



What Is the Current Public Charge Standard?

Q: Is the 2019 DHS public charge rule really gone?

A: Yes! As of March 9, 2021, the Department of Homeland Security (DHS) public charge rule is dead. On that date, an Illinois district court order enjoining its implementation and enforcement went into effect nationwide. The government dropped its appeal of that order and the appellate court lifted the stay. The government has withdrawn other appeals pending in the Ninth and Second circuits and in the Supreme Court. Various states tried to intervene and stop the rule vacatur from issuing, but they have been unsuccessful. On March 15, 2021, DHS formally removed the 2019 public charge rule from the Code of Federal Regulations effective March 9.

Q: What about the Department of State? Are they enforcing their 2019 public charge rule?

A: No. On July 29, 2020, a district court in New York enjoined the agency from implementing and enforcing its 2019 public charge rule and Form DS-5540, as well as changes the agency had made to the Foreign Affairs Manual (FAM) in 2018.

Q: Do I need to include an I-944 if I am now filing an adjustment of status application?

A: No. U.S. Citizenship and Immigration Services has discontinued all use of the Form I-944, Declaration of Self-Sufficiency.

Q: What if I received an RFE for an I-944?

A: Applicants who received a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) requiring the submission of an I-944 or related information with a due date on or after March 9, 2021 do not have to submit the form or requested documentation. But those applicants should respond to the RFE and indicate that the form has been withdrawn. USCIS has stated that "if USCIS requires additional information or evidence to make a public charge inadmissibility determination under the statute and consistent with the 1999 Interim Field Guidance, we will send you another RFE or NOID."

Q: What if I already submitted an I-944? Will that be considered by the USCIS when it adjudicates the application?

A: No. The Form I-944 will not be applied to pending adjustment cases where the I-944 was already filed. Nor will USCIS apply the 2019 DHS public charge standard in effect at that time.

Q: What is the current public charge standard that USCIS is now applying?

A: The agency is applying the 1999 memorandum, field guidance, and a proposed rule that clarified the meaning of the term public charge. According to the interim guidance, a non-citizen has become a public charge for inadmissibility or deportability purposes if he or she has become “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.” The term “public cash assistance for income maintenance” includes only three forms of benefits: (1) Supplemental Security Income (SSI) for the aged, blind, and disabled; (2) Temporary Assistance for Needy Families (TANF) cash assistance; and (3) state and local cash assistance programs, usually known as general relief or general assistance. It also includes any federal non-cash program that supports persons who are institutionalized for long-term care, including Medicaid; these are typically provided to those in a nursing home or mental health institution.

Q: What about the federal programs that were included in the 2019 DHS public charge rule?

A: The government will not consider any receipt by the applicant of food stamps (SNAP), Medicaid, federal housing programs, or any other federal benefit program.

Q: What about receipt of benefits by other family members?

A: The government will not consider any public benefit received by family members who are not applying for adjustment of status.

Q: What about the five statutory factors (age, health, family status, financial status, and education/skills)?

A: It is unclear at this time how much weight will be given to these factors. The 1999 interim guidance stressed the importance of the affidavit of support and evidence that the sponsor could maintain the intending immigrant at a level that was at least 125 percent of the Federal Poverty Guidelines (FPG). Most USCIS adjudicators placed their entire focus on the Form I-864, affidavit of support, and not on the intending immigrant’s self-sufficiency. The general rule in determining public charge has been that intending immigrants who are able-bodied and employable will not be found inadmissible under this ground.

Q: What public charge standard will the Department of State apply?

A: The Department of State should apply the same public charge standard as the DHS. The language in the FAM is quite short and directs consular officials to consider the sponsor's Form I-864, as well as application of the five statutory factors. Any potential visa refusal for public charge must first be sent to the Visa Office and include an explanation and justification for the finding; the VISA Office must concur with the finding before the refusal will be issued. It remains to be seen how the various consular offices, once they resume full operation, will apply the pre-2018 public charge rule to immigrant visa applications.

Q: Has the affidavit of support changed?

A: No, the petitioner/sponsor must still execute a Form I-864 that satisfies the 125 percent of FPG standard for the household size and include last year's tax return. Affidavits from joint sponsors will be accepted and the joint sponsor does not have to be a family member. Those applicants who qualify for an exception to the affidavit of support (widow(er)s, those who have earned 40 qualifying quarters, or children deriving citizenship) will need to file Form I-864W, Request for Exemption for Intending Immigrant's Affidavit of Support, once the USCIS reinstates that form.