



# GUIDE TO GATHERING SUPPORTING EVIDENCE FOR THE NEW USCIS PUBLIC CHARGE FORM I-944

By Ariel Brown

The I-944 is USCIS' new public charge form, part of implementing the Department of Homeland Security's public charge rule that took effect on February 24, 2020.<sup>1</sup> Among other changes that will make it harder for moderate- and low-income immigrants to pass a public charge test, the new public charge rule includes details for scrutinizing the statutory factors involved in evaluating public charge inadmissibility: age, health, household size, financial resources, and education and skills.<sup>2</sup> The I-944 is designed to collect extensive information and evidence pertaining to these factors, as part of the new rule's intense scrutiny of a person's life circumstances to assess public charge.

For more information on **filling out the form**, see our companion advisory, *Guide to Filling Out the New USCIS Public Charge Form I-944*.<sup>3</sup> This advisory discusses the **supporting evidence** detailed in the Form I-944 Instructions,<sup>4</sup> as well as some practice tips and strategy considerations for collecting and submitting this evidence.

Presently, there is no "initial checklist" of required documentation, as USCIS has created for some forms,<sup>5</sup> that might help applicants figure out which documents must be submitted at the outset with the I-944 to avoid a denial for failure to include all required initial evidence.<sup>6</sup> Eventually USCIS may create a checklist for Form I-

<sup>1</sup> See ILRC, *Guide to Filling Out the New USCIS Public Charge Form I-944* (May 2020), available at <https://www.ilrc.org/guide-filling-out-new-uscis-public-charge-form-i-944>, for more information on who must submit the I-944; see also <https://www.ilrc.org/public-charge> for more information on changes to public charge and the new public charge rule.

<sup>2</sup> These factors come from the statute, at INA § 212(a)(4)(B), however the new public charge rule and guidance place greater emphasis on these factors, rather than having a sufficient affidavit of support, which used to be the focus in evaluating public charge inadmissibility.

<sup>3</sup> Available at <https://www.ilrc.org/guide-filling-out-new-uscis-public-charge-form-i-944>.

<sup>4</sup> Available at <https://www.uscis.gov/i-944>.

<sup>5</sup> See, e.g., <https://www.uscis.gov/i-485Checklist>. Note this checklist, for Form I-485 Application for Adjustment of Status, has not been updated since September 2018 before the final new public charge rule came out, and thus is missing the I-944.

<sup>6</sup> See July 13, 2018 USCIS Policy Memorandum "Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator's Field Manual (AFM) Chapter 10.5(a), Chapter 10.5(b)," formerly available at [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/AFM\\_10\\_Standards\\_for\\_RFEs\\_and\\_NOIDs\\_FINAL2.pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/AFM_10_Standards_for_RFEs_and_NOIDs_FINAL2.pdf), on when skeletal applications may be denied without first giving the applicant an opportunity to supplement the record where evidence is lacking. As of May 15, 2020 this memo has purportedly been incorporated into the USCIS Policy Manual (USCIS-PM) at Vol. 1, Part E, Ch. 4 on "Burdens and Standards of Proof." Even where "checklists of required initial evidence" exist for certain forms, USCIS states the checklists are "for informational purposes only" and "do not replace statutory, regulatory, and form instruction requirements." See, e.g., <https://www.uscis.gov/i-485Checklist>.

944, but for now practitioners must refer to the form instructions as well as regulations and policy guidance. As will be discussed further below, although the I-944 appears to have the potential to involve many pages of supporting documents, some cases will require substantially less documentation simply because certain sections, like bankruptcy or receipt of public benefits, will not apply to the applicant.

**Note: When do you have to submit I-944 supporting evidence?** Currently, USCIS has not issued guidance regarding what new public charge documentation is required with an initial filing of Form I-944, and what can be submitted later at the adjustment interview. For applications postmarked on or after February 24, 2020 and where the applicant is subject to public charge inadmissibility, practitioners must include Form I-944 with the I-485 adjustment application.<sup>7</sup> Instructions indicate that the I-944 is required at time of filing the I-485 packet, although it is not yet part of the I-485 initial evidence checklist. Arguably, the applicant may continue to gather supporting evidence after initial filing, and will certainly want to provide any updated information at the time of the adjustment interview (e.g. new health insurance coverage, updated taxes, and updated assets information such as bank account statements, paychecks if the applicant got a raise or higher paying job, etc. especially if favorable to the applicant’s public charge case). To date, the ILRC has not received any reports of rejected I-485 filings due to lack of supporting evidence related to the I-944.<sup>8</sup>

We will refer to the case example, below, with “Antonio” as we go through the supporting evidence for the I-944 and discuss what might be submitted in “Antonio’s” case.

**Case example:** Antonio is 35 years old, was born in Mexico, and has been living in the U.S. without status since he came here at age 17. He is adjusting through a petition filed by his U.S. citizen wife. His younger brother, Marco, who is single and makes \$70,000 per year, is his joint sponsor. Antonio has had mostly steady work for the last 10+ years, in construction; in 2019, he made \$50,000 annually. His wife does not work outside the home, as she cares for their two young U.S. citizen children, ages 4 and 6. She plans to go back to work once both children are in school. He says that he does not speak English very well, but he does not feel his language skills have negatively affected his ability to work because his boss speaks both English and Spanish, and many others he works with speak Spanish too. He did not complete high school. He doesn’t have any additional income to list, but the family has two cars and a home with a mortgage. They are still financing their second car. They have no credit card debt and have approximately \$10,000 in savings in a joint bank account. Antonio doesn’t believe he has a credit report, doesn’t owe taxes, has never been foreclosed on or had his car repossessed, and he has never filed for bankruptcy. He does not have health insurance but is young and healthy, with no serious health problems. He has never received public benefits (even though the family briefly received food stamps and Medi-Cal for the children, during a short period when he was between jobs, about three years ago). He has never applied for an immigration fee waiver.

<sup>7</sup> See ILRC, *Guide to Filing Out the New USCIS Public Charge Form I-944* (May 2020), available at <https://www.ilrc.org/guide-filing-out-new-uscis-public-charge-form-i-944>, for more information on who must submit the I-944.

<sup>8</sup> If you have any examples of rejected applications due to missing I-944 evidence, please email [abrown@ilrc.org](mailto:abrown@ilrc.org).

**Practice Tip: Include a cover letter with the I-944, summarizing the evidence in relation to the public charge factors.** Practitioners should consider including a brief cover letter or legal summary for the I-944, outlining pertinent facts for each of the statutory factors, to contextualize the information and evidence reflected in the I-944 and supporting documents. This can be a brief bullet point list, portraying the client’s situation in the best possible light while addressing each of the factors and referring to the supporting evidence, where applicable, attached to the I-944. This would also be a good place to highlight the *absence* of evidence relating to negative factors that do not apply to the applicant’s case, for example no bankruptcy records because they have never filed for bankruptcy, or no public benefits documentation because they have never utilized public benefits.

## I. General Advice on Supporting Evidence for Form I-944

The Form I-944 Instructions<sup>9</sup> state that “at the time of filing, you must submit all evidence and supporting documentation listed” in the instructions.<sup>10</sup> However, as will be addressed in this advisory, there likely is no one-size-fits-all, minimum supporting documentation that must be submitted with every I-944 because much of the evidence is circumstance-specific.

As will be discussed below, the main sections of the Form I-944 that involve supporting documentation are Part 3, relating to the applicant (and, in some situations, household) finances, and Part 4, relating to the applicant’s education and skills, although a few other instances where supporting evidence is mentioned are also noted. Appendix A is a summary checklist of supporting evidence discussed below; italicized items are optional and/or dependent on the applicant’s situation.

## II. Supporting Evidence Relating to Parts 1 & 2 (Applicant’s and Household’s Information)

Parts 1 and 2 of the Form I-944 request information about the applicant and their household. The only required supporting evidence for these sections is **proof of the applicant’s relationship with their household members**. For most individuals, this evidence is a birth certificate or marriage certificate. For other household members whose relationship to the applicant cannot be established with a birth certificate or marriage certificate, the I-944 instructs the applicant to include a signed statement from the household member or their legal guardian.<sup>11</sup> Presumably this signed statement would explain the relationship between the applicant and household member.<sup>12</sup>

**Case example:** For Antonio, the supporting evidence he would submit for this section would be his marriage certificate to show his relationship with his wife and his children’s birth certificates to show his relationship with his children.

<sup>9</sup> All references are to the October 15, 2019 edition of the I-944 form and instructions. For the most current form and instructions, and which versions are currently being accepted, go to <https://www.uscis.gov/i-944>.

<sup>10</sup> Form I-944 Instructions, page 2.

<sup>11</sup> See Form I-944, top of page 2.

<sup>12</sup> See 8 USCIS-PM G.8(C) (“Evidence of family status includes information regarding the household members, which may include birth certificates, marriage certificates, and affidavits to establish relationships.”).

### III. Supporting Evidence Relating to Part 3 (Assets, Resources, and Financial Status)

Pay attention below to which sections in Part 3 of the I-944 request information pertaining to the household, versus just the applicant. For instance, the I-944 asks about *household* income and assets, but only the *applicant's* debts and liabilities, receipt of public benefits, health insurance, etc.

#### A. Household Income

For the household income section in Part 3 of the I-944,<sup>13</sup> USCIS requires the applicant submit a **transcript of their federal income tax return for the most recent tax year**. “Most recent tax year” refers to the last full tax year; between January 1 and April 15 of a given year, depending if a person has filed a tax return for the last tax year, their “most recent tax year” may actually be two years ago.

**Example:** Jean is filing her I-944 in February 2021. She has not yet filed her 2020 taxes (she has until April 15, 2021) and thus “most recent tax year” for her is 2019. Jean will submit a transcript for her 2019 tax return with her I-944. However, by the time of her adjustment interview Jean will be expected to have filed her 2020 tax return and may be asked for her 2020 tax transcript. (If Jean *already* had filed her 2020 taxes, then she would submit a transcript for her 2020 return with her I-944.)

If applicable, the applicant must also submit a **tax transcript for household members**, but in many cases an adult applicant will only need to include their own tax transcript, unless:

1. They are married but filed their taxes *separately* from their spouse, in which case they must also include their spouse’s individual tax transcript, or
2. Someone provides the applicant with at least 50% financial support and/or lists the applicant as a dependent on their tax return, in which case the applicant must also submit that other person’s tax transcript.

For further explanation of who is a household member for purposes of Form I-944 and more information on how this evidence is factored into the totality of the circumstances test, see companion advisory, *Guide to Filling Out the New USCIS Public Charge Form I-944*.<sup>14</sup>

Note that tax transcripts are distinct from a simple photocopy of a person’s tax return or filing, and must be separately requested from the IRS. Tax transcripts are downloadable for free from the IRS website, at <https://www.irs.gov/individuals/get-transcript>. Up until recently, a person who only had an ITIN, but not a Social Security number, had to request their transcript by mail, rather than online, but that is no longer the

<sup>13</sup> USCIS will compare household income to the federal poverty guidelines (FPG); if household income is at least 125% of the FPG for their household size, that will be a positive factor (and the higher than that, the more positive). Note active duty military have a lower income threshold, 100% FPG, but must also submit evidence of active duty military status by providing a copy of their Uniformed Services ID card (DD Form 2 or DD Form 2765). See 8 USCIS-PM G.9 for more information.

<sup>14</sup> Available at <https://www.ilrc.org/guide-filing-out-new-uscis-public-charge-form-i-944>.

case. Further, the IRS is no longer processing mail-in requests for tax transcripts; they are only processing these requests online.<sup>15</sup>

Any applicants who do not have a recent tax transcript because they were not required to file a tax return for any of the last three tax years “may” optionally provide their W-2 or Social Security Earnings Statement, instead of a tax transcript.<sup>16</sup>

If the applicant or any household members received **additional income** for the most recent tax year that was not reflected on their tax return, such as child support, they must also provide evidence of this other income. Public benefits are handled separately, see Section G below.

**Case example:** For this section, Antonio would submit his tax transcript showing that he earned \$50,000 last year, which he should be able to request online as long as he has an ITIN. Assuming the couple jointly filed their taxes, they would only need the one tax transcript for both of them. He has no proof of additional income to submit.

## B. Household Assets

The applicant must provide **proof of ownership and the claimed value of any household assets** they include on the I-944, owned by either themselves or a household member.

As discussed in the companion advisory, *Guide to Filling Out the New USCIS Public Charge Form I-944*,<sup>17</sup> all applicants will want to include what assets they have. Including assets may be most critical if they are attempting to show significant assets to compensate for income under 125% of the federal poverty level, but even those with income just barely over 125% will also want to include proof of assets, as will others who want to strengthen their public charge case by reaching 250% of the federal poverty guidelines, which is a heavily weighted positive factor.<sup>18</sup> Possible assets include a home, car (if the applicant or household member has at least one other car that they are *not* using as an asset), money in bank accounts, stocks and bonds, retirement accounts, etc.

If including a **home** as an asset, in addition to providing proof of ownership they must also include a recent appraisal by a licensed appraiser and proof of the amount of all loans secured on the home, such as by a mortgage, trust deed, or other lien.<sup>19</sup>

**Practice Tip: Finding an affordable home appraisal.** The Form I-944 Instructions do not describe what counts as a “recent” appraisal,<sup>20</sup> so a client may have an appraisal from a year or two ago, that they could try to use along with a Zillow or other online estimate in case the value may have changed slightly. In most cases, the financing documents for the home will include a formal appraisal which can be included. Many real estate

<sup>15</sup> See <https://www.irs.gov/individuals/get-transcript> (“Tax Transcripts are only available online. We have stopped processing transcript requests by mail until further notice”) (last visited May 19, 2020).

<sup>16</sup> Form I-944 Instructions, page 6.

<sup>17</sup> Available at <https://www.ilrc.org/guide-filling-out-new-uscis-public-charge-form-i-944>.

<sup>18</sup> See *id.*

<sup>19</sup> If the home or other real estate property has “full liens or full mortgage,” then immigration officers will not consider such a property to be an asset. 8 USCIS-PM G.9(A)(3).

<sup>20</sup> 8 USCIS-PM G.9(A)(3).

websites, like Zillow, Redfin, etc. will provide free appraisal estimates and can at least be a starting point to assess whether there has been a significant change in the value of the home. Seeking a new professional appraisal may be a few hundred dollars, and should only be pursued where it will demonstrate a significant asset for the applicant. The real estate company RE/MAX is another option to get a free home appraisal. If the applicant decides to seek a professional home appraisal, they should call a few they are considering to get a quote first, but paying for a licensed home appraisal might not be worth it unless the applicant may also be selling their home in the near future or really stands to gain by a documented change in value of their home. Ultimately, of course, this option should be presented to the client and it would be their choice whether to get a professional appraisal. Whether or not they choose to get a professional appraisal, they should still list their home, if they have one, as an asset on the I-944 and at least submit a free Zillow or other online estimate.

If including **checking and savings accounts** as an asset, the applicant must include account statements covering at least the last twelve months before submitting the I-944. Whether to include such evidence might depend on if the applicant has a significant amount of money in bank accounts and/or low household income and other weak factors they want to offset, as mentioned above. When the adjudicating officer is reviewing this evidence, they are directed to look at whether a bank account shows only recent deposits, that “may indicate payment of salary and wages but may also indicate that the deposits were recently added for the applicant to meet the income threshold and only for a temporary period.”<sup>21</sup> To figure out the source of recent deposits, if not obvious, the officer can ask questions or issue a request for additional evidence.<sup>22</sup>

**Case example:** For this section, if Antonio and his wife’s home was in their name, they will want to assess whether it has positive value—that the money owed on the mortgage is less than the current value of the home. If so, they would likely want to include their home as an asset. If they have had an official appraisal done that captures the current value of their home, they would probably want to start by submitting the last formal appraisal. They could include a free online estimate to show that the value has not changed since that last “recent” appraisal. If the value of their home has increased significantly, they might consider obtaining a new professional appraisal. They could also include their second car as an asset. For the home and car, they’d have to include the title or deed and the valuation of these assets/the basis for their claimed net cash value, listed on the I-944 in Part 3, item number 9. Because only one of their two cars can be included as an asset, they should make sure to include the one with the higher net value. If they also have substantial money in bank accounts, they should include copies of bank account statements covering the last twelve months before filing. Note that because their household income is above 125% FPG for a household of four, it is less important that they include proof of assets, but nonetheless it will strengthen their case so they will most likely still want to do so.

### C. Applicant’s Debts and Liabilities

The Form I-944 Instructions request “**documentation**” for each of the applicant’s liabilities and debts, such as mortgage and car payments and credit card statements in the applicant’s name, listed on the I-944 in Part 3, item number 10. Note this section only pertains to *the applicant’s* debts and liabilities, thus part of the case

<sup>21</sup> *Id.*

<sup>22</sup> *See id.*



strategy here will involve isolating which debt belongs to the applicant versus other household members (as other household member's debt does not need to be reported on the I-944).

**Case example:** For Antonio, it will be important to identify which of the liabilities and debts are Antonio's, versus those of other household members (in other words, which are only in his wife's name, not his). Before including car financing, mortgage, etc. it will be important to know if these debts are in his name. If in Antonio's name, he would provide a copy of the couple's most recent mortgage statement, car financing statement, and other proof of his debts and liabilities that he listed on the I-944 for this section (if any). When including these, it will be important to document the value of assets associated with the debt—consider whether in fact any of these debts can tell the story of an asset with positive value.

### D. Applicant's Credit Report (Or Optional Proof of Continued Payment of Bills)

USCIS states that it will review the applicant's **credit report and score**, "if available." For individuals with a Social Security number, they can request their free annual credit report online by visiting [www.annualcreditreport.com](http://www.annualcreditreport.com). The applicant may submit a credit report from any one of the three national credit reporting agencies: Equifax, Experian, or TransUnion.

Many applicants, however, do not have a Social Security number and thus will not be able to easily access a credit report (see Note, below). Importantly, the USCIS Policy Manual states "an officer must not consider the fact that an applicant does not have an established credit history as a negative factor in reviewing the totality of the circumstances."<sup>23</sup> Where a person lacks a credit report, the Form I-944 Instructions state a person can alternatively submit "documentation that demonstrates that you do not have a credit report or score with a credit bureau,"<sup>24</sup> although it is not entirely clear what such evidence would look like, and whether the applicant's statement they do not have a credit report would be sufficient. On the I-944 application, under the section on credit report and score in Part 3 at item number 11, the form directs applicants answering "No" to the question "Do you have a U.S. credit report?" to "Provide a credit agency report that demonstrates that you do not have a credit record or score." The wording on the I-944 application form seems to suggest proof of no credit record must come from the credit reporting agency, such as a "no record" response. For those who are not submitting a credit report with their I-944, they optionally may submit proof of consistent bill payments.

**Example:** Jean does not have a Social Security number or credit report. She rents an apartment and pays her rent and utilities in cash. The one bill she has in her name is for her cellphone. To submit proof of consistent bill payments, she would submit copies of her paid cellphone bills, and would also want to get declarations or receipts from her landlord proving those timely payments.

If the applicant does not submit a credit report, practitioners may also want to highlight in a cover letter or other summary that the applicant has never been foreclosed upon or had their car repossessed, if applicable, events that would show up in a credit report.

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<sup>23</sup> 8 USCIS-PM G.9(A)(6).

<sup>24</sup> Form I-944 Instructions, page 7.

**Note:** A person with no Social Security number may request a credit report by mail.<sup>25</sup> Practitioners may not want to take this extra step of requesting a credit report by mail for an applicant who has no credit history, and instead try a declaration about credit history and provide alternate evidence of “paying bills.” Note, for those with no formal accounts and no debt, much of this is proving a negative. Even so, for those who have been paying taxes with an ITIN, it is likely a step USCIS officers will expect. Advocates, however, should argue that much of the information in a credit report is irrelevant to assessing a person’s future likelihood of being a public charge. Nonetheless, for those requesting a credit report by mail, practitioners have reported getting a response in less than two weeks. Since there is no USCIS initial evidence checklist for Form I-944, practitioners might opt to submit the initial adjustment application without a credit report response, and simply indicate “no credit report” on the form, if appropriate. Keep in mind that when the applicant signs the I-944 in Part 5, they are authorizing USCIS to request records directly from any of the national credit reporting agencies, so at least theoretically USCIS has the power to independently request an applicant’s credit report.<sup>26</sup>

**Case example:** Antonio may not have a Social Security number, but unlike someone who recently arrived in the U.S., Antonio has indicated to you that he has a home and vehicles. This is a flag that likely some credit history exists for Antonio (unless absolutely everything is in his U.S. citizen wife’s name only). The advocate helping Antonio should review the financial documents submitted related to the mortgage and vehicles to determine if Antonio is listed as an owner. If so, the advocate should see if a Social Security number is listed. It will be important to know if Antonio used a made-up Social Security number, or someone else’s information. In a case like this, Antonio can request his credit history by mail. Additionally, Antonio could include proof the couple is regularly paying all their bills, including their credit card bills, utility bills, mortgage, car payments, etc.

### E. Applicant’s Bankruptcy

The applicant is expected to provide **proof of the resolution of any bankruptcy**—“if available”—listed at Part 3, item number 14. If the applicant never filed for bankruptcy, and thus has no supporting evidence pertaining to this, that would be a positive fact worth highlighting in a cover letter or other summary on public charge.

**Case example:** Antonio has never filed for bankruptcy, so he would not attach any evidence here but might want to emphasize in the cover letter or other public charge summary included with his application that he has never filed for bankruptcy.

### F. Applicant’s Health Insurance (Or Optional Other Way to Pay for Health Costs)

For **proof of health insurance**, the applicant is expected to provide a copy of each page of their policy showing the terms, type of coverage, and who is covered; OR a letter on the health insurance company’s letterhead

<sup>25</sup> A person without a Social Security number can request a credit report by mail, using a form available at <https://www.consumer.ftc.gov/sites/www.consumer.ftc.gov/files/articles/pdf/pdf-0093-annual-report-request-form.pdf> or a written request that contains the same information that would be included in the form. Make sure to highlight that the requester does not have a Social Security number, otherwise the requester will receive a letter stating that they did not provide all the information and therefore no report was generated.

<sup>26</sup> See ILRC, *Guide to Filling Out the New USCIS Public Charge Form I-944* (May 2020), available at <https://www.ilrc.org/guide-filling-out-new-uscis-public-charge-form-i-944>.



summarizing the same; OR their most recent IRS tax forms confirming health insurance coverage, 1095-B Health Coverage or 1095-C Employer-Provided Health Insurance Offer and Coverage; OR a copy of their health insurance card *if* it shows both the coverage effective date and expiration date. The health insurance evidence should show the amount of deductible or premium. See next section for discussion of federally-funded Medicaid, if applicable.

If the applicant received a tax credit for their health insurance, they are directed to provide a transcript copy of IRS Form 8963 Report of Health Insurance Provider Information and Form 8962 Premium Tax Credit, as well as a copy of IRS Form 1095A Health Insurance Marketplace Statement.

Applicants who do not yet have health insurance but have enrolled or plan to enroll soon are directed to provide **evidence of their enrollment or future enrollment** that includes the terms, type of coverage, who is covered, and when the coverage begins.

Those without health insurance, who also have a medical condition that will likely appear on the I-693 medical exam results and that might suggest a public charge issue, may provide **positive evidence to counterbalance any negative factors due to a health condition**. Such evidence may include a letter from their doctor about the condition and how it does not prevent them from working or going to school and caring for themselves, or proof of assets and other financial resources that should cover any reasonably anticipated medical costs from the medical condition. Evidence of assets that are also submitted for this purpose should be referenced, in a cover letter or other public charge summary as part of the adjustment packet.

**Case example:** Antonio does not have health insurance, but may be able to state that once his wife returns to work in a year, he can be included on her health insurance through her work. Or, he might want to try to find health insurance, if he qualifies for any. He would also want to highlight that he is young, healthy, and has no serious health conditions. Antonio should consider including a letter from his doctor confirming his good health or positive physical exam. Antonio would also highlight his I-693, indicating no health concerns.

## G. Applicant's Use of Public Benefits that "Count" Under the New Public Charge Rule

The applicant must include **evidence of any public benefits that "count"** under the new public charge rule and that are listed in Part 3, item number 16 of the I-944.<sup>27</sup> Applicants should NOT submit evidence of exclusively state-funded benefits; benefits received by dependents or other family members; or benefits that are not considered under the public charge rule, such as disaster relief or tax credits, all of which also should not be disclosed on the I-944. For more details on this, see ILRC, *Guide to Filling Out the New USCIS Public Charge Form I-944*.<sup>28</sup>

Most applicants will not have any supporting evidence to submit for this section because they have not received any public benefits that must be listed on the I-944. However, if they *do* have public benefits that they are required to list on the I-944—which will be rare—the supporting evidence may be a letter or notice

<sup>27</sup> See companion advisory, ILRC, *Guide to Filling Out the New USCIS Public Charge Form I-944* (May 2020), available <https://www.ilrc.org/guide-filling-out-new-uscis-public-charge-form-i-944>, for more information on USCIS consideration of public benefits as part of the totality of the circumstances test and which benefits to list in Item Number 16 on Form I-944.

<sup>28</sup> Available at <https://www.ilrc.org/guide-filling-out-new-uscis-public-charge-form-i-944>.

from the benefits-granting agency that provides the type of benefit and date the benefit receipt starts (and ends, too, if applicable).<sup>29</sup>

If the receipt of benefits falls within the narrow category of benefits that must be listed on the I-944 (again, see above and double check whether the applicant must disclose the benefits use on the I-944, as this will rarely be the case), but they received the benefits while in an exempt status or fall within an exception,<sup>30</sup> the applicant must further submit **evidence that their benefits use should not be considered**. This evidence will depend on the exemption or exception, and is detailed in the Form I-944 Instructions at pages 9-10. Examples include verification of pregnancy, if the applicant received federally-funded Medicaid while pregnant or up to 60 days after the last day of the pregnancy, or U visa approval notice if benefits received while in valid U nonimmigrant status.<sup>31</sup>

Applicants who indicate in Part 3, item number 17 that they have disenrolled or requested to be disenrolled from benefits listed in item number 16, or in item number 25 that they withdrew their benefits application, must submit **evidence of a request for disenrollment or withdrawal**. In most cases, this would be a letter addressed to the benefits-granting agency or confirmation from the agency that they received such a request. However, most applicants' receipt of benefits does not affect their public charge case, thus they do not stand to benefit by disenrolling or withdrawing.

**Case example:** For this section, Antonio would not have any supporting evidence to include, having never received public benefits in his own name. This is another area where lack of evidence pertaining to this section is also a good thing, that would be worth emphasizing.

## IV. Supporting Evidence Relating to Part 4 (Education and Skills)

### A. Applicant's Education and Skills, Including Language Skills

As evidence of the applicant's education, they are directed to include **proof of any diplomas, degrees, or certifications** by submitting transcripts or certificates, or an explanation why such proof is not available. Note that USCIS requires an equivalency evaluation for foreign education.<sup>32</sup>

To prove occupational skills, the applicant should submit **evidence of training, licenses, or certificates that show specialized skills in a trade or profession**.<sup>33</sup> See Practice Tip, below, for ideas on alternative forms of evidence.

<sup>29</sup> The USCIS Policy Manual appears to contemplate situations where record of public benefits receipt may no longer be available and in that case would instead require a letter from the benefits-granting agency confirming the information is not available. See 9 USCIS-PM G.9(C)(5).

<sup>30</sup> See *id.*

<sup>31</sup> But, as long as the applicant is still in valid U nonimmigrant status, they do not need to submit the I-944 at all. Most individuals whose receipt of benefits does not count because they were in an exempt status will likely continue to be in an exempt status at the time they are applying to adjust, and thus are not required to submit the I-944.

<sup>32</sup> See Form I-944 Instructions for more details on obtaining foreign education equivalency evaluations, which appear to involve a fee. We do not yet know how USCIS will respond in cases where individuals were not able to obtain this highly burdensome extra evidence of a formal equivalency evaluation.

<sup>33</sup> When reviewing this evidence, adjudicating officers are directed to look at when the certification or license was obtained, who issued it, and the expiration or renewal date. 9 USCIS-PM G.11(A)(3).

In addition to occupational skills, they are also directed to document language skills, especially English language skills, through **proof of language classes or language certifications**. Alternatively, the applicant may choose not to submit evidence of English skills and instead rely on the officer's assessment at their adjustment interview,<sup>34</sup> or submit other evidence that their language skills have not negatively affected their job prospects (see Practice Tip, below).

**Practice Tip:** Sometimes applicants will not have exactly the types of supporting evidence contemplated by USCIS with the I-944, such as official certifications or licenses meant to demonstrate occupational training, skills, and experience or proof of formal English language education. In these instances, applicants and their advocates should get creative with alternatives forms of evidence they can provide. For example, if they do not have formal certifications or professional licenses, they may want to seek reference letters from long time employers, attesting to their extensive on-the-job experience and skills.<sup>35</sup> And if they do not have proof of formal English language education, ultimately the English language skills assessment is supposed to pertain to the applicant's "employability" and "self-sufficiency,"<sup>36</sup> so an applicant who does not have basic English skills but has a steady employment history and makes at least 125% FPG should submit evidence of this—e.g. a letter from their employer or supervisor, confirming the applicant's lack of strong English skills has never impeded their work, summarizing their position, how long they have worked there, any other positive comments on their work performance, etc. Applicants can also take steps now to get further evidence in support of the education and skills section, such as enrolling now in an English language course (they could submit proof of enrollment with the I-944 and then would have roughly a year, until the adjustment interview, to work on improving their language skills) or an online certification course to highlight skills that they already have (but this way, they will have a certificate to show for it).

If the applicant is not working because they are the **primary caregiver** for someone in their household, the Form I-944 Instructions request evidence establishing this, such as proof the person for whom they are the caregiver lives in their household and proof of that person's age or medical condition, as it relates to their need for care.

**Case example:** Antonio never completed high school and is not confident in his English language skills, but most importantly he has extensive work experience including references and connections that may take the place of higher education in terms of showing his "employability." He can also assert, possibly with letters from current and former employers or supervisors, that the fact he is not fluent in English or does not feel he has strong English language skills has not impeded his ability to find and maintain work to support himself and his family. (His employer might also say that his English is good!) He should also think creatively about professional certifications he has and include proof of these, such as OSHA worksite safety training or training

<sup>34</sup> In the absence of evidence documenting English language skills submitted with the I-944, officers will also evaluate the applicant's English skills at their adjustment interview; "[t]he applicant only needs to demonstrate basic English skills for a positive consideration." 9 USCIS-PM G.11(A)(4).

<sup>35</sup> The USCIS Policy Manual states that officers will consider "positively any relevant occupational skill(s)" and justifies its inquiry into certificates, training, and licenses as evidence someone is "more likely to obtain employment in those trades." 9 USCIS-PM G.11(A)(3).

<sup>36</sup> "If the applicant is not proficient in English, the officer should review whether the lack of English or other language proficiency adversely affects the applicant's ability to obtain or maintain employment with an income at or above the income threshold. Not all occupations require proficiency in English..." 9 USCIS-PM G.11(A)(4).

in industry-specific specialty skills and activities, like crane operation or cement work, etc. In addition, Antonio can enroll now in an English class and show proof of enrollment.

## B. Applicant's Retirement

The Form I-944 Instructions require **evidence of retirement benefits or other income from a pension or Social Security**, if not already provided in support of the I-944 (e.g. in support of the income section).

**Case example:** Antonio is not retired, and likely would not have any supporting evidence to include regarding retirement or related income at this point in his career. Although in this case example there is nothing to include related to retirement, do not assume that your client has nothing to share that would be helpful. Union workers might have pension systems, others might have retirement accounts related to work they did in their home country.

## V. Other Evidence and Conceptualizing the Case as a Whole

Lastly, remember that as part of the new public charge rule's updated totality of the circumstances test, officers are also considering two other factors, in addition to the factors explicitly addressed in the I-944:

- The applicant's prospective immigration status and period of admission, as it relates to their apparent "self-sufficiency" for the duration of their intended presence in the United States (this was added by the new public charge rule); and
- The affidavit of support, including any joint sponsor affidavit of support (this has always been part of the totality of the circumstances test, but has now been demoted in terms of the weight it carries as part of the overall assessment).

While these last two factors do not specifically require additional evidence, it is important to keep in mind that officers will be looking at the evidence (and information) provided with the I-944 in the context of all of these factors: the applicant's age; applicant's health (as reflected in the I-693); number of people the applicant supports or who support them; household income and assets; the applicant's debts, liabilities, and credit history; whether the applicant has ever filed for bankruptcy; the applicant's health insurance coverage; receipt of public benefits; use of fee waivers; education; work-related skills; immigration status and period of admission; and affidavit(s) of support.

Returning to the example with "Antonio," he might want to point out the following and attach evidence in support, even if not specifically elicited by the Form I-944 Instructions, when looking at the case as a whole:

- Even though he does not have many degrees or formal professional licenses, he has been gainfully employed for his entire adult life in the United States. During that time, he has accumulated over a decade of experience and connections, and is highly regarded by current and former employers (reference attached letters supporting this);
- If he were to face financial difficulties in the future, the couple has some money saved up and a strong family support system including Marco, his brother and joint sponsor, and others who would help Antonio and his family if they needed financial help (reference attached bank account statements evidencing savings, joint sponsor affidavit of support and joint sponsor statement,

potentially also letters from family and friends affirming their willingness and ability to help the family if need be, as well as the joint sponsor statement from Marco stating the same);

- In addition, his U.S. citizen wife plans to return to work once both children are in school, in less than a year from now (their youngest is four years old), at which point they will be a dual income household, greatly increasing their current household income (which is already over 125% FPG) (reference attached job offer letter or other proof his wife will be returning to work).

## VI. Conclusion

As burdensome as the I-944 evidentiary requests are, advocates may strategically focus on certain evidentiary aspects that will bolster their case. We will update this advisory should we learn USCIS is rejecting or denying claims based on lack of I-944 evidence, but for now advocates should focus on the evidence that is most salient in their particular cases. A well-prepared cover letter can help build the case.

For some sections of the I-944, for example having to do with bankruptcy and public benefits use, lack of supporting evidence is a positive fact, and should be highlighted in the cover letter or other public charge summary. For other sections, inclusion of supporting evidence helps the applicant prove they are not likely to become a public charge, whether it is evidence of certifications and professional skills or proof of health insurance or other plans to pay for medical costs, and so although it may be tempting to look through the I-944 and try to avoid filling out sections that require more paperwork, practitioners should think creatively about what documentation they *can* submit—even if not explicitly listed in the form instructions—that relate to the statutory factors and the individual’s particular life circumstances.

While this form is required and covers detailed information about multiple aspects of the client’s life, advocates should center the inquiry—rather than allow the I-944 to dictate the analysis—and remind officers that at the end of the day, the relevant question is whether the person is likely to require certain public benefits for the requisite period of time in the future. It is important to draw on all relevant facts in your client’s life to show that likely will not be the case. For instance, an applicant’s family might have a long history of being low income and never requiring public benefits. The cover letter and advocacy at interview can help tell that story.

## APPENDIX A: CHECKLIST SUMMARIZING I-944 SUPPORTING EVIDENCE THAT MAY APPLY

Italicized items are optional and/or dependent on the applicant's situation.

- Proof of the applicant's relationship with household member(s) (e.g. birth certificate, marriage certificate, or signed statement explaining other relationship) – **see Section II.**
- Transcript (not photocopy) of federal income tax return for most recent tax year – **see Section III.A.**
  - *In the alternative: W-2 or Social Security Earnings Statement*
- If receiving any additional income like child support or unemployment:* proof of additional income – **see Section III.A.**
- If including net value of home as asset:* – **see Section III.B.**
  - Proof of ownership
  - Recent appraisal by licensed appraiser
  - Evidence of amount of all loans secured by mortgage, trust deed, other lien on home
- If including money in bank accounts as asset:* account statements covering last 12 months – **see Section III.B.**
- For all household assets (e.g. car,<sup>37</sup> stocks, bonds, certificates of deposit, retirement accounts, educational accounts): – **see Section III.B.**
  - Proof of ownership
  - Evidence of the asset's value
- Evidence of applicant's (and only applicant's) debts or liabilities listed on the I-944 in Part 3 item number 10 – **see Section III.C.**
- If applicable and available, credit report and credit score* – **see Section III.D.**
  - *In the alternative: proof no credit report and evidence of continued payment of bills*
- If applicable and available, proof of bankruptcy resolution* – **see Section III.E.**
- If applicant has health insurance:* – **see Section III.F.**
  - Proof of coverage as evidenced by ONE of the following:
    - Copy of each policy page showing terms and type of coverage, who is covered, and date insurance terminates or must be renewed *or*
    - Letter on health insurance company's letterhead confirming coverage and providing terms and type of coverage *or*
    - Most recent IRS Form 1095-B or 1095-C and evidence of coverage renewal for current year *or*
    - Copy of health insurance card, if it has both effective date *and* expiration date
  - Evidence of deductible or premium amount
  - Evidence of date insurance terminates or must be renewed, unless included above

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<sup>37</sup> Applicant must have at least one other car, not being used as an asset.



- *If applicant does not have health insurance but is enrolled or is planning to enroll:* letter from health insurance company or other evidence of enrollment/future enrollment, including type of coverage, who is covered, and when coverage starts – **see Section III.F.**
- *If applicant does not have health insurance and has no plans to enroll:* optionally may include documentation to outweigh any negative factors related to a medical condition that would be reflected in I-693 medical exam (e.g. letter from treating physician on prognosis and whether it impacts ability to be self-sufficient, assets included to show ability to pay reasonably anticipated medical costs) – **see Section III.F.**
- Evidence of any public benefits listed on the I-944 in Part 3 item number 16 – **see Section III.G.**
- *If applicable, evidence an exception or exemption applies to consideration of benefits listed in Part 3, item number 16* – **see Section III.G.**
- *If applicable, proof of disenrollment or withdrawal of benefits listed in Part 3, item number 16* – **see Section III.G.**
- Evidence of any degrees, diplomas, transcripts, certificates, etc. listed in Part 4 at item number 3 – **see Section IV.A.**
  - *In the alternative: explanation why such evidence, where applicable, is unavailable*
- Evidence of any occupational training, professional licenses, etc. listed in Part 4, item number 4 – **see Section IV.A.**
  - *In the alternative: explanation why such evidence where applicable is unavailable*
- *If so indicated at Part 4, item number 7, evidence of primary caregiver situation (e.g. proof the person lives with them and needs their care, due to their age or a medical condition)* – **see Section IV.A.**
- *If applicable, proof of language classes the applicant has already taken or is currently taking* – **see Section IV.A.**
- *If applicable, evidence of income from pensions, social security, or other retirement benefits* – **see Section IV.B.**



**San Francisco**

1458 Howard Street  
San Francisco, CA 94103  
t: 415.255.9499  
f: 415.255.9792

[ilrc@ilrc.org](mailto:ilrc@ilrc.org) [www.ilrc.org](http://www.ilrc.org)

**Washington D.C.**

1015 15th Street, NW  
Suite 600  
Washington, DC 20005  
t: 202.777.8999  
f: 202.293.2849

**Austin**

6633 East Hwy 290  
Suite 102  
Austin, TX 78723  
t: 512.879.1616

**San Antonio**

500 6<sup>th</sup> Street  
Suite 204  
San Antonio, TX 78215  
t: 210.760.7368

**About the Immigrant Legal Resource Center**

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.