public benefits likely to be received by the alien while the bond is in effect), this would be a negative factor in the discretionary determination. The projected receipt of means-tested benefits in such a high amount is indicative of a very high level of likely dependence, a risk that the value of public benefits received by the alien during the bond period would significantly exceed the value of the bond, and potentially (depending on the circumstances) a high likelihood that the alien would continue receiving a high level of government support after the end of the bond period.

USCIS views bonds as an effective way to provide a safeguard to hold the government harmless against the alien receiving means-tested public benefits, and to discourage such receipt by aliens, during the period when the bond is in effect.

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. Moreover, no opportunity to submit a bond should be offered to any alien that is currently receiving any means-tested public benefits.³⁶⁴

1. Public Charge Bond Amounts

The purpose of the public charge bond is to hold the government harmless if an alien becomes a public charge after adjusting to lawful permanent resident (LPR) status while the bond is in effect.

A public charge bond must be at least \$1,000 and provided in such an amount that it will hold harmless the government against the alien becoming a public charge.³⁶⁵ By “hold harmless,” USCIS means that the bond amount should be set based on the value of the public benefits likely to be received by the alien.³⁶⁶ By setting a bond amount at or above the value of the public benefits likely to be received by the alien while the bond is in effect, the bond also helps achieve the deterrent effect identified by the BIA, that the alien “not in the future become a public charge.”³⁶⁷

USCIS determines the appropriate bond amount for each alien on a case-by-case basis. USCIS considers the same factors listed in section 212(a)(4)(A) of the Immigration and Nationality Act (INA), as well as the record as a whole in the totality of the circumstances, when making a determination of the bond amount. The stronger the likelihood that the alien will become a public charge and the greater the anticipated value of the benefits likely to be received by the alien (in the opinion of USCIS when considering these factors), the higher the bond amount.

³⁶⁴ Such an alien would be in immediate breach of the bond conditions.

³⁶⁵ See INA 213. See 8 CFR 213.1.

³⁶⁶ See 8 CFR 213.1(c). See INA 213.

³⁶⁷ See *Matter of Viado*, 19 I&N Dec. 252, 253 (BIA 1985). Logically, if the cost to the alien of breaching the bond is equal to or greater than the value of the means-tested public benefits the alien would receive, there would be a strong disincentive for the alien to breach the bond.

To assist officers in determining appropriate bond amounts, USCIS developed three categories of aliens to estimate the amount of certain means-tested public benefits an alien applying for adjustment of status could receive over a 5-year period³⁶⁸ after adjustment:

- Single/Married Adult with Children;
- Single/Married Adult without Children; and
- Child.³⁶⁹

2. Determining Public Charge Bond Amount for Bonds Accepted On or After September 18, 2026

The below table presents the estimated³⁷⁰ amount of benefits for each category—Single/Married Adult with Children, Single/Married Adult without Children, and Child—through year 5 after adjustment, calculated as the median³⁷¹ of the average amounts that these aliens could receive from the following means-tested public benefits analyzed for the purposes of this table over a 5-year period after adjustment.³⁷² Other means-tested public benefits may also be considered under the 2026 Public Charge Final Rule:

³⁶⁸ This approach assumes that the new LPRs are eligible to receive such benefits during the 5-year period. USCIS estimates the amount of benefits received for up to 5 years because the median timeframe for an alien, including aliens who may not be subject to the public charge ground of inadmissibility, with an approved Form I-485 who later files for naturalization using Application for Naturalization (Form N-400) is 5 years.

³⁶⁹ USCIS limited the categories to these three because most public benefits programs offer similar benefit levels to single or married aliens, older aliens, or aliens with disabilities. The primary distinction in the amount of public benefits received is whether an adult alien has children. See the U.S. Department of Health and Human Services report, “How Many People Participate In the Social Safety Net?”

³⁷⁰ To estimate the amounts presented in this section, the average annual enrollment and average annual payments for each public benefits program were calculated using a five-year average. For each category, the estimate is based on the median value of these averages across the relevant programs, rather than the sum of all programs. The median is used because it provides a more accurate representation of what an individual or household may experience and reduces the impact of unusually high or low estimates from specific programs.

³⁷¹ It is uncommon for an alien adjusting status to use more than 3 benefits simultaneously, making the median a reasonable measure. While multiple benefit use is common among low-income families with children, approximately 41 percent of families receive 1 to 2 benefits, 16 percent receive 3 benefits, and 20 percent receive 4 or more. Most families receiving 1 to 3 benefits typically access food assistance and public health insurance, such as Medicaid and SNAP, with limited use of other public benefits. For more information see, Urban Institute, “Characteristics of Families Receiving Multiple Public Benefits.”

³⁷² Independent, peer-reviewed studies commonly categorize these programs together as core public benefit programs. They are major government programs that are highly utilized and often included in analyses of public benefit programs. While there are additional Federal, State, and local benefits that aliens may be eligible to receive which could result in a higher total benefit amount than what is presented, USCIS cannot quantify the number of individuals receiving benefits across all means-tested public benefits programs and considers the limitation to these specific Federal benefits to be reasonable.

- Medicaid;³⁷³
- Children's Health Insurance Program (CHIP);
- Special Supplemental Nutrition Program for Women, Infants, and Children (WIC);
- Supplemental Nutrition Assistance Program (SNAP);
- Temporary Assistance for Needy Families (TANF);
- Supplemental Security Income (SSI); and
- Federal Rental Assistance.³⁷⁴

Officers may consider this table when setting an appropriate public charge bond amount in their discretion for adjustment of status applications filed or electronically submitted on or after September 18, 2026. Officers should also consider the number of years the alien is likely to receive public benefits, based on the totality of the circumstances, to determine the appropriate bond amount.

Estimated Amounts of Certain Means-tested Public Benefits Received Per Person For Benefits Considered Under the 2026 Public Charge Final Rule

Categories	Total Annual Benefit per Person Year 1	Total Annual Benefit per Person Year 2	Total Annual Benefit per Person Year 3	Total Annual Benefit per Person Year 4	Total Annual Benefit per Person Year 5
Single/Married Adult with Children³⁷⁵	\$8,400	\$16,800	\$25,200	\$33,600	\$42,000

³⁷³ The data reflected for Medicaid depicts enrollment activity for all populations receiving Medicaid benefits in all states. This may include individuals receiving Emergency Medicaid. However, Emergency Medicaid only covers treatment for emergency medical conditions and does not provide comprehensive Medicaid benefits. These emergency benefits can be accessed by aliens who meet eligibility requirements, regardless of immigration status.

³⁷⁴ Federal Rental Assistance includes HUD Section 8 Project-based Rental Assistance, HUD Section 8 Housing Choice Vouchers, HUD Public Housing, HUD Section 202/811, and USDA Section 521.

³⁷⁵ Inclusive of Medicaid, CHIP, SNAP, TANF, SSI, and Federal Rental Assistance. WIC was not included in this estimate since its enrollment is targeted towards pregnant women, breastfeeding women, postpartum women, infants up to 1 year old, and children up to 5 years old. While an individual cannot be simultaneously enrolled in TANF and SSI, they may alternate between the two programs as their eligibility changes. For example, an individual may exhaust their TANF eligibility but, due to an ongoing medical condition that prevents them from working, may become eligible to shift to SSI.

**Estimated Amounts of Certain Means-tested Public Benefits Received Per Person For
Benefits Considered Under the 2026 Public Charge Final Rule**

Categories	Total Annual Benefit per Person Year 1	Total Annual Benefit per Person Year 2	Total Annual Benefit per Person Year 3	Total Annual Benefit per Person Year 4	Total Annual Benefit per Person Year 5
Single/Married Adult without Children³⁷⁶	\$10,686	\$21,372	\$32,058	\$42,744	\$53,430
Child³⁷⁷	\$5,640	\$11,280	\$16,920	\$22,560	\$28,200

This table is intended solely as a helpful resource for officers as they determine an appropriate bond amount. There may be instances when the median amount for the benefits listed in the table above is not as useful to officers in setting an appropriate bond amount because it would be lower than the value of benefits likely to be received by the alien while the bond is in effect.

For example, while the average recipient of means-tested public benefits may be enrolled in one or two benefits programs, TANF recipients have the highest level of means-tested public benefit receipt, with families receiving an average of at least three or more benefits,³⁷⁸ such as SNAP, housing assistance, and Medicaid.³⁷⁹ If an alien reported on his Form I-485 that he received

³⁷⁶ Inclusive of Medicaid, SNAP, SSI, and Federal Rental Assistance. CHIP, TANF, and WIC are not included in this estimate. CHIP is strictly designed for children under 19 and sometimes pregnant individuals. TANF is generally for families with children to help support children and their caregivers. WIC was not included in this estimate since its enrollment is targeted towards pregnant women, breastfeeding women, postpartum women, infants up to 1 year old, and children up to 5 years old.

³⁷⁷ Inclusive of Medicaid, CHIP, SNAP, TANF, WIC, and SSI. For these programs a child can participate even if his or her parent and/or guardian do not qualify for the program. The parent and/or guardian would apply on the child's behalf; however, only the child is eligible for receipt of the benefit. Most children are eligible for these programs; however, CHIP covers children up to age 19, TANF extends up to age 19 if the child is still in high school, WIC is limited to children up to age 5, and SSI extends up to age 22 if the child is regularly attending school and meets disability criteria. SNAP is included because an ineligible parent may apply on behalf of an eligible child. Medicaid and CHIP are both included in this estimate because Medicaid generally covers children from lower-income families, while CHIP covers children from families with incomes too high for Medicaid, but too low to afford private coverage. While a child cannot be simultaneously enrolled in Medicaid and CHIP, he or she can alternate between the two programs, for example, if his or her parent and/or legal guardian's income levels change.

³⁷⁸ About 95 percent of TANF recipient households received assistance from 3 or more programs. See American Institute for Economic Research, "The Work vs Welfare Tradeoff Revisited: Explaining Welfare Benefits at the State level." See Urban Institute, "Characteristics of Families Receiving Multiple Public Benefits." See Department of Commerce, Census Bureau, "Temporary Assistance for Needy Families (TANF): 2022."

³⁷⁹ See American Institute for Economic Research, "The Work vs Welfare Tradeoff Revisited: Explaining Welfare Benefits at the State level."

TANF, the median amount in the table above may be lower than the appropriate bond amount as the alien could be expected to receive a wider variety and therefore higher overall value of benefits. This contrasts with SNAP recipients, where over 80 percent receive only one or two means-tested public benefits.³⁸⁰

The median may also be too low a starting point for setting an appropriate public charge bond amount if a recipient receives Medicaid and/or SSI benefits, as the estimated annual benefit for Medicaid (\$15,420)³⁸¹ and SSI (\$12,024)³⁸² exceeds the median. Additionally, SNAP participants often received health insurance through Medicaid/CHIP³⁸³ and 82 percent of SSI recipient households were also covered by Medicaid/CHIP and 64 percent received SNAP.³⁸⁴

Conversely, the median may be too high if a recipient receives only WIC, as the estimated annual benefit for WIC (\$576) is well below the median. However, approximately 80.4 percent of recipients approved for WIC benefits also receive SNAP, Medicaid, and/or TANF.³⁸⁵

Officers may consider this table and the evidence in the totality of the alien's circumstances, including the likelihood of an alien receiving multiple means-tested public benefits and institutionalization at government expense when determining a public charge bond amount.³⁸⁶ This table does not include the costs of institutionalization at government expense. If an alien were to be institutionalized at government expense, the value of that benefit annually is estimated at \$109,860 (under Medicaid).³⁸⁷ As noted above, if an alien is projected to receive such a high value of public benefits, it is a negative factor in the determination as to whether the inadmissible alien should be offered the opportunity to submit a bond. Officers may, in their discretion and based on the totality of the alien's circumstances, set a public charge bond amount lower or higher than the estimates reflected in the table above.

³⁸⁰ Urban Institute, "Characteristics of Families Receiving Multiple Public Benefits."

³⁸¹ USCIS Analysis of Medicaid - Data on Medicaid Per Capita Expenditures, "Medicaid Per Capita Expenditures, CY 2023, Median Total."

³⁸² USCIS Analysis of U.S. Social Security Administration, Office of Research, Statistics, & Policy Analysis. Annual Report of the Supplemental Security Income Program, 2024 and SSI Recipients by State and County.

³⁸³ Medicaid and SNAP target low-income individuals, and many individuals receive benefits through both programs. In 2022, approximately eighty percent of SNAP recipients had health insurance through Medicaid or CHIP. See Department of Commerce, Census Bureau, "Supplemental Nutrition Assistance Program (SNAP): 2022."

³⁸⁴ See Department of Commerce, Census Bureau, "Supplemental Security Income (SSI): 2022."

³⁸⁵ USDA, "WIC Participant and Program Characteristics 2022 Final Report."

³⁸⁶ In considering an alien's likelihood of being institutionalized at government expense, an officer must not make health diagnoses and should generally defer to the medical examination results provided by a civil surgeon or a panel physician. See Chapter 5, Statutory Minimum Factors, Section B, Health [8 USCIS-PM G.5(B)].

³⁸⁷ The estimated median per diem Medicaid cost for nursing home residents in 2019 was \$240 per day. Adjusted to June 2025 dollars, this amount is estimated to be \$301 per day (rounded). Calculation: \$301 (estimated costs per day) x 365 (number of days per year) = \$109,860 (rounded). USCIS analysis of U.S. Department of Health and Human Services, Office of Behavioral Health, Disability, and Aging Policy, "Assessing Medicaid Payment Rates and Costs of Caring for the Medicaid Population Residing in Nursing Homes," June 2024.

C. Inviting an Alien to Submit a Public Charge 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,³⁸⁸ USCIS will provide the opportunity to submit 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 submit a public charge bond, which would permit, if accepted, the alien to adjust status to that of an LPR;
- The public charge bond amount;
- That the bond must be posted by submitting Form I-945 completed in accordance with the form's instructions;
- The due date (postmark date), that is, by when Form I-945 must be submitted to USCIS;
- The consequences for failure to respond to the notice and for the failure to submit Form I-945, in accordance with the form's instructions. 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
- Any additional information required to properly post the bond.

D. Assessing the Sufficiency of a Submitted Public Charge Bond

Once the public charge bond is submitted, USCIS should determine whether the bond was properly completed as outlined in the form's instructions and the NOID, and that the appropriate bond amount has been paid. The bond is not effective until USCIS accepts the bond.

³⁸⁸ To perform a discretionary analysis, USCIS weighs all positive factors present in a particular case against any negative factors in the totality of the circumstances. Some examples of discretionary considerations include: close family ties in the United States, community standing, length of lawful residence in the United States, evidence of respect for law and order, and violations of immigration law. For more information on the use of discretion in adjudications, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 8, Discretionary Analysis [1 USCIS-PM E.8].

A public charge bond is a contract between the U.S. government (USCIS) and the obligor. 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.³⁸⁹

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,³⁹⁰ is submitted in accordance with instructions outlined in the form's instructions and the NOID, and that the appropriate bond amount 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. USCIS does not accept a public charge bond as sufficient and acceptable if:

- The obligor or 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;³⁹¹
- The obligor physically alters the terms contained on Form I-945;³⁹² or
- The obligor submits the bond on a contract other than Form I-945.³⁹³

1. Accepting the Bond

If USCIS determines that the public charge bond meets the regulatory requirements, the requirements outlined in the form's 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.

2. Issuing a Receipt for Accepted Bonds

Once the bond is signed by the designated USCIS authority and accepted, the obligor, the authorized agent (in the case of a surety bond), any representative, and the alien and the alien's

³⁸⁹ Officers tasked with evaluating the public charge bond should consult with their supervisory chain to determine to whom to forward a public charge bond so that it can be signed by the designated USCIS authority.

³⁹⁰ See 8 CFR 213.1.

³⁹¹ This is the case even if the obligor generally agrees with the Form I-945 terms but suggests that the contract cover additional conditions. USCIS cannot accept a bond under conditions other than those outlined in Form I-945 and the NOID.

³⁹² 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.

³⁹³ This is the case even if the document 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.

representative, if any, are notified that the bond has been accepted. USCIS 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 of status application. If the alien 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.³⁹⁴ If the officer determines, after the acceptance of the bond, that the adjustment of status application should be denied, USCIS will return the bond, notify the obligor and all parties involved, 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 accrued to the obligor along with the communication.

3. Bond Not Accepted

If the public charge bond does not meet the regulatory requirements, the requirements outlined in the form's instructions, or in the NOID, USCIS cannot accept the public charge bond and denies the adjustment of status application. The denial decision will include a discussion of how the bond did not meet the regulatory requirements.

Chapter 13. Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds

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 or co-obligor, or the alien may experience a change of address, or the obligor or the alien may wish to substitute the bond.

USCIS will send a copy of any communication with the obligor, the obligor's representative, if any, the agent or co-obligor, and the agent or co-obligor's representative, if any, to the alien, and the alien's representative, if any.³⁹⁵ 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 generally transcribes the communication, and sends a copy of the transcribed communication to all parties involved. USCIS also retains a copy of the communication in the alien's file.

³⁹⁴ For more information about adjustment of status, please see Volume 7, Adjustment of Status [7 USCIS-PM].

³⁹⁵ See Public Charge Bond (Form I-945).

B. Substituting a Bond

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. Another example would be if 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. 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 Public Charge Bond (Form I-945) and completed in accordance with the form's instructions.³⁹⁶

When USCIS is reviewing the sufficiency of the substitute bond, USCIS ensures that the following requirements are met before presenting the public charge bond to the designated USCIS authority for signature and acceptance of the bond:

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

In addition, USCIS follows the steps outlined in this part,³⁹⁷ addressing the acceptance of a public charge bond when reviewing the substitute public charge bond for sufficiency.

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 is effective on the day it is signed by the designated USCIS authority. USCIS should proceed with issuing the receipt as outlined in this part.³⁹⁸

³⁹⁶ See 8 CFR 103.2(a)(1).

³⁹⁷ See Chapter 12, Public Charge Bonds: Posting and Accepting Bonds [8 USCIS-PM G.12].

³⁹⁸ See Chapter 12, Public Charge Bonds: Posting and Accepting Bonds, Section D, Assessing the Sufficiency of a Submitted Public Charge Bond, Subsection 2, Issuing a Receipt for Accepted Bonds [8 USCIS-PM G.12(D)(2)].

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 original bond amount 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. This notice should not only be sent to the new obligor, but all parties involved, including the obligor and agent or co-obligor, if any, on file (the bond to be substituted), the agent or 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 the alien not receive means-tested public benefits.³⁹⁹ A bond may be breached for non-compliance of any condition imposed on the public charge bond.⁴⁰⁰ While use of a single means-tested public benefit in any amount is sufficient for a bond breach, it is not synonymous with becoming a public charge. Bond breach conditions are specified on the bond form and in the regulations.⁴⁰¹

1. Investigation

USCIS may learn of a potential bond breach from various sources, including Federal and State benefit-granting agencies. USCIS may also learn of a potential bond breach from information provided by the alien as a part of the bond cancellation request. Aliens may also provide information suggesting that they breached a public charge bond on other forms submitted to USCIS. Regardless of the source of the information, USCIS investigates any credible allegation of a 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, the agent or co-obligor, and all parties' representatives, if any. Before sending any communication regarding the bond breach, USCIS consults the Office of the Chief Counsel (OCC) to determine

³⁹⁹ See Chapter 2, Key Concepts, Section C, Receipt (of Public Benefits) [8 USCIS-PM G.2(C)]. See 8 CFR 103.6(c)(1)(ii). For bonds accepted prior to September 18, 2026, the regulations in place and the conditions of the bond at that time continue to govern.

⁴⁰⁰ See INA 213.

⁴⁰¹ See 8 CFR 103.6(c)(1)(ii).

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whether any information USCIS has would be protected by law from the disclosure to the obligor.

If the information may not be disclosed by law, USCIS may not address it in the communication or 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, USCIS must declare the bond breached by notifying the obligor. Before the bond can be declared breached, USCIS must determine whether the information supports a finding that any conditions imposed by the bond were breached.

If USCIS finds that there is insufficient information to determine whether a breach occurred, USCIS should request additional information from the alien or the obligor. However, if the evidence USCIS possesses supports a finding of a breach, then USCIS should inform the obligor and an agent or 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 or co-obligor the opportunity to respond and submit rebuttal evidence;
- Include all information in the record that supports the breach determination and is by law permitted to be disclosed to the obligor or agent or 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 determination. USCIS should consult OCC before sending the notice to avoid inadvertent disclosure; and
- Include a date by when the obligor must respond and submit rebuttal evidence.

USCIS must also send a copy of any notification to the obligor or co-obligor regarding the breach 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 determines whether the obligor's response and any evidence submitted to rebut the initial breach determination is sufficient to overcome USCIS' initial determination that the bond was breached.

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If the obligor or agent or 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 or co-obligor, if any, of the right to appeal the bond breach determination. USCIS must provide a copy of the determination to all parties involved in the bond.

If the information provided in the response 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 in the bond.

4. Appeal of Breach Determination

An obligor⁴⁰² may appeal a breach determination to USCIS' Administrative Appeals Office (AAO) by filing a Notice of Appeal or Motion (Form I-290B) together with the appropriate fee and required evidence.⁴⁰³ If the obligor fails to appeal the bond breach determination within the requisite appeal 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.

If the obligor appeals the bond breach determination in a timely fashion, USCIS reviews the decision before the appeal is forwarded to the AAO.⁴⁰⁴ 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 their own motion.⁴⁰⁵

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.

5. Collecting Bond Amount

An administratively final determination that a bond has been breached creates a claim in favor of the United States. The claim may not be released or discharged by an immigration officer.

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

⁴⁰² The obligor includes the term agent or co-obligor.

⁴⁰³ See 8 CFR 103.3.

⁴⁰⁴ See 8 CFR 103.3(a)(2).

⁴⁰⁵ See 8 CFR 103.5(a)(5)(i).

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.⁴⁰⁶ 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.⁴⁰⁷ Only if the bond is breached will the surety company be required to pay 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.⁴⁰⁸ USCIS applies the government-wide nonprocurement suspension and debarment procedures found in 2 CFR Part 180 to public charge surety bonds.⁴⁰⁹

D. Canceling a Bond

In general, a public charge bond has to remain in place until the bond can be canceled and USCIS determines that the bond has not been breached.⁴¹⁰

1. Request to Cancel

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.⁴¹¹

The request to cancel the public charge bond must be submitted on a Request for Cancellation of 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, if applicable.⁴¹²

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

⁴⁰⁶ See 8 CFR 293.1.

⁴⁰⁷ See Chapter 11, Public Charge Bonds, Section B, Type of Bonds [8 USCIS-PM G.11(B)].

⁴⁰⁸ See 31 U.S.C. 9305(b)(3).

⁴⁰⁹ See 2 CFR Part 3000, in which DHS adopts the Office of Management and Budget Guidance found in subparts A through I of 2 CFR Part 180.

⁴¹⁰ Cancellation of a bond submitted prior to the effective date of the 2026 Final Rule would be based on the version of 8 CFR 103.6 (2023) established by the 2022 Final Rule and the terms and conditions from the version of Form I-945 accepted by USCIS.

⁴¹¹ See 8 CFR 103.6(c)(1).

⁴¹² See 8 CFR 103.5.

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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 that a cancellation request is submitted without the obligor or any agent or 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 for a request to be submitted when only partially completed, particularly when one party has requested cancellation of the bond without informing or including the other parties in the cancellation request.

Missing Information from the Alien

If the obligor (or the agent or co-obligor) submits the cancellation request but the request does not contain the information from the alien required 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 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); and
- Send a copy of the communication to the obligor and the agent or co-obligor and any representative, even though the request originated from the obligor or agent or 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 provides 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:

- Died (as evidenced by a certified copy of a death certificate, provided the alien did not breach the bond before death);
- Permanently departed the United States (provided the alien did not breach the bond before departure);
- Naturalized or otherwise obtained U.S. citizenship (provided the alien did not breach the bond before naturalization); or
- Reached his or her 5-year anniversary since admission or becoming an LPR (provided the alien did not breach the bond).

The obligor and the alien must always demonstrate that the bond has not been breached before the cancellation of the public charge bond by USCIS.⁴¹³

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

If there is insufficient information to determine whether a breach occurred, or whether the cancellation requirements are met, USCIS may request additional information from the alien or the obligor.

3. Special Considerations Related to Permanent Departure

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.⁴¹⁴

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

- Lost or abandoned LPR status, whether involuntarily by operation of law or voluntarily; and
- Is physically outside the United States.

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

⁴¹³ See Instructions for Request for Cancellation of Public Charge Bond (Form I-356). See 8 CFR 103.6(c)(1)(ii).

⁴¹⁴ See INA 213.

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For these purposes, an alien is deemed to have involuntarily lost LPR status by operation of law only 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.

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.

Generally, determining whether an alien has abandoned his or her LPR status voluntarily is 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.⁴¹⁵ 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 abandonment of their LPR status.

To simplify the process, USCIS created the Record of Abandonment of Lawful Permanent Resident Status (Form I-407) as a means by which an alien may formally record that he or she has 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.

An alien may demonstrate voluntary relinquishment of the LPR status for purposes of bond cancellation by showing proof that he or she submitted Form I-407 to the U.S. government from outside the United States.

4. Decision

⁴¹⁵ See *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). See *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). See *Matter of Quijencio*, 15 I&N Dec. 95, 97-98 (BIA 1974) (alien's LPR status considered abandoned after 12-year absence). See *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). See *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 *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).

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 canceled, the obligor is released from liability.

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.⁴¹⁶

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 or co-obligor and any representative, in order to extend the opportunity to rebut USCIS' determination. The notice must include the information provided by the alien in Form I-356, unless protected by law, and any other documentation.

The officer will 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 not meet the cancellation requirements then the officer should not cancel the public charge bond.

If the obligor's response cannot overcome USCIS' determination and the adverse information upon which it is based, then USCIS issues the decision, informing the obligor and the agent or 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 canceled and that it remains in effect. The obligor may file an appeal to challenge this determination.⁴¹⁷

An obligor may only file a motion⁴¹⁸ after an unfavorable decision on an appeal.

If USCIS determines that the alien has breached the public charge bond, USCIS initiates bond breach proceedings.⁴¹⁹ 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 canceled.

⁴¹⁶ See INA 293. See 8 CFR 293.1.

⁴¹⁷ See generally 8 CFR part 103.

⁴¹⁸ See 8 CFR 103.5.

⁴¹⁹ See Section C, Breach of Bond [8 USCIS-PM G.13(C)].