

CHAPTER 1
INTRODUCTION

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§ 1.1 Purpose of This Manual

This manual is designed for attorneys, accredited representatives, advocates, paralegals, and other staff at nonprofit organizations working with immigrants and their families on immigration issues. This manual is also a resource for government agencies, law enforcement agencies, schools, social service agencies, health care providers, and other organizations that serve and advise immigrant communities. The goal of this manual is to provide accurate information regarding the “public charge” law in immigration so that those working with immigrants and their families can provide reasoned advice related to accessing needed public programs and services. In addition, this manual is a tool for legal practitioners preparing their adjustment and visa cases in light of recent developments in public charge law and policy.

Green card applicants and other noncitizens seeking to enter the United States on certain visas are subject to the “public charge” ground of inadmissibility (among other grounds), which looks at the likelihood an intending immigrant will rely on specified public benefits in the United States after they are admitted on a visa or granted a green card. Someone who is deemed likely to utilize certain public benefits programs in the future may be denied a green card or visa on the basis that they are likely to become a “public charge.”

Over the last few years, the Trump administration has been working to change public charge policy, to make this ground of inadmissibility stricter and harder for moderate- and low-income immigrants to prove they are not likely to be a public charge. The Trump administration’s negative rhetoric targeting immigrants and their families, coupled with widespread media coverage of recent changes to public charge rules and policies, has caused fear and uncertainty within immigrant communities. Immigrants fear repercussions from using basic public programs, unclear about the actual, legal impact of new policies. Service providers must be savvy to the rapid policy changes and the actual scope of the public charge law to help inform those they serve. In addition, the changing landscape and rampant fear and misinformation require immigration legal services providers to thoroughly understand the public charge policy that applies to their client’s case, to best inform immigrant clients of the potential impact, if any, on themselves and their families. Further, lawsuits challenging the Trump administration’s changes to public charge are ongoing, but add to the confusion about the current state of public charge law and policy.

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At the time of this manual's writing (August 2020), the country is also grappling with the novel coronavirus, COVID-19, and a widespread economic downturn which has dramatically altered the context in which immigrants are deciding whether to access public benefits programs.

Our hope is that this manual will help build the capacity of the field to address public charge concerns from clients, many of whom are not subject to public charge at all, are not eligible for the benefits that would subject them to public charge anyway, and/or are using benefits that are not considered as part of a public charge determination. This manual is also meant to equip advocates and others with detailed information on the new public charge policies, so that you are ready for whatever comes next.

NOTE: Check for the latest updates on public charge! Because public charge is in flux, with ongoing litigation and expected publication of additional new rules or policies, advocates and legal practitioners should be mindful to check for the latest updates. Two places to start are <https://protectingimmigrantfamilies.org/> and <https://www.ilrc.org/public-charge>.

PRACTICE TIP: Talking to community members about public charge. When community members are considering whether to enroll in or dis-enroll from public benefits, the possible impact such a decision may have on “public charge” in their or a family member’s immigration case is only one consideration. Moreover, it may not be the driving factor in a client’s decision to apply for or continue receiving public benefits. For many noncitizens who are eligible for cash aid, long-term institutionalization, or other programs, these benefits provide critical support that is otherwise inaccessible to them and their families and may outweigh other concerns, including immigration issues.

Even if immigration is a person’s main concern, the public charge laws might not apply to their situation. Public charge does not apply to applicants for U visas, asylum, TPS, DACA, and VAWA, for example. It does not apply to those seeking cancellation of removal in immigration court. It does not apply to those who are undocumented and have no current opportunity to seek status. In fact, public charge only applies to a narrow range of those seeking admission or a green card.

In sum, advocates should not tell community members to avoid applying for or to dis-enroll from public benefits solely because of a possible public charge risk, without considering the overall needs of their family and the relevance of public charge to their immigration strategy.

§ 1.2 Contents of This Manual

This manual contains nine chapters and an appendix of referenced documents. In the next chapter, **Chapter 2**, we discuss the history of the public charge rule, including the recent developments under the Trump administration, and provide an update on the legal challenges to the Trump administration’s attempts to change public charge. In **Chapters 3-9**, we provide detailed information on the new public charge policies, so that advocates and others will have the information they need to grapple with these new, more harsh public charge standards should they be in effect. However, because this is an active litigation space, make sure to check the status of litigation and implementation to determine whether the new rules are in effect for a particular

case. Injunctions may block the implementation of the new rules for a geographic region, or for certain cases based on the time they were filed. Our aim is that this manual will be helpful to you, regardless of the status of legal challenges to the new public charge rules, by providing guidance on both old and new public charge policies. To figure out whether an injunction is in place (meaning old policies continue to apply) and other updates, check our website at <https://www.ilrc.org/public-charge>.

Please refer to these chapters for substantive coverage of the following topics:

Chapter 1, Introduction, covers the purpose and contents of this manual, including who this manual is for and how to stay informed on this issue.

Chapter 2, Brief History of Public Charge, provides an overview of how public charge has been interpreted since its inception and its evolution in federal regulations and policy guidance.

Chapter 3, Public Charge as a Ground of Inadmissibility, provides an overview of who is subject to the grounds of inadmissibility, which include public charge; specifies who is subject to the public charge ground; and discusses the legal standard to assess public charge.

Chapter 4, Assessing Public Charge, explains the multi-factored “totality of the circumstances” test that immigration officials use to assess public charge, including the affidavit of support, which certain applicants are required to submit as part of proving that they are not likely to become a public charge.

Chapter 5, The Affidavit of Support, covers the affidavit of support requirements and process. The requirements discussion includes who is subject to the affidavit of support, who is exempt, different types of sponsors, and various ways to meet the financial requirements. It also covers the serious legal responsibilities a person takes on when they sign an affidavit of support and how long these obligations last. The process discussion covers completing the application forms and collecting the supporting documents, and includes an explanation of the different affidavit of support forms (Form I-864, I-864A, and I-864EZ) and when to use them.

Chapter 6, I-944 Declaration of Self-Sufficiency, covers who must submit the I-944, USCIS’ new public charge form for some adjustment applicants, how to complete the form, and what supporting evidence must be submitted, as well as how immigration officers will use the information and evidence provided with the Form I-944 to evaluate public charge under the new DHS public charge rule.

Chapter 7, Public Charge and Consular Processing, covers the new State Department rule and Foreign Affairs Manual guidance on public charge inadmissibility in the consular processing context, the State Department’s new public charge form, DS-5540, and special considerations involving visa refusals and provisional waiver revocations.

Chapter 8, Public Charge as a Ground of Deportability, provides an overview of the public charge deportability ground, including the elements the government must prove for a person to be found deportable as a public charge, and explains how historically this ground has rarely been used.

Chapter 9, Considerations for Lawful Permanent Residents and Naturalization Applicants, examines when and how the public charge ground of inadmissibility might

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apply to lawful permanent residents, with a focus on analyzing these issues at the time a permanent resident applies to naturalize (applies for U.S. citizenship). While there is no public charge test to naturalize, permanent residents might have triggered a public charge concern in their past.

The **Appendix** at the end of this manual provides sample materials and other referenced resources.

§ 1.3 Staying Informed and Getting Involved

What public charge is and how it affects noncitizens comes from three main sources, listed in descending order of authority:

- The **law** on public charge, which is contained in the immigration statute, the Immigration and Nationality Act (INA). The president of the United States cannot change the law, including immigration laws, only Congress can change laws;
- **Federal regulations** on public charge, which provide details describing how a law will be implemented or carried out in practice, often referred to as “rules.” An agency such as Department of Homeland Security (DHS) or Department of State (DOS) can make changes to regulations, according to a specific process which generally includes notifying the public in advance and soliciting comments on proposed changes before developing a final rule; and
- **Policy guidance** on public charge, which provide further instructions to adjudicating officers, beyond the statute and regulations. Policy guidance may take the form of a memorandum. For USCIS this guidance is often collected in its Policy Manual, whereas for the State Department, these instructions are contained in the Foreign Affairs Manual. Policy guidance is the easiest to change, can be done by the agency, and requires little advance notice, if any.

The government is trying to change public charge through new federal regulations, with corresponding updated policy guidance in the USCIS Policy Manual and DOS Foreign Affairs Manual. The *law* on public charge has not changed, but these changes to the *rules* and *guidance* dramatically alter how people will be evaluated for public charge inadmissibility.

To stay informed, you can visit the Immigrant Legal Resource Center’s public charge page at <https://www.ilrc.org/public-charge> for training information, fact sheets, and resources. We also suggest you consider joining the Protecting Immigrant Families (“PIF”) campaign, a diverse coalition of advocates for immigrants, children, education, health, anti-hunger, and anti-poverty groups opposing these harmful changes to public charge, led by the National Immigration Law Center (NILC) and the Center for Law and Social Policy (CLASP), at <https://protectingimmigrantfamilies.org/>.