PUBLIC CHARGE TIMELINE

JANUARY 3, 2018
DOS revises Foreign Affairs Manual (FAM) guidance on public charge

OCTOBER 10, 2018
DHS publishes proposed public charge rule in Federal Register

DECEMBER 10, 2018
Public comment period closes for proposed DHS public charge rule (more than 260,000 comments submitted!)

AUGUST 14, 2019
DHS publishes final public charge rule in Federal Register, with 10/15/19 effective date

OCTOBER 11-14, 2019
Multiple courts issue preliminary injunctions of final DHS public charge rule

OCTOBER 11, 2019
DOS publishes public charge interim final rule in Federal Register, with 10/15/19 effective date; implementation delayed awaiting finalization of new form, DS-5540 Public Charge Questionnaire

JANUARY 27, 2020
Supreme Court lifts last remaining nationwide injunction blocking DHS rule; DHS then says rule will take effect 2/24/20 everywhere except Illinois

FEBRUARY 20, 2020
DOS announces will start applying new rule 2/24/20 now that DS-5540 finalized

FEBRUARY 21, 2020
Supreme Court allows new DHS rule to take effect in Illinois too

FEBRUARY 24, 2020
New DHS and DOS public charge rules go into effect everywhere

JULY 29, 2020
New DHS rule enjoined nationwide during declared national emergency related to COVID-19 pandemic; new DOS rule and 2018 FAM guidance enjoined nationwide indefinitely

AUGUST 7, 2020
DOS posts update indicating it will comply with July 2020 DOS injunction and revised guidance forthcoming

AUGUST 12, 2020
Second Circuit limits July 2020 DHS injunction to New York, Connecticut, and Vermont only

SEPTEMBER 11, 2020
Second Circuit grants government's motion to lift July 2020 DHS injunction nationwide

NOVEMBER 2, 2020
Federal district court vacates new DHS rule; DHS cannot use new rule in any cases, nationwide

NOVEMBER 3, 2020
Seventh Circuit stays November 2 order vacating new DHS rule; DHS can use new rule, nationwide, during appeal of district court's decision

DECEMBER 2, 2020
Ninth Circuit enjoins new DHS rule in various regions of the U.S. represented by the plaintiffs; DHS cannot use new rule in those areas, but can elsewhere

DHS/USCIS
DOS/Consulates
DHS/USCIS and DOS/Consulates

SO WHERE ARE WE NOW?

DHS is currently enjoined from implementing the new public charge rule in 18 states and Washington, D.C. DOS is currently enjoined from implementing its new public charge rule at embassies and consulates.

The DHS new public charge rule has stopped and started various times now, from a delayed start date in February 2020, to a brief halt in response to COVID-19 in late July 2020, to court decisions in August and September 2020 that chipped away at the pandemic-related injunction, ultimately permitting USCIS to resume implementation everywhere in September. Then the November 2020 district court decision vacating the new public charge rule nationwide only lasted one day, before the Seventh Circuit permitted USCIS to continue applying the new rule, including requiring submission of Form I-944, while appealing the November decision. Most recently, the Ninth Circuit upheld geographically limited injunctions of the new rule, enjoining DHS from implementing the new rule in California, Colorado, Delaware, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Pennsylvania, Rhode Island, Virginia, Washington D.C., and Washington State. DHS may continue applying the new rule everywhere else, but it is not yet known whether the agency will challenge this decision. USCIS has not yet updated its public website to reflect the limited injunctions.

The DOS new public charge rule remains enjoined, in accordance with the July 29, 2020 order. On August 7, 2020, DOS posted an update conveying its intent to comply with the July 2020 DOS injunction. Visa applicants are not required to complete the DS-5540 Public Charge Questionnaire or present it during visa interviews. DOS has also indicated that it is updating its guidance to consular officers on how to proceed under the preliminary injunction. DOS has provided a limited update to its FAM guidance on public charge, directing consular officers to refuse visa applicants under INA § 221(g) (i.e., a visa refusal because of a "documentary problem"), not INA § 212(a)(4) (i.e., a visa refusal because of a "substantive problem"—in this situation, public charge), if they believe an applicant may be ineligible for a visa under INA § 212(a)(4) or want to ensure they are not relying on enjoined FAM guidance on public charge. Officers who refuse visa applicants under INA § 221(g) must request an advisory opinion explaining the basis for their belief that the applicant may be ineligible under INA § 212(a)(4). The FAM guidance on public charge prohibits consular officers from finding any visa applicants ineligible for admission under INA § 212(a)(4) until they have received a response from the Office of Legal Adviser for Consular Affairs.

Note that litigation challenging the DHS and DOS public charge rules, 2018 FAM revisions, and related issues is ongoing; the state of the law and implementation of these rules could very well change again.

Check our Public Charge Page for further updates.