



Public Charge Inadmissibility: Credit Reports and Credit Scores

Under the new Department of Homeland Security regulations, U.S. Citizenship and Immigration Services may consider a noncitizen's assets, resources, and financial status as one factor when determining whether the individual is likely to become a public charge. As part of that evaluation, USCIS may consider the noncitizen's credit history and credit score and other evidence of the noncitizen's liabilities. This resource provides a background on credit reports and credit scores, how these are viewed by DHS, and how to obtain a credit report and credit score or prove that an applicant has neither.

Overview of Agency Guidance Credit Reports, Credit Scores, and other Liabilities

Credit reports and credit scores are addressed in the USCIS Policy Manual Volume 8, Part G, Chapter 9. USCIS will consider an applicant's credit report, credit score, debts and other liabilities as a factor in determining whether the individual is likely to become a public charge.

A good credit report is considered a positive factor while a bad credit report is considered a negative factor. Bad credit history may include: delinquent accounts; foreclosures; debt collections; charge-offs (delinquent accounts deemed unlikely to be collected); repossession; judgments; tax liens; or bankruptcies.

Many intending immigrants will not have any credit history, and USCIS does not consider the lack of credit history a negative factor. However, the applicant would need to provide a letter from one of the major credit agencies indicating that no credit report is available,¹ and some practitioners have reported difficulties in obtaining such proof.

A credit score of 670 or above is rated as "good to exceptional" and will be a positive factor. Those below 560 are rated as "poor" and will be a negative factor. Credit scores between these numbers are rated as "fair" and will be given no weight, as would the absence of a credit score.²

Applicants who do not have a credit history may try to demonstrate their financial reliability by including evidence of continued payment of bills. Officers should give positive weight to an applicant

¹ USCIS Policy Manual, Vol. 8, Part G, Chapter 9(A)(6).

² *Id.*

who can show little or no debt and a history of paying bills, regardless of the applicant's credit score (if one is available).

USCIS also reviews any other liabilities not reflected in the credit report including, but not limited to:

- Mortgages;
- Car loans;
- Unpaid child or spousal support;
- Unpaid taxes; and
- Credit card debt.³

Credit Reports

USCIS requires applicants to submit a copy of their credit report and score, assuming they have one.⁴ DHS claims that credit reports and credit scores can indicate whether a person is likely to be self-sufficient and support a household.⁵ However, credit reports and credit scores are designed to have a very narrow and specific purpose,⁶ and a bad credit score does not reflect how likely a person is to use public benefits or become a public charge.

A credit report shows bill payment history, current debt, and other financial information. Information from a credit report is used to calculate a credit score that rates an individual's credit risk. Credit bureaus or credit reporting agencies collect and maintain information for credit reports and credit scores. The three major credit bureaus are Equifax, Experian, and Transunion.

Many intending immigrants will not have a credit history or credit score to consider. Credit history is established over a lifetime in the United States and cannot be transferred from abroad. A credit report is based on mortgages, car loans, student loans, personal loans, credit cards, and other loans obtained in the United States.⁷ Those who do not have a legal immigration status or a Social Security Number (SSN) face significant barriers to opening bank accounts, obtaining credit cards, and establishing a good credit history. Depending on the bank or creditor, an SSN may be required to

³ 8 CFR §212.22(b)(4)(i)(D); USCIS Policy Manual, Vol. 8, Part G, Chapter 9(A)(6).

⁴ 8 CFR §212.22(b)(4)(ii)(G); USCIS Policy Manual, Vol. 8, Part G, Chapter 9(C)(4).

⁵ USCIS Policy Manual, Vol. 8, Part G, Chapter 9(A)(6).

⁶ Consumer Financial Protection Bureau, Data Point: Credit Invisibles, May 7, 2015, available at files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf (most credit scoring models are built to predict the likelihood relative to other borrowers that the consumer will become delinquent on payments).

⁷ Bd. of Governors of the Fed. Reserve System, Consumer's Guide, Credit Reports and Credit Scores available at www.federalreserve.gov/creditreports/pdf/credit_reports_scores_2.pdf, last accessed Nov. 27, 2018.

apply for a credit card or a loan. In other cases, an Individual Taxpayer Identification Number (ITIN) is sufficient.

Many of the day-to-day transactions that undocumented immigrants complete, such as receiving wages, paying rent and other bills, and buying food are often completed in cash.⁸ Savings and checking accounts are not listed on credit reports from the big three credit bureaus because no borrowing or debt is involved.⁹ Credit reports and credit scores do not take these transactions into account, and thus do not provide an accurate view of an intending immigrant's financial history. Only applicants who have had a credit card, loan, unpaid bills in collection, or bankruptcies in the United States are likely to have a credit report from one of the three major credit bureaus.¹⁰ The USCIS officer must not draw any negative inferences if the applicant does not have any credit history or cannot submit a report.¹¹

Although noncitizens without an SSN may be able to open bank accounts, receive loans, and apply for credit cards, that activity is not always reflected in a credit report or credit score. Each credit reporting agency manages its own records and might not have information about all of an individual's accounts.¹² Agencies match information to a person's credit history using identifying information provided by a creditor or lender, but the information is not always accurate. Immigrants who have applied for credit cards or loans using an ITIN may still have trouble obtaining a credit report. As the Federal Reserve describes:

[R]eporters do not always report to each of the national credit-reporting agencies, and if they do, they may not report the same information or at the same time to each agency. As a consequence, the information on an individual may differ across the agencies. The information on an individual may also differ across agencies because each applies its own rules in determining how to assign reported information to a given individual. Such rules are necessary because reporters are not always able to provide a Social Security Number when furnishing information or the reported number may be wrong.¹³

⁸ NYC Department of Consumer Affairs, *Immigrant Financial Services Study*, available at www1.nyc.gov/assets/dca/downloads/pdf/partners/Research-ImmigrantFinancialStudy-FullReport.pdf.

⁹ Consumer Financial Protection Bureau, *My bank or credit union closed my checking account. Will this hurt my credit?* www.consumerfinance.gov/ask-cfpb/my-bank-or-credit-union-closed-my-checking-account-will-this-hurt-my-credit-en-1819/ (June 1, 2017); Erica Sandberg, Experian, *How Savings Can Impact Your Credit*, www.experian.com/blogs/ask-experian/does-taking-money-out-of-your-savings-affect-your-credit/#:~:text=Savings%20and%20checking%20accounts%20are,deposits%20and%20withdrawals%20you%20make (Dec. 19, 2019).

¹⁰ *Id.*

¹¹ USCIS Policy Manual, Vol. 8, Part G, Chapter 9(A)(6).

¹² USA.gov, *Credit Reports and Scores*, available at www.usa.gov/credit-reports#item-35087 (last visited April 27, 2020).

¹³ Bd. of Governors of the Fed. Reserve System, *Report to the Congress on Credit Scoring and Its Effect on the Availability and Affordability of Credit at S-2* (Aug. 2007), www.federalreserve.gov/boarddocs/rptcongress/creditscore/creditscore.pdf (last visited April 27, 2020).

An SSN is commonly relied on to generate a credit report because it is a unique identifier assigned to only one individual, but it is not the only identifier used. If an SSN is not reported, credit reporting agencies may rely on other identification elements to compile a credit history. Those identifying elements include names and any variations and current and previous addresses. However, the lack of an SSN may make it difficult to obtain a credit report and an ITIN is not a substitute for an SSN.

Requesting a Credit Report or Demonstrating a Lack of Credit Report

Form I-944, Part 3, Question 11 asks whether the applicant has a credit report that has been generated within the last 12 months. If not, it asks for a credit agency report demonstrating that no credit report or score exists.

Three nationwide credit reporting agencies issue credit reports: Equifax, Experian, or TransUnion. The applicant can request one for free from each of the three companies every 12 months by going to www.annualcreditreport.com/index.action.

Alternatively, the applicant can request it by calling (877) 322-8228 or by mailing a written request to: Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281. A request form can be downloaded from www.annualcreditreport.com/gettingReports.action. A credit report or report of no history should be mailed to the requestor within 15 days.

USCIS instructs applicants to prove their lack of credit report or credit score through documentation from a credit reporting agency, which can pose challenges. To request a report online, the applicant will need to provide his or her name, SSN, current and previous addresses, date of birth, and telephone number. If the applicant does not enter a valid SSN, he or she will receive an error message. CLINIC has heard reports of USCIS rejecting applications that include printouts of an error message from a credit reporting agency website as proof that the applicant has no credit history. If the applicant does not have an SSN, he or she may have a better chance of obtaining a credit report if the request is submitted via mail. They should indicate that they do not have an SSN to avoid receiving a response that the request was incomplete and that a report could not be generated.

If the applicant is unable to provide a credit report or confirmation from a credit bureau that no credit report can be generated, he or she should write a statement explaining that no report exists based on the lack of either an SSN or any credit history. The applicant should submit documentary evidence of financial responsibility through proof of regular and continued payments of rent, utilities, or other bills.

Note that although USCIS acknowledges that younger applicants may not have credit history, the USCIS Policy Manual does not exempt minors from having to demonstrate that through a report from a credit bureau.

Example: Julissa overstayed a tourist visa but is now applying for adjustment of status as the spouse of a U.S. citizen. She opened a checking and savings accounts using her ITIN, but when she requested a credit report online, she received an error message for failing to include a valid SSN. Along with her I-944 she includes a statement explaining that she does not have a credit report or credit score because she has no credit history. However, she provides evidence of paying rent and other bills in a timely manner over the past six months. Julissa has a 13-year-old son who will also adjust status. He must submit his own I-944 and he includes a statement explaining that he has no credit history.

Credit Scores

Credit scores are calculated using multiple factors, including an individual's credit history (patterns in paying credit card or loan debt and applications for new credit), the amount of current debts that are carried, and the types of current credit that are carried.¹⁴ Credit scores are not calculated by the credit reporting agencies; they are created by different companies or lenders that apply their own credit rating system to information from a credit report. Therefore, it is possible for one person to have multiple credit scores. Studies show that even when immigrants do have credit histories, their credit scores are artificially low.¹⁵ USCIS instructs officers to give positive weight to an applicant who can show little to no debt and a history of paying bills, regardless of the applicant's credit score (if one is available).¹⁶

A good credit report and/or a credit score of at least 670 is a positive factor. A bad credit report or a credit score below 580 is a negative factor. If the applicant has a bad credit history or low credit score, he or she can provide an explanation in Question 13. USCIS recognizes that credit scores may contain errors and state that officers must not consider any error on a credit score that has been "verified by the credit agency."¹⁷ Adjustment applicants with credit history must monitor their credit reports and advocate with the credit bureaus to make any necessary corrections – an involved process that may be difficult for many applicants for adjustment to navigate and complete before the public charge assessment is made.

¹⁴ USA.gov, *supra* note 12.

¹⁵ See Bd. of Governors of the Fed. Reserve System, *supra* note 13 ("Evidence also shows that recent immigrants have somewhat lower credit scores than would be implied by their performance.")

¹⁶ USCIS Policy Manual, Vol. 8, Part G, Chapter 9(A)(6).

¹⁷ *Id.*

Requesting a Credit Score

If the applicant has a credit score within the last 12 months, he or she enters that number in Part 3 Question 12 and attaches the credit score document. The free credit reports do not include a credit score; that must be requested separately. Credit scores may be available on credit card or loan statements; through credit score services; and can be purchased directly from credit reporting agencies or through [myfico.com](https://www.myfico.com). More information on obtaining a credit score can be found by going to www.usa.gov/credit-reports.

Example: Yvan has established a credit history through the use of a credit card. His credit score can be found for free when he logs on to his online credit card account. His score of 575 is considered a negative factor, and before he submits his application for adjustment of status, he reviews his credit report to make sure there are no errors that have contributed to his low score. Yvan submits his adjustment application with additional evidence to show that over several months he has paid credit card, rent, and other bills on time. When he attends his adjustment interview, he brings additional evidence showing that he has continued to pay his bills on time.

Other Evidence

USCIS may also review any other liabilities not reflected in the credit report, including mortgages, car loans, tax debts, and credit card debt.¹⁸ The applicant's debts and liabilities, including education-related loans, liens, and personal loans, must be identified in Part 3 Question 10. Unpaid child or spousal support can also be considered by USCIS and would be listed under "other" on the form. The applicant is required to "attach evidence of these liabilities or debts."

If the applicant has ever filed for bankruptcy, indicate that in Part 3 Question 14 and provide the requested information. Attach evidence of the resolution of each bankruptcy, if available.

The wording on the form implies that only the applicant's debts and liabilities must be listed. Therefore, advocates should carefully examine any debts or liabilities that the applicant disclosed to ensure they are in the applicant's name and not in the name of other household members.

The agency assigns negative weight to the receipt of a fee waiver from USCIS for an immigration benefit to which the public charge ground applies, but that is very unlikely to have occurred. Part 3 Question 26 asks for this information, including the date it was received, the type of immigration benefit sought, and the receipt number. The agency also assigns positive weight for having not obtained such a fee waiver, which is far more common. The applicant should point out having never obtained a fee waiver in any cover letter accompanying the I-944.

¹⁸ *Id.*

Example: While preparing Teoh’s application for adjustment of status, immigration attorney Dani asks about his credit history and debts. Teoh mentions that he and his spouse share a credit card and make payments on a car loan. After examining his supporting documentation, Dani determines that the credit card is under the name of Teoh’s spouse, while the car loan is under both spouse’s names. Teoh is only required to disclose the car loan as a debt or liability under Question 10.

Practice Tips:

1. Some advocates have reported adjustment applications being rejected when the applicant has claimed there is no credit history, and the only evidence provided was a printout from a credit reporting agency showing an error message. If no credit report is available and the applicant is unable to obtain a letter from a credit reporting agency explaining that, include a statement from the applicant confirming that he or she has no credit history or that a credit report could not be generated. That statement can also highlight a history of meeting financial obligations and point out that the applicant has never filed for bankruptcy or been subject to tax liens.
2. Credit reports and credit scores do not reflect the reasons for any late payments, including circumstances beyond the consumer’s control, such as a major illness, an emergency expense, or a loss of employment – all situations from which the individual may ultimately recover. Applicants should highlight any unique circumstances that may have contributed to any poor credit history.

Credit reports and credit scores are not designed to measure the likelihood someone will become a public charge, and practitioners should include an argument that these products are not a useful metric.

3. Don’t include liabilities of other household members, but do include their income and assets.