

**DEPARTMENT OF HOMELAND SECURITY**

**8 CFR Parts 103, 212, 213, 214, [237], and 248**

**[CIS No. 2499-10; DHS Docket No. USCIS-2010-0012]**

**RIN 1615-AA22**

**Inadmissibility on Public Charge Grounds**

**AGENCY:** U.S. Citizenship and Immigration Services, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Homeland Security (DHS) proposes to change how it determines whether an alien is inadmissible to the United States because he or she is likely at any time to become a public charge consistent with section 212(a)(4) of the Immigration and Nationality Act (INA). Aliens who are seeking adjustment of status or an immigrant visa, or who are applicants for admission, must all establish that they are not likely at any time to become a public charge. Moreover, DHS will require aliens seeking an extension of stay or change of status demonstrate that they are not using or receiving, nor likely to use or receive, public benefits.

DHS proposes to define the term public charge as the term is used in section 212(a)(4) of the INA. DHS also proposes to define the types of public benefits that are considered in public charge inadmissibility determinations. DHS proposes to clarify that it will make public charge determinations based on the totality of an alien's circumstances. DHS also proposes to clarify when an alien seeking adjustment of status or immigrant visa, who is inadmissible under section 212(a)(4) of the INA, may be admitted in the discretion of DHS upon the giving of public charge bond. With the publication of this proposed rule, DHS withdraws the proposed regulation on public

charge that former Immigration and Naturalization Service (INS) published on May 26, 1999.

**DATES:** Written comments and related material to this proposed rule must be submitted to the online docket via [www.regulations.gov](http://www.regulations.gov), on or before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments on this proposed rule, including the proposed information collection requirements, identified by DHS Docket No. USCIS-2010-0012, by any **one** of the following methods:

- Federal eRulemaking Portal (preferred): [www.regulations.gov](http://www.regulations.gov). Follow the website instructions for submitting comments.
- Mail: Samantha L. Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW, Washington, DC 20529-2140. To ensure proper handling, please reference DHS Docket No. USCIS-2010-0012 in your correspondence. Mail must be postmarked by the comment submission deadline.

**FOR FURTHER INFORMATION CONTACT:** Mark Phillips, Residence and Naturalization Division Chief, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts NW, Washington, DC 20529-2140; telephone 202-272-8377.

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- ACA – Patient Protection and Affordable Care Act
- AFM – Adjudicator’s Field Manual
- ASEC – Annual Social and Economic Supplement of the Current Population Survey
- BIA – Board of Immigration Appeals
- BLS – U.S. Bureau of Labor Statistics
- CDC – Centers for Disease Control and Prevention
- CBP – U.S. Customs and Border Protection
- CFR – Code of Federal Regulations
- CHIP – Children’s Health Insurance Program
- DHS – U.S. Department of Homeland Security
- DOS – U.S. Department of State
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Form I-912 – Request for Fee Waiver  
Form I-94 – Arrival/Departure Record  
Form I-944 – Declaration of Self-Sufficiency  
Form I-945 – Public Charge Bond  
GA– General Assistance  
GAO – U.S. Government Accountability Office  
HHS – U.S. Department of Health and Human Services  
ICE – U.S. Immigration and Customs Enforcement  
IIRIRA – Illegal Immigration Reform and Immigrant Responsibility Act of 1996  
INA – Immigration and Nationality Act  
INS – Immigration and Naturalization Service  
IRCA – Immigration Reform and Control Act of 1986  
NHE – National Health Expenditure  
PRA – Paperwork Reduction Act  
PRWORA – Personal Responsibility and Work Opportunity Reconciliation Act  
RFE – Request for Evidence  
SAVE – Systematic Alien Verification for Entitlements  
Secretary – Secretary of Homeland Security  
SIPP – Survey of Income and Program Participation  
SNAP – Supplemental Nutrition Assistance Program  
SSA – Social Security Administration  
SSI – Supplemental Security Income  
TANF – Temporary Assistance for Needy Families  
USDA – U.S. Department of Agriculture  
U.S.C. – United States Code  
USCIS – U.S. Citizenship and Immigration Services  
WIC – Special Supplemental Nutrition Program for Women, Infants, and Children

## **I. Public Participation**

All interested parties are invited to participate in this rulemaking by submitting written data, views, comments and arguments on all aspects of this proposed rule. DHS also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments must be submitted in English, or an English translation must be provided. Comments that will provide the most assistance to

the U.S. Citizenship and Immigration Services (USCIS) in implementing these changes will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that supports such recommended change.

**Instructions:** If you submit a comment, you must include the agency name and the DHS Docket No. USCIS-2010-0012 for this rulemaking. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

**Docket:** For access to the docket and to read background documents or comments received, go to <http://www.regulations.gov>, referencing DHS Docket No. USCIS-2010-0012. You may also sign up for email alerts on the online docket to be notified when comments are posted or a final rule is published.

The docket for this rulemaking does not include any comments submitted on the related notice of proposed rulemaking published by INS in 1999.<sup>1</sup> Commenters to the 1999 notice of proposed rulemaking that wish to have their views considered should

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<sup>1</sup> See *Inadmissibility and Deportability on Public Charge Grounds*, 64 FR 28676 (May 26, 1999).

submit new comments in response to this notice of proposed rulemaking.

## **II. Executive Summary**

DHS seeks to advance self-sufficiency for aliens subject to public charge inadmissibility grounds through this rulemaking. DHS proposes to define the term public charge by regulation and to identify the types of public benefits that would be considered in the public charge inadmissibility determinations. DHS proposes to amend its regulations to interpret the minimum statutory factors for determining whether an alien is inadmissible because he or she is likely to become a public charge. This proposed rule would provide a standard for determining whether an alien who seeks admission into the United States as a nonimmigrant or an intending immigrant, or adjustment of status, is likely at any time to become a public charge under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4). DHS also provides a more comprehensive framework under which USCIS will consider public charge inadmissibility. DHS proposes that certain paper-based applications to USCIS would require an additional form, Declaration of Self-Sufficiency (Form I-944), related to public charge considerations. This form would not generally be required at ports of entry.

DHS also proposes amending the extension of stay and change of status regulations to permit USCIS to consider whether the applicant is using or receiving, or likely to use or receive public benefits as defined in the proposed rule in extension of stay and change of status adjudications unless the nonimmigrant status that is being extended or to which the applicant seeks to change is explicitly exempt from consideration of inadmissibility under section 212(a)(4) of the INA. Finally, DHS proposes to revise its regulations governing the discretion of the Secretary of Homeland Security (Secretary) to



accept a public charge bond under section 213 of the INA, 8 U.S.C. 1183 for those seeking immigrant visas and adjustment of status.

### **A. Major Provisions of the Regulatory Action**

DHS proposes to include the following major changes:

- Amending 8 CFR 103.6, Surety bonds. The amendments to this section set forth DHS's discretion to approve public charge bonds for immigrant visa and adjustment of status applications, specify acceptable sureties, cancellation, bond schedules, and breach of bond and move principles governing public charge bonds to proposed 8 CFR 213.1.
- Adding 8 CFR 212.20, Applicability of public charge inadmissibility. This section identifies the categories of aliens that are subject to the public charge inadmissibility determination.
- Adding 212.21, Definitions. This section establishes key regulatory definitions, including public charge, public benefit, dependent, government, and subsidized health insurance.
- Adding 212.22, Public charge determination. This section clarifies that evaluating the likelihood of becoming a public charge is a prospective determination based on the totality of the circumstances. This section provides greater detail on how the statute's mandatory factors would be considered when making a public charge inadmissibility determination.
- Adding 212.23, Public benefits considered for purposes of public charge inadmissibility. This section provides guiding principles and a list of public benefits to be considered when making a public charge inadmissibility determination.

- Adding 212.24, Public benefits not considered for purposes of public charge inadmissibility. This section provides general principles and a list of public benefits that an officer cannot consider when making a public charge inadmissibility determination.
- Adding 212.25, Exemptions and waivers for the public charge ground of inadmissibility. This section provides a list of exemptions and waivers for inadmissibility based on public charge.
- Amending 8 CFR 213.1, Admission or adjustment of status of aliens on giving of a public charge bond. The updates to this section change the title of this section and add specifics to the public charge bond provision for individuals who are seeking an immigrant visa or adjustment of status, including the discretionary review and the minimum amount for a public charge bond.
- Amending 8 CFR 214.1, Nonimmigrant general requirements. These amendments provide that with limited exceptions, an applicant for extension of nonimmigrant status must demonstrate that he or she is not using or receiving, nor likely to use or receive, public benefits as defined in proposed 8 CFR 212.21(d), before the applicant can be granted. Where section 212(a)(4) of the INA does not apply to the nonimmigrant category that the alien seeks to extend, or where extension of status cannot be denied as a matter of discretion, this provision does not apply.
- Amending 8 CFR 245.4 Documentary requirements. These amendments require applicants for adjustment of status to file new USCIS Form I-944, Declaration of Self-Sufficiency, to facilitate USCIS' public charge inadmissibility determination.
- Amending 8 CFR 248.1, Change of nonimmigrant classification eligibility.

This section provides that with limited exceptions, an applicant for change of nonimmigrant status must demonstrate that he or she is not using or receiving, nor likely to use or receive, public benefits as defined in proposed 8 CFR 212.21(d), before the applicant can be granted. Where section 212(a)(4) of the INA does not apply to the nonimmigrant category to which the alien requests a change of status, or where change of status may not be denied as a matter of discretion, this provision does not apply.

#### **B. Costs and Benefits**

This proposed rule would impose new costs on the population applying to adjust status using Application to Register Permanent Residence or Adjust Status (Form I-485) that are subject to the public charge grounds on inadmissibility who would now be required to file the new Form I-944 as part of the public charge inadmissibility determination. This general requirement would only apply in the adjustment of status context.

DHS estimates that the total annual cost on the population applying to adjust status who would be required to file Form I-944 would be \$25.8 million. Over the first 10 years of implementation, DHS estimates the total quantified new costs of the proposed rule would be as much as \$258,448,690 (undiscounted) for filing Form I-944 as part of the review for determination of inadmissibility based on public charge when applying for adjustment of status. DHS estimates that the 10-year discounted total costs of this proposed rule would be \$220,461,975 at a 3 percent discount rate and \$181,523,545 at a 7 percent discount rate.

Simultaneously, DHS is proposing to eliminate the use and consideration of the Request for Exemption for Intending Immigrant's Affidavit of Support (Form I-864W), currently applicable to certain classes of aliens.

The proposed rule would also potentially impose new costs on individuals or companies (obligors) if an alien has been found to be a public charge, but has been given the opportunity to submit a public charge bond, for which USCIS intends to use the new Public Charge Bond form (Form I-945). DHS estimates the cost to file Form I-945 would be \$5.30 per obligor.<sup>2</sup>

In addition, the proposed rule would potentially impose new costs on the population seeking extension of stay or change of status using Petition for a Nonimmigrant Worker (Form I-129) or the Application to Extend/Change Nonimmigrant Status (Form I-539). For either of these forms, USCIS officers would be able to exercise discretion regarding whether it would be necessary to issue a request for evidence (RFE) requesting an applicant to submit Form I-944. The costs to Form I-129 beneficiaries who may receive a RFE to file Form I-944 range from \$444,914 to \$52,730,601 annually. The costs to Form I-539 applicants who may receive a RFE to file Form I-944 range from \$231,318 to \$27,415,491 annually.

The primary benefit of the proposed rule would be to help ensure that aliens who apply for admission to the United States, seek extension or change of status, or apply for adjustment of status are self-sufficient. DHS also anticipates that the proposed rule would produce some benefits from the elimination of Form I-864W. The elimination of these forms would potentially reduce the number of forms USCIS would have to process,

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<sup>2</sup> An obligor is a person who is bound to another by contract or other legal procedure.

although it likely would not reduce overall processing burden. DHS estimates the amount of benefits that would accrue from eliminating Form I-864W would be \$34.84 per petitioner.<sup>3</sup> However, DHS notes that we are unable to determine the annual number of filings of Form I-864W and therefore currently unable to estimate the total annual benefits. Additionally, a public charge bond process would also provide benefits to applicants as they potentially would allow an alien to be admitted if otherwise admissible, in the discretion of DHS, after a determination that he or she is likely to become a public charge.

Table 1 provides a more detailed summary of the proposed provisions and their impacts.

<b>Table 1. Summary of Major Provisions and Economic Impacts of the Proposed Rule</b>		
<b>Provisions</b>	<b>Purpose</b>	<b>Expected Impact of Proposed Rule</b>
Adding 8 CFR 212.20. Purpose and applicability of public charge inadmissibility.	To define the categories of aliens that are subject to the public charge determination.	<b>Quantitative:</b> Benefits <ul style="list-style-type: none"> <li>• \$34.84 per petitioner opportunity cost of time for eliminating Form I-864W.</li> </ul>
Adding 8 CFR 212.21. Definitions.	To establish key definitions, including public charge, public benefit, dependent, government, and subsidized health insurance.	Costs: <ul style="list-style-type: none"> <li>• DHS anticipates a likely increase in the number of denials for adjustment of status applicants based on public charge</li> </ul>

<sup>3</sup> Calculation opportunity cost of time for completing and submitting Form I-864W: (\$34.84 per hour \* 1.0 hours) = \$34.84.

<p>Adding 8 CFR 212.22. Public charge determination.</p>	<p>Clarifies that evaluating public charge is a prospective determination based on the totality of the circumstances.</p> <p>Outlines minimum and additional factors considered when evaluating whether an immigrant is inadmissible based on public charge. Factors are weighed, positively and negatively, to determine an individual's likelihood of becoming a public charge.</p>	<p>determinations due to formalizing and standardizing the criteria and process for public charge determination.</p> <p><b>Qualitative:</b></p> <p><u>Benefits</u></p> <ul style="list-style-type: none"> <li>• Ensure that aliens who are admitted to the United States or apply for adjustment of status are self-sufficient and would not use or receive one or more public benefits through an improved review process.</li> </ul>
<p>Adding 8 CFR 212.23. Public benefits considered for purposes of public charge inadmissibility.</p> <p>Adding 8 CFR 212.24. Public benefits not considered for purposes of public charge inadmissibility.</p>	<p>Outlines public benefits that, if alien used, received, currently uses or receives, or is likely to use or receive, constitute a negative factor in the public charge determination.</p> <p>Outlines public benefits that cannot be considered when evaluating whether an alien is likely to become inadmissible based on public charge.</p>	<ul style="list-style-type: none"> <li>• Potential to improve the efficiency for USCIS in the review process for public charge.</li> </ul>
<p>Adding 8 CFR 212.25. Exemptions and waivers for public charge ground of inadmissibility.</p>	<p>Outlines exemptions and waivers for inadmissibility based on public charge grounds.</p>	
<p>Adding 8 CFR 214.1(a)(3)(iv) and amending 8 CFR 214.1(c)(4). Nonimmigrant general requirements; and Amending 8 CFR 248.1(a) and adding 8 CFR 248.1(c)(4). Change of nonimmigrant classification eligibility.</p>	<p>To provide, with limited exceptions, that an applicant for extension of nonimmigrant status must demonstrate that he or she is not using or receiving, nor likely to use or receive, public benefits as defined in proposed 8 CFR 212.21(d), before the applicant can be granted.</p>	<p><b>Quantitative:</b></p> <ul style="list-style-type: none"> <li>• None</li> </ul> <p><b>Qualitative:</b></p> <p><u>Benefits</u></p> <ul style="list-style-type: none"> <li>• Ensure that nonimmigrants seeking to extend their stay or change their nonimmigrant status are self-sufficient and are not using or receiving, nor likely to use or receive one or more public benefits through an improved review process.</li> </ul>

		<ul style="list-style-type: none"> <li>• Potential to improve the efficiency for USCIS in the review process for public charge.</li> </ul>
<p>Amending 8 CFR 245.4. Adjustment of status to that of a person admitted for permanent residence.</p>	<p>To outline requirements that aliens submit a declaration of self-sufficiency on the form designated by DHS and any other evidence requested by DHS in the public charge inadmissibility determination.</p>	<p><b>Quantitative:</b></p> <p><u>Costs</u></p> <ul style="list-style-type: none"> <li>• Total costs over 10-year period to applicants applying to adjust status who must file Form I-944 are: <ul style="list-style-type: none"> <li>• \$258.4 million for undiscounted costs;</li> <li>• \$220.5 million at a 3% discount rate; and</li> <li>• \$181.5 million at a 7% discount rate.</li> </ul> </li> <li>• Range of potential annual costs for those filing Form I-129 from \$0.44 million to \$52.7 million depending on how many applicants are sent a RFE by USCIS.</li> <li>• Range of potential annual costs for those filing Form I-539 from \$0.23 million to \$ 27.4 million depending on how many applicants are sent a RFE by USCIS.</li> </ul> <p><b>Qualitative:</b></p> <ul style="list-style-type: none"> <li>• None</li> </ul>
<p><b>Public Charge Bond Provisions</b></p>		

<p>Amending 8 CFR 103.6(c). Surety bonds.</p>	<p>To set forth the Secretary’s discretion to approve bonds, specify acceptable sureties, cancellation, bond schedules, and breach of bond and move principles governing public charge bonds to proposed 8 CFR 213.1.</p>	<p><b>Quantitative:</b></p> <p><u>Costs</u></p> <ul style="list-style-type: none"> <li>• \$15.89 per applicant opportunity cost of time for completing Public Charge Bond (Form I-945).</li> <li>• \$2.65 per applicant opportunity cost of time for completing Request for Cancellation of Public Charge Bond (Form I-356).</li> <li>• Fees paid by applicants to surety bond companies to secure a public charge bond could range from 1 – 15 percent of the public charge bond amount based on an individual’s credit score.</li> </ul>
<p>Amending 8 CFR 213.1. Admission or adjustment of status of aliens on giving of a public charge bond.</p>	<p>To change the title of this section and add specifics to the public charge bond provision for individuals who are seeking an immigrant visa or adjustment of status, including the discretionary review and the minimum amount required for a public charge bond.</p>	<p><b>Qualitative:</b></p> <p><u>Costs</u></p> <ul style="list-style-type: none"> <li>• Potentially enable an alien who was found inadmissible on public charge grounds to be admitted by posting a public charge bond with DHS.</li> </ul>
<p>Source: USCIS analysis.</p>		

### III. Purpose of the Proposed Rule

#### A. Self-Sufficiency

DHS seeks to ensure that aliens who are subject to the public charge inadmissibility ground and who are admitted to the United States or who adjust their status to that of a lawful permanent resident are self-sufficient. Under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), any alien is inadmissible if at the time of an application for a visa, admission, or adjustment of status, he or she is likely at any time to become a public charge. Aliens subject to public charge inadmissibility include: immediate relatives of U.S. citizens, fiancé(e)s, family-preference immigrants, most employment-based immigrants, diversity visa immigrants, and certain nonimmigrants. Immediate relatives of U.S. citizens, fiancé(e)s, most family-preference immigrants, and some



employment-based immigrants require a sponsor and a legally binding affidavit of support under section 213A of the INA showing that these sponsored immigrants have adequate means of financial support and are not likely to become a public charge. Most employment-based immigrants are coming to work for their petitioning employers. They should have adequate income and resources to support themselves and their dependents. Nonimmigrants should have sufficient financial means to support themselves for the duration of their authorized admission and stay. The following congressional policy statements relating to public benefits and immigration are relevant to aliens subject to public charge inadmissibility.

(1) Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes.

(2) It continues to be the immigration policy of the United States that—

(A) Aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations; and

(B) The availability of public benefits not constitute an incentive for immigration to the United States.<sup>4</sup>

Generally, aliens in the United States who receive or use public benefits are dependent on Federal, State, and local governments for support. The receipt or use of public benefits by aliens subject to public charge inadmissibility is contrary to section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), and to policy statements made in 8 U.S.C.

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<sup>4</sup> See 8 U.S.C. 1601.

1601. Accordingly, DHS is proposing new regulations that align with the statute and congressional intent.

### **B. Public Charge Inadmissibility Determinations**

DHS also seeks to interpret the term “public charge” for purposes of making public charge inadmissibility determinations. Congress codified minimum mandatory factors that must be considered as part of the public charge determination under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4): age, health, family status, assets, resources, financial status, education, and skills.<sup>5</sup> In addition to these minimum factors, the statute states that any affidavit of support under section 213A of the INA may also be considered.<sup>6</sup> In fact, family-sponsored aliens and certain employment-sponsored aliens are generally inadmissible as likely to become a public charge if they do not submit such a satisfactory affidavit of support.<sup>7</sup>

Although INS<sup>8</sup> issued a proposed rule and interim guidance in 1999, neither the proposed rule nor interim guidance sufficiently described the mandatory factors or explained how to weigh these factors in the public charge determination.<sup>9</sup> The 1999 interim guidance focused on the receipt of cash public benefits over non-cash public benefits and the relationship of such benefits to the guidance’s definition of “public charge.” This proposed rule better aligns public charge policies with the statutory text by providing clarification and guidance on the mandatory factors, including how these

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<sup>5</sup> See INA section 212(a)(4)(B)(ii); 8 U.S.C. 1182(a)(4)(B)(ii).

<sup>6</sup> See INA section 212(a)(4)(B)(iii); 8 U.S.C. 1182(a)(4)(B)(iii).

<sup>7</sup> See INA section 212(a)(4)(C); 8 U.S.C. 1182(a)(4)(C).

<sup>8</sup> On March 1, 2003, INS functions were transferred from the Department of Justice to DHS. See Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135, 2178, 2192 (Nov. 25, 2002).

<sup>9</sup> See *Inadmissibility and Deportability on Public Charge Grounds*, 64 FR 28676 (May 26, 1999), and *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds*, 64 FR 28689 (May 26, 1999).

factors would be evaluated in relation to the new proposed definition of “public charge” and in making a public charge inadmissibility determination.<sup>10</sup>

#### **IV. Background**

Congress and administrative policymakers have wrestled with three principal issues<sup>11</sup> that have framed the development of public charge inadmissibility: (1) The factors involved in determining whether or not an alien is likely to become a public charge, (2) The relationship between public charge and receipt and use of public benefits; and (3) The consideration of a sponsor’s affidavit of support within public charge determinations.

##### **A. Legal Authority**

DHS’s authority for making public charge inadmissibility determinations and related decisions is found in several statutory provisions. Section 102 of the Homeland Security Act of 2002 (Public Law 107-296, 116 Stat. 2135), 6 U.S.C. 112, and section

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<sup>10</sup> Moreover, this proposed policy change is consistent with the March 6, 2017, Presidential Memorandum, directing DHS to issue new rules, regulations, and/or guidance to enforce laws relating to such grounds of inadmissibility and subsequent compliance. *See Implementing Immediate Heightened Screening and Vetting of Applications for Visas and Other Immigration Benefits, Ensuring Enforcement of All Laws for Entry Into the United States, and Increasing Transparency Among Departments and Agencies of the Federal Government and for the American People*, 82 FR 16279 (Apr. 3, 2017), available at <https://www.whitehouse.gov/the-press-office/2017/03/06/memorandum-secretary-state-attorney-general-secretary-homeland-security>.

<sup>11</sup> *See, e.g., Report of the Committee of the Judiciary Pursuant to S. Res. 137*, S. Rep. 81-1515, 346-350 (1950). Prior to passage of the INA of 1952, the Senate Judiciary Committee issued a report assessing issues within the immigration system, including public charge. The committee recommended retention of public charge exclusion in the statute but highlighted two main problems related to its implementation: 1) how to determine who is likely to become a public charge and 2) how to find a better way of meeting the purpose for which affidavits of support were executed on the alien’s behalf. The committee noted that there was no definition of the term “likely to become a public charge” and that the meaning of the term had been left to the interpretation of administrative officials and the courts. Factors such as financial status, business ownership, health, and employability were considerations and decisions rendered by the courts and in public charge determinations made by consular and immigration officers. The committee advised against defining public charge in law. Instead, it recommended that the determination of whether an alien falls into the public charge category should rest within the discretion of consular and immigration officials, because the elements constituting public charge are varied. It also recommended that the use of a bond or suitable undertaking over the practice of using affidavits of support.

103 of the INA, 8 U.S.C. 1103, charge the Secretary with the administration and enforcement of the immigration and naturalization laws of the United States. In addition to establishing the Secretary's general authority for the administration and enforcement of immigration laws, section 103 of the INA enumerates various related authorities including the Secretary's authority to establish regulations and prescribe such forms of bond as are necessary for carrying out her authority. Section 212 of the INA, 8 U.S.C. 1182, establishes classes of aliens that are ineligible for visas, admission, or adjustment of status and paragraph (a)(4) of that section establishes the public charge ground of inadmissibility, including the minimum factors the Secretary must consider in making a determination that an alien is likely to become a public charge. Section 212(a)(4) of the INA also establishes the affidavit of support requirement as applicable to certain family-based and employment based immigrants, and exempts certain aliens from both the public charge ground of inadmissibility and the affidavit of support requirement. Section 213 of the INA, 8 U.S.C. 1183, provides the Secretary with discretion to admit into United States an alien (who is otherwise admissible), but is found inadmissible as a public charge under section 212(a)(4) of the INA upon the giving of a proper and suitable bond. That section authorizes the Secretary to establish the amount and conditions of such bond. Section 213A of the INA sets out requirements for the sponsor's affidavit of support, including reimbursement of government expenses where the sponsored alien received means-tested public benefits. Section 214 of the INA addresses requirements for the admission of nonimmigrants, including authorizing the Secretary to prescribe the conditions of such admission through regulations and when necessary establish a bond to ensure that those admitted as nonimmigrants or who change their nonimmigrant status

under section 248 of the INA depart if they violate their nonimmigrant status or after such status expires. Section 248 of the INA authorizes the Secretary to prescribe conditions under which an alien change his or her status from one nonimmigrant classification to another. The Secretary proposes the changes in this rule under these authorities.

### **B. Immigration to the United States**

The INA governs whether an alien may obtain a visa, be admitted to or remain in the United States, or obtain an extension of stay, change of status, or adjustment of status.<sup>12</sup> The INA establishes separate processes for aliens seeking a visa, admission, extension of stay, change of status, and adjustment of status.

For example, where an immigrant visa petition is required, USCIS will adjudicate the petition. If USCIS approves the petition, the alien may apply for a visa with the Department of State (DOS) and thereafter seek admission in the appropriate immigrant or nonimmigrant classification. If the alien is present in the United States, he or she may be eligible to apply to USCIS for adjustment of status to that of lawful permanent resident.

In the nonimmigrant context, the nonimmigrant typically applies directly to the U.S. consulate or embassy abroad for a visa to enter for such a limited purpose, like business or tourism.<sup>13</sup> Applicants for admission are inspected at or, when encountered, between the port of entry. They are inspected by immigration officers at that time in a timeframe and setting distinct from the adjudication process. If the alien is present in the

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<sup>12</sup> See, e.g., INA section 212(a), 8 U.S.C. 1182(a) (listing grounds of inadmissibility).

<sup>13</sup> Certain nonimmigrant classifications are subject to petition requirements. See, e.g., INA section 214(c), 8 U.S.C. 1184(c). In addition, certain aliens are not subject to a visa requirement in order to seek admission as a nonimmigrant. See, e.g., INA section 217, 8 U.S.C. 1187.

United States, he or she may be eligible to apply to USCIS for an extension of nonimmigrant stay or change of nonimmigrant status.

DHS has the discretion to waive certain grounds of inadmissibility. Where an alien is subject to a ground of inadmissibility, if a waiver is unavailable under the INA, the alien does not meet the statutory requirements for the waiver, or the alien does not warrant the waiver in any authorized exercise of discretion, DHS cannot approve the benefit sought.

### **C. Extension of Stay and Change of Status**

Section 214 of the INA, 8 U.S.C. 1184, permits DHS to allow certain nonimmigrants to remain in the United States beyond the initial period of stay authorized to continue the same activities permitted when the nonimmigrant was first admitted to the United States. The extension of stay regulations require a nonimmigrant applying for an extension of stay to demonstrate that he or she is admissible to the United States.<sup>14</sup> Additionally, for some extension of stay applications, the applicant's financial status is part of the eligibility determination.<sup>15</sup>

DHS has the authority to set conditions in determining whether to grant the extension of stay request.<sup>16</sup> The decision to grant an extension of stay application, with certain limited exceptions, is discretionary.<sup>17</sup>

Section 248 of the INA, 8 U.S.C. 1258, allows an alien to change his or her status from one nonimmigrant status to another nonimmigrant status, with certain exceptions, as long as the nonimmigrant is continuing to maintain his or her current nonimmigrant

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<sup>14</sup> See 8 CFR 214.1(a)(3)(i).

<sup>15</sup> See, e.g., 8 CFR 214.2(f)(1)(i)(B).

<sup>16</sup> See INA section 214(a)(1), 8 USC 1184(a)(1); 8 CFR 214.1(a)(3)(i).

<sup>17</sup> See 8 CFR 214.1(c)(5).

status and is not inadmissible under section 212(a)(9)(B)(i) of the INA, 8 U.S.C.

1182(a)(9)(B)(i).<sup>18</sup> An applicant's financial status is currently part of the determination for changes to certain nonimmigrant classifications.<sup>19</sup>

Like extensions of stay, change of status adjudications are discretionary determinations, and DHS has the authority to set conditions that would apply for a nonimmigrant to change his status.<sup>20</sup>

#### **D. Public Charge Inadmissibility**

Section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4) deems an alien applicant for a visa, admission, or adjustment of status inadmissible if he or she is likely at any time to become a public charge. The public charge ground of inadmissibility, therefore, only applies to any alien applying for a visa to come to the United States temporarily or permanently, for admission into the United States, or for adjustment of status to that of a lawful permanent resident.<sup>21</sup>

The INA does not define public charge. It does, however, specify that when determining if an alien is likely at any time to become a public charge, consular officers and immigration officers must, at a minimum, consider certain factors including the alien's age, health, family status, assets, resources, financial status, and education and skills.<sup>22</sup>

Some immigrant and nonimmigrant immigrant categories are exempt from public charge inadmissibility. DHS proposes to list these categories in regulation. In addition,

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<sup>18</sup> See INA section 248(a), 8 U.S.C. 1258(a); 8 CFR 248.1(a)

<sup>19</sup> See *e.g.*, Adjudicator's Field Manual (AFM) Ch. 30.3(c)(2)(C) (applicants applying to change status to a nonimmigrant student must demonstrate that they have the financial resources to pay for coursework and living expenses in the United States.)

<sup>20</sup> See INA section 248(a), 8 U.S.C. 1258(a); 8 CFR 248.1(a).

<sup>21</sup> See INA section 212(a)(4), 8 U.S.C. 1182(a)(4).

<sup>22</sup> See INA section 212(a)(4)(B)(i); 8 U.S.C. 1182(a)(4)(B)(i).

DHS proposes to list in the regulation the applicants that the law permits to apply for a waiver of the public charge inadmissibility ground.<sup>23</sup>

Additionally, section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), permits the consular officer or the immigration officer to consider any affidavit of support submitted under section 213A of the INA, 8 U.S.C. 1183a, on the applicant's behalf when determining whether the applicant may become a public charge.<sup>24</sup> In fact, with very limited exceptions, aliens seeking family-based immigrant visas and adjustment of status, and a limited number of employment-based immigrant visas or adjustment of status, must have a sufficient affidavit of support or they will be found inadmissible as likely to become a public charge.<sup>25</sup> In general, an alien, whom DHS has determined to be inadmissible based on the public charge ground, may, if otherwise admissible, be admitted at the discretion of the Secretary upon giving a suitable and proper bond or undertaking approved by the Secretary.<sup>26</sup> The purpose of issuing a public charge bond is to ensure that the alien will not become a public charge in the future.<sup>27</sup> Since the introduction of enforceable affidavits of support in section 213A of the INA, the use of public charge bonds has decreased significantly.<sup>28</sup> This rule would outline a process under which USCIS could, in its discretion, offer public charge bonds to applicants for an immigrant visa or adjustment of status who are inadmissible only on public charge grounds.

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<sup>23</sup> See proposed 8 CFR 245.4(b).

<sup>24</sup> See INA section 212(a)(4)(B)(ii). When required, the applicant must submit an Affidavit of Support Under Section 213A of the INA (Form I-864).

<sup>25</sup> See INA section 212(a)(4)(C) and (D); 8 U.S.C. 1182(a)(4)(C) and (D).

<sup>26</sup> See INA section 213, 8 U.S.C. 1183.

<sup>27</sup> See *Matter of Viado*, 19 I&N Dec. 252 (BIA 1985).

<sup>28</sup> See AFM Ch. 61.1(b).



Since at least 1882, the United States has denied admission to aliens on public charge grounds.<sup>29</sup> The INA of 1952 excluded aliens who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission, are likely at any time to become public charges.<sup>30</sup> The Attorney General has long interpreted the words “in the opinion of” as evincing the discretionary nature of the determination.<sup>31</sup>

A series of administrative decisions after passage of the INA clarified that a totality of the circumstances review was the proper framework for making public charge determinations. In *Matter of Martinez-Lopez*, the Attorney General opined that the statute “required more than a showing of a possibility that the alien would require public support. Some specific circumstance, such as mental or physical disability, advanced age, or other fact showing that the burden of supporting the alien was likely to be cast on the public, must be present. A healthy person in the prime of life could not ordinarily be considered likely to become a public charge, especially if he has friends or relatives in the United States who have indicated their ability and willingness to come to his assistance in case of emergency.”<sup>32</sup> In *Matter of Perez*, the Board of Immigration Appeals (BIA) held that “[t]he determination of whether an alien is likely to become a public charge . . . is a prediction based upon the totality of the alien's circumstances at the time he or she applies for an immigrant visa or admission to the United States. The fact that an alien has

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<sup>29</sup> See sections 1-2 of the Immigration Act of 1882, ch. 376, 22 Stat. 214 (Aug. 3, 1882). The Act also provided that an alien who became a public charge within 1 year of arrival in the United States from causes that existed prior to his or her landing, was deemed to be in violation of law, and was to be returned at the expense of the person or persons, vessel, transportation, company or corporation who brought the alien into the United States. See *id.*, section 11.

<sup>30</sup> See sections 212(a)(15) of the INA of 1952, Pub. L. No. 414-477, 66 Stat. 163, 182 (Jun. 27, 1952).

<sup>31</sup> See *Matter of Harutunian*, 14 I&N Dec. 583, 588, (R.C. 1974); cf. *U.S. ex rel. Dolenz v. Shaughnessy*, 206 F.2d 392, (2d Cir. 1953).

<sup>32</sup> See 10 I&N Dec. 409, 421-423 (A.G. 1964).

been on welfare does not, by itself, establish that he or she is likely to become a public charge.”<sup>33</sup> Instead, as stated in *Matter of Harutunian*,<sup>34</sup> public charge determinations should take into consideration factors such as an alien's age, incapability of earning a livelihood, a lack of sufficient funds for self-support, and a lack of persons in this country willing and able to assure that the alien will not need public support.

The totality of circumstances approach to public charge determinations was codified in relation to one class of aliens in the 1980s. In 1986, Congress passed the Immigration Reform and Control Act (IRCA) providing lawful status to certain aliens who had resided in the United States continuously prior to January 1, 1982.<sup>35</sup> No changes were made to the language of the public charge exclusion ground under section 212 of the INA, but IRCA contained special public charge rules for aliens seeking legalization under 245A of the INA. Although IRCA provided otherwise qualified aliens an exemption or waiver for some grounds of excludability, they generally remained excludable on public charge grounds.<sup>36</sup> Under IRCA, however, if an applicant demonstrated a history of self-support through employment and without receiving public cash assistance, an applicant was not ineligible for adjustment of status.<sup>37</sup> In addition, aliens who were “aged, blind or disabled” as defined in section 1614(a)(1) of the Social Security Act, could obtain a waiver from the public charge provision.<sup>38</sup>

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<sup>33</sup> See 15 I&N Dec. 136, 137 (BIA 1974).

<sup>34</sup> See 14 I&N Dec. 586, 589 (R.C. 1974).

<sup>35</sup> See IRCA of 1986, Pub. L. 99-603, 100 Stat. 3445 (Nov. 6, 1986).

<sup>36</sup> See INA section 245A(d)(2)(B)(ii)(IV), 8 U.S.C. 1255(d)(2)(B)(ii)(IV).

<sup>37</sup> See INA section 245A(d)(2)(B)(iii), 8 U.S.C. 1255(d)(2)(B)(iii).

<sup>38</sup> See INA section 245A(d)(2)(B)(ii); see also 42 U.S.C.1381. DHS does not propose to apply the proposed public charge rule to legalization applications filed pursuant section 245A of the INA or otherwise amend the regulations at 8 CFR Part 245a. Any legalization applications that are pending with USCIS are subject to the provisions of the settlement agreements in *Catholic Social Services, Inc. v. Meese*, vacated sub nom, *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993), and *NWIRP v. USCIS*, which require USCIS to adjudicate the application under the laws and policies INS

INS published 8 CFR 245a.3,<sup>39</sup> which established that immigration officers would make public charge determinations by examining the “totality of the alien’s circumstances at the time of his or her application for legalization.”<sup>40</sup> According to the regulation, the existence or absence of a particular factor could never be the sole criterion for determining whether a person is likely to become a public charge.<sup>41</sup> Further, the regulation established that the determination is a “prospective evaluation based on the alien’s age, health, income, and vocation.”<sup>42</sup> A special provision in the rule stated that aliens with incomes below the poverty level are not excludable if they are consistently employed and show the ability to support themselves.<sup>43</sup> Finally, an alien’s past receipt of public cash assistance would be a significant factor in a context that also considers the alien’s consistent past employment.<sup>44</sup> In *Matter of A---*,<sup>45</sup> INS again pursued a totality of circumstances approach in public charge determinations. “Even though the test is prospective,” INS “considered evidence of receipt of prior public assistance as a factor in making public charge determinations.” INS also considered an alien’s work history, age, capacity to earn a living, health, family situation, affidavits of support, and other relevant factors in their totality.<sup>46</sup>

The administrative practices surrounding public charge determinations began to crystalize into legislative changes in the 1990s. The Immigration Act of 1990

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followed in adjudicating applications timely filed during the initial IRCA application period. This includes the application of the special public charge rule, where appropriate, and the public charge waiver for the aged, blind, and disabled under INA section 245A(d)(2)(B)(ii)(IV) and 8 CFR 245a.

<sup>39</sup> See *Adjustment of Status for Certain Aliens*, 54 FR 29442 (Jul. 12, 1989).

<sup>40</sup> See 8 CFR 245a.3(g)(4)(i).

<sup>41</sup> See *id.*

<sup>42</sup> See *id.*

<sup>43</sup> See *id.*

<sup>44</sup> See *id.*

<sup>45</sup> See 19 I&N Dec. 867 (Comm’r 1988).

<sup>46</sup> See *id.* at 869.

reorganized section 212(a) of the INA and re-designated the public charge provision as section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4).<sup>47</sup> In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) altered the legislative landscape of public charge considerably.<sup>48</sup> Congress declared that aliens generally should not depend on public resources and that these resources should not constitute an incentive for immigration to the United States through PRWORA, which is commonly known as the 1996 welfare reform law.<sup>49</sup> Congress created section 213A of the INA and made a sponsor's affidavit of support for an alien beneficiary legally enforceable.<sup>50</sup> The affidavit of support provides an mechanism for public benefit granting agencies to seek reimbursement in the event a sponsored alien received means-tested public benefits.<sup>51</sup>

PRWORA also significantly restricted alien eligibility for many Federal, State, and local public benefits.<sup>52</sup> With certain exceptions, Congress defined the term "Federal public benefit" broadly as:

(A) Any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

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<sup>47</sup> See Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1990).

<sup>48</sup> See Pub. L. 104-208, 110 Stat 3009 (Sep. 30, 1996). In 1990, Congress reorganized INA section 212(a), redesignated the public charge provision as INA 212(a)(4), and eliminated the exclusion of paupers, beggars and vagrants as it was considered that these grounds were sufficiently covered under the public charge provision. See Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1990).

<sup>49</sup> See Title IV of Pub. L. 104-193, 110 Stat. 2260 (Aug. 22, 1996), 8 U.S.C. 1601.

<sup>50</sup> See Title IV of Pub. L. 104-193, 110 Stat. 2105, 2260 (Aug. 22, 1996). See 8 U.S.C. 1601-46. See also INA section 213A; 8 U.S.C. 1183a. The provision was further amended with the passage of IIRIRA.

<sup>51</sup> See INA section 213A(b).

<sup>52</sup> See 8 U.S.C. 1601-1646, as amended.

(B) Any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.<sup>53</sup>

Congress permitted certain qualified aliens to remain eligible for at least some forms of Federal public benefits, particularly medical and nutritional benefits such as Medicaid and Food Stamps.<sup>54</sup> Congress defined “qualified alien” as:<sup>55</sup>

- An alien who is lawfully admitted for permanent residence under the INA;
- An alien who is granted asylum under section 208 of the INA;
- A refugee who is admitted to the United States under section 207 of the INA;
- An alien who is paroled into the United States under section 212(d)(5) of the INA for a period of at least 1 year;
- An alien whose deportation is being withheld under section 243(h) of the INA;<sup>56</sup> or
- An alien who is granted conditional entry under section 203(a)(7) of the INA as in effect before April 1, 1980; or

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<sup>53</sup> See Title IV of Pub. L. 104–193, section 401, 110 Stat. 2262 (Aug. 22, 1996) (codified at 8 U.S.C. 1611(c)). Congress noted that such term shall not apply—

(A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99–239 or 99–658 (or a successor provision) is in effect;

(B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Attorney General, after consultation with the Secretary of State; or

(C) to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States. 8 U.S.C. 1611(c)(2).

<sup>54</sup> See Title IV of PRWORA, Pub. L. 104-193, 110 Stat. 2105 (Aug. 22, 1996).

<sup>55</sup> See section 431 of Pub. L. 104-193, 110 Stat. 2274 (Aug. 22, 1996) (codified at 8 U.S.C. 1641).

<sup>56</sup> As in effect immediately before the effective date of section 307 of division C of Pub. L. 104–208; or section 241(b)(3) of the INA as amended by section 305(a) of division C of Pub. L. 104–208.

- An alien who is a Cuban and Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980.

With certain exceptions, aliens who were not “qualified aliens,” including nonimmigrants and unauthorized aliens, were barred from obtaining Federal benefits.<sup>57</sup> Congress chose not to restrict eligibility for certain benefits including emergency medical assistance; short-term, in-kind, non-cash emergency disaster relief; and public health assistance related to immunizations and treatment of the symptoms of a communicable disease.<sup>58</sup>

Congress defined the term “State or local public benefit” in similar broad terms except where the term encroached upon the definition of Federal public benefit.<sup>59</sup> With certain exceptions for qualified aliens, nonimmigrants, or parolees, Congress also limited aliens’ ability to obtain certain State and local public benefits.<sup>60</sup> Congress also allowed states to enact their own legislation to provide public benefits to certain aliens not

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<sup>57</sup> See Title IV of PRWORA, Pub. L. 104-193, section 401(a), 110 Stat. 2261 (Aug. 22, 1996).

<sup>58</sup> See 8 U.S.C. 1611(b)(1); *see also* 64 FR 28676 (May 26, 1999).

<sup>59</sup> See 8 U.S.C. 1621(c). “State or local public benefit” is defined as:

(1) Except as provided in paragraphs (2) and (3), for purposes of this subchapter the term “State or local public benefit” means—

(A) any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and

(B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.

(2) Such term shall not apply—

(A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658 (or a successor provision) is in effect;

(B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Secretary of State, after consultation with the Attorney General; or

(C) to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States.

(3) Such term does not include any Federal public benefit under section 1611(c) of this title.

<sup>60</sup> See 8 U.S.C. 1621.

lawfully present in the United States.<sup>61</sup> PRWORA also provided that a State that chooses to follow the Federal “qualified alien” classification in determining aliens’ eligibility for public assistance “shall be considered to have chosen the least restrictive means available for achieving the compelling governmental interest of assuring that aliens be self-reliant in accordance with national immigration policy.”<sup>62</sup> Still, some States and localities have funded public benefits (particularly medical and nutrition benefits) that aliens may be not eligible for federally.<sup>63</sup>

Under IIRIRA,<sup>64</sup> the public charge inadmissibility text changed significantly. IIRIRA codified the following minimum factors that must be considered when making public charge determinations:<sup>65</sup>

- Age;
- Health;
- Family status;
- Assets, resources, and financial status; and
- Education and skills.<sup>66</sup>

Congress also generally permitted but did not require consular and immigration officers to consider an enforceable affidavit of support as a factor in the determination of inadmissibility,<sup>67</sup> except in certain cases.<sup>68</sup> The law requires affidavits of support for

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<sup>61</sup> See 8 U.S.C. 1621(d).

<sup>62</sup> See 8 U.S.C. 1601(7).

<sup>63</sup> See Overview of Immigrants Eligible for SNAP, TANF, Medicaid and CHIP, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation (Mar. 2012), available at <http://aspe.hhs.gov/hsp/11/ImmigrantAccess/Eligibility/ib.shtml>.

<sup>64</sup> See Div. C, Title V of [Pub. L. 104-208](#), 110 Stat. 3009, 670 (Sep. 30, 1996).

<sup>65</sup> See INA section 212(a)(4); 8 U.S.C. 1182(a)(4). See Div. C, Title V, Section 531 of Pub. L. 104-208, 110 Stat. 3009, 674 (Sept. 30, 1996).

<sup>66</sup> See INA section 212(a)(4)(B), 8 U.S.C. 1182(a)(4)(B).

<sup>67</sup> See INA section 212(a)(4)(B)(ii), 8 U.S.C. 1182(a)(4)(B)(ii).

<sup>68</sup> See INA sections 212(a)(4), 8 U.S.C. 1182(a)(4) and INA 213A; 8 U.S.C. 1183A.

most family-sponsored immigrants and certain employment-based immigrants and provided that these aliens are inadmissible unless a satisfactory affidavit of support is filed on his or her behalf.<sup>69</sup> In the Conference Report, the committee indicated that the amendments to INA section 212(a)(4), 8 U.S.C. 1182(a)(4), were designed to expand the public charge ground of inadmissibility.<sup>70</sup> The report indicated that self-reliance is one of the fundamental principles of immigration law and aliens should have affidavits of support executed.<sup>71</sup>

On May 20, 1999, INS issued interim *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds*.<sup>72</sup> This guidance identified how the agency would determine if a person is likely to become a public charge as required under section 212(a)(4) of the INA, 8 U.S.C. 1182(a), for admission and adjustment of status purposes, and whether a person is deportable as a public charge under section 237(a)(5) of the INA, 8 U.S.C. 1227(a)(5).<sup>73</sup> The INS proposed promulgating these policies as regulations in a proposed rule issued on May 26, 1999.<sup>74</sup> DOS also issued a cable to its consular officers at that time implementing similar guidance for visa adjudications, and its Foreign Affairs Manual (FAM) was similarly updated.<sup>75</sup> USCIS has continued to follow the 1999 public charge guidance in its adjudications and DOS continued following the public charge guidance set forth in the FAM.<sup>76</sup>

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<sup>69</sup> See INA section 212(a)(4)(C) and (D), 8 U.S.C. 1182(a)(4)(C) and (D).

<sup>70</sup> See H.R. Rep. 104-828, at 240-41 (1996) (Conf. Rep.); see also H.R. Rep. 104-469(I), at 143-45 (1996).

<sup>71</sup> See H.R. Rep. 104-828, at 241 (1996).

<sup>72</sup> See 64 FR 28689 (May 26, 1999).

<sup>73</sup> See 64 FR 28689 (May 26, 1999).

<sup>74</sup> See 64 FR 28676 (May 26, 1999).

<sup>75</sup> See *id.* at 28680.

<sup>76</sup> See section 214 of the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. 111-3, 123 Stat. 8, 56 (Feb. 4, 2009).



In the 1999 proposed rule, INS proposed to “alleviate growing public confusion over the meaning of the currently undefined term ‘public charge’ in immigration law and its relationship to the receipt of Federal, State, or local public benefits.”<sup>77</sup> INS sought to reduce negative public health and nutrition consequences generated by the confusion and to provide aliens, their sponsors, health care and immigrant assistance organizations, and the public with better guidance as to the types of public benefits that INS considered relevant to the public charge determinations.<sup>78</sup> To address the public’s concerns about immigrant fears of accepting public benefits for which they remained eligible, specifically in regards to medical care, children's immunizations, basic nutrition and treatment of medical conditions that may jeopardize public health. INS also sought to stem the fears that were causing non-citizens not to accept limited public benefits, such as transportation vouchers and child care assistance, so that they could get to and retain employment and move to self-sufficiency.<sup>79</sup>

INS defined public charge in its proposed rule and interim guidance to mean “the likelihood of a foreign national becoming primarily dependent<sup>80</sup> on the government for subsistence, as demonstrated by either:

- Receipt of public cash assistance for income maintenance; or
- Institutionalization for long-term care at government expense.”<sup>81</sup>

When developing the proposed rule, INS consulted with Federal benefit-granting agencies such as the Department of Health and Human Services (HHS), the Social

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<sup>77</sup> See 64 FR at 28676.

<sup>78</sup> See 64 FR at 28676-77.

<sup>79</sup> See 64 FR 28676, 28677 (May 26, 1999).

<sup>80</sup> Former INS defined “primarily dependent” as “the majority” or “more than 50 percent.”

<sup>81</sup> Through its long-standing policy, legacy INS, DHS, and agency partners have been focused on promoting the public health of the United States as a whole by helping to ensure immigrants obtain essential medical and nutrition care.

Security Administration (SSA), and the Department of Agriculture (USDA) to determine what public benefits would be considered to be primarily dependent on the government. HHS, which administers Temporary Assistance for Needy Families (TANF), Medicaid, the Children's Health Insurance Program (CHIP), and other benefits, advised that the best evidence of whether an individual is relying primarily on the government for subsistence is either the receipt of public cash benefits for income maintenance purposes or institutionalization for long-term care at government expense.<sup>82</sup> The USDA,<sup>83</sup> SSA,<sup>84</sup> and other benefit-granting agencies concurred with the HHS advice that receipt of cash assistance for income maintenance is the best evidence of primary dependence on the government.<sup>85</sup> INS provided that non-cash, supplemental and certain limited cash, special purpose benefits should not be considered for public charge purposes, in light of INS's decision to define public charge by reference to primary dependence on public benefits. Ultimately, despite INS's efforts to define public charge, to establish a framework for public charge determinations, and to clarify the role of affidavits of support in public charge determinations, these issues were never settled and finalized through rulemaking.

## **V. Discussion of Proposed Rule**

DHS seeks to address these issues, among others, through this rulemaking. DHS intends to establish the proper nexus between public charge and receipt and use of public benefits by defining the terms "public charge" and "public benefit" among other terms.

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<sup>82</sup> See 64 FR 28676, 28686-87 (May 26, 1999); Letter from HHS Deputy Secretary Kevin Thurm to INS Commissioner Doris Meissner (Mar. 25, 1999).

<sup>83</sup> The USDA administers Food Stamps (now called Supplemental Nutrition Assistance Program or SNAP), WIC, and other nutrition assistance programs.

<sup>84</sup> The SSA administers SSI and other programs.

<sup>85</sup> See 64 FR 28676, 28688 (May 26, 1999); Letter from USDA Under Secretary for Food, Nutrition, and Consumer Services Shirley R. Watkins to INS Commissioner Doris Meissner (Apr. 15, 1999).

DHS proposes to interpret the minimum statutory factors involved in public charge determinations and to establish a clear framework under which DHS would evaluate those factors to determine whether or not an alien is likely to become a public charge. DHS also proposes to clarify the role of a sponsor's affidavit of support within public charge determinations.

DHS also proposes that certain factual circumstances would weigh heavily in favor of determining that an alien is not likely to become a public charge and other factual circumstances would weigh heavily in favor of determining that an alien is likely to become a public charge.<sup>86</sup> The purpose of assigning weight to certain factual circumstances is to provide clarity for the public and immigration officers with respect to how DHS would fulfill its statutory duty to assess public charge admissibility. Ultimately, each determination would be made in the totality of the circumstances based on consideration of the relevant factors. In addition, DHS proposes that for applications for adjustment of status, the alien would be required to submit a Form I-944. DHS also proposes the establishment of a public charge bond process in the immigrant visa and adjustment of status context, and proposes to clarify DHS's use of discretion in nonimmigrant extension of stay and change of status applications.

#### **A. Applicability, Exemptions, and Waivers**

This rule would apply to any alien subject to section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), who is applying for admission to the United States or is applying for adjustment of status to that of lawful permanent resident.<sup>87</sup> Because the processes for aliens seeking a visa, admission, extension of stay, change of status, and adjustment of

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<sup>86</sup> See proposed 8 CFR 212.22(c).

<sup>87</sup> See proposed 8 CFR 212.20.

status differ, DHS proposes public charge processes appropriate to the context in which the issue presents itself. For instance, aliens seeking adjustment of status undergo a different process than a temporary visitor for pleasure from Canada. The length and nature of the stay of these two subsets of aliens differs, as does the type and frequency of entry. Accordingly, this rule would apply different processes and evidentiary requirements to these groups of aliens.

1. Applicants for Admission

Under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), any alien who is applying for a visa or for admission to the United States is inadmissible if he or she is likely at any time to become a public charge. A nonimmigrant is admitted into the United States to stay for the limited period and purpose of the classification under which he or she was admitted and then return to his or her country. A nonimmigrant typically applies directly to the U.S. consulate or embassy abroad for a visa to enter for such a limited purpose, like business or tourism. Applicants for admission are inspected at or, when encountered, between the port of entry. They are inspected by immigration officers at that time in a timeframe and setting distinct from the adjudication process.

In addition to nonimmigrants, an alien who is the beneficiary of an approved immigrant visa petition and has an immigrant visa number immediately available may apply to a DOS consulate abroad for an immigrant visa to come to the United States.<sup>88</sup> As part of the immigrant visa process, DOS reviews required affidavits of support submitted under section 213A of the INA, 8 U.S.C. 1183a, and makes public charge determinations. Under this proposed rule, DOS would continue to review affidavits of support and screen aliens for public charge inadmissibility in accordance with its own

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<sup>88</sup> See INA sections 221 and 222, 8 USC 1201 and 1202; 8 CFR 204.

regulations and instructions prior to the alien undergoing inspection and applying for admission at a pre-inspection location or port-of-entry.

## **2. Extension of Stay and Change of Status Applicants**

As mentioned above, a nonimmigrant is admitted into the United States to stay for the limited period and purpose of the classification under which he or she was admitted and then return to his or her country. However, the regulations permit the discretionary extension of the nonimmigrant status or change of nonimmigrant status from one classification to another.<sup>89</sup> Both the INA and the current regulations give DHS the discretion to set conditions on the extension of stay or change of status. Consistent with this authority, DHS is proposing to require an applicant for an extension of stay or change of status to demonstrate that he or she is not using or receiving, nor likely to use or receive, public benefits as defined in this proposed rule.

Although applicants for extension of stay and change of status are not subject to the public charge inadmissibility ground in section 212(a)(4) of the INA, which only applies to applicants for visas, admission, and adjustment of status, the government's interest in a nonimmigrant alien's ability to maintain self-sufficiency does not end with his or her admission as a nonimmigrant. The government has an interest in ensuring that aliens present in the United States do not depend on public benefits to meet their needs.<sup>90</sup> This government interest is evidenced by the fact that DHS already considers the financial status in adjudicating some extension of stay and change of status applications.<sup>91</sup> These

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<sup>89</sup> INA sections 214 and 248, 8 U.S.C. 1184 and 1258.

<sup>90</sup> See 8 USC 1601(2)(A).

<sup>91</sup> 8 CFR 214.2(f)(1)(i)(B); AFM Ch. 30.2(c)(2)(F) ("Students seeking reinstatement must submit evidence of eligibility, including financial information . . ."); AFM Ch. 30.3(c)(2)(C) (applicants applying to change status to a nonimmigrant student must demonstrate that they have the financial resources to pay for coursework and living expenses in the United States.).

amendments better reflect the government's interest to prevent the presence of aliens who are using or receiving, or who are likely to use or receive, public benefits, while remaining in the United States temporarily.

### **3. Adjustment of Status Applicants**

In general, an alien who is physically present in the United States may apply for adjustment of status to that of a lawful permanent resident if the applicant was inspected and admitted or paroled, is eligible to receive an immigrant visa, is admissible to the United States, and has an immigrant visa immediately available at the time of filing of the application.<sup>92</sup> As part of the adjustment process, USCIS is responsible for reviewing any required affidavits of support and making public charge determinations. This rule includes specific evidentiary requirements for the adjustment of status context, which may also apply on a case-by-case basis in other contexts, such as change of status or extension of stay.

### **4. Exemptions**

The public charge inadmissibility ground does not apply to all applicants who are seeking a visa, admission, or adjustment of status.<sup>93</sup> Based on various public laws and regulations, the following categories of aliens are exempt from inadmissibility based on public charge:

- Refugees and asylees at the time of admission and adjustment of status to lawful permanent resident according to sections 207(c)(3) and 209(c) of the INA;
- Amerasian immigrants at admission as described in sections 101(e) [Title V, §584] of the Foreign Operations, Export Financing, and Related Programs Appropriations Act

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<sup>92</sup> See INA section 245.

<sup>93</sup> See proposed 8 CFR 212.25(a).

of 1988, Public Law 100-202, 101 Stat. 1329-183 (1987) (as amended), 8 U.S.C. 1101 note 5;

- Afghan and Iraqi Special immigrants serving as translators with United States Armed Forces according to section 1059(a)(2) of the National Defense Authorization Act for Fiscal Year 2006 Public Law 109-163 (Jan. 6, 2006) and section 602(b) of the Afghan Allies Protection Act of 2009, as amended Public Law 111-8 (Mar. 11, 2009);
- Cuban and Haitian entrants at adjustment as described in section 202 of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603, 100 Stat. 3359 (1986) (as amended), 8 U.S.C. 1255a, note;
- Aliens applying for adjustment of status as described in the Cuban Adjustment Act, Public Law 89-732 (Nov. 2, 1966) as amended; 8 U.S.C. 1255, note;
- Nicaraguans and other Central Americans who are adjusting status as described in section 202(a) and section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), Public Law 105-100, 111 Stat. 2193 (1997) (as amended), 8 U.S.C. 1255 note;
- Haitians who are adjusting status as described in section 902 of the Haitian Refugee Immigration Fairness Act of 1998, Public Law 105-277, 112 Stat. 2681 (Oct. 21, 1998), 8 U.S.C. 1255 note;
- Lautenberg parolees as described in section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Public Law 101-167, 103 Stat. 1195 (Nov. 21, 1989), 8 U.S.C.A. 1255 note;
- Special immigrant juveniles as described in section 245(h) of the INA;
- Aliens who entered the United States prior to January 1, 1972, and who meet the

other conditions for being granted lawful permanent residence under section 249 of the INA and 8 CFR part 249;

- Aliens applying for Temporary Protected Status as described in section 244 of the INA who receive a blanket regulatory waiver of the public charge ground of inadmissibility under 8 CFR 244.3(a);
- A nonimmigrant described in section 101(a)(15)(T) of the INA, under section 212(d)(13)(A) of the INA at time of admission;
- An applicant for, or who is granted, nonimmigrant status under section 101(a)(15)(U) of the INA under section 212(a)(4)(E)(ii) of the INA;
- Nonimmigrants who were admitted under section 101(a)(15)(U) of the INA at the time of their adjustment of status under section 245(m) of the INA and 8 CFR 245.24;
- An alien who is a VAWA self-petitioner under section 212(a)(4)(E)(i) of the INA;
- A qualified alien described in section 431(c) of the PRWORA of 1996 (8 U.S.C. 1641(c)) under section 212(a)(4)(E)(iii) of the INA;
- Applicants adjusting status under section Authorization Act of 2004, Public Law 108-136, 117 Stat. 1392 (Nov. 24, 2003) (posthumous benefits to surviving spouses, children, and parents);
- American Indians Born in Canada under section 289 of the INA; and
- Nationals of Vietnam, Cambodia, and Laos adjusting status under section 586 of Public Law 106-429.

In general, the aforementioned classes of aliens are vulnerable populations of immigrants and nonimmigrants. Some have been persecuted or victimized. Others have little to no private support network in the United States. They tend to require government



protection and support and do not have family, friends, and employers sponsoring them. Other legal provisions may exempt other categories of aliens from the public charge provisions under section 212(a)(4) of the INA.

## **5. Waivers**

The proposed regulation at 8 CFR 212.25(b) lists the following categories of applicants who may apply for waivers:

- Nonimmigrants who were admitted under section 101(a)(15)(T) of the INA at the time of their adjustment of status under section 245(l)(2)(A) of the INA;
- S nonimmigrants seeking adjustment of status under section 245(j) and 8 CFR 245.11(c);
- Applicants for admission and adjustment of status under section 245(j) of the INA (witnesses or informants); and
- Other categories of aliens made eligible by law for a waiver of the public charge provisions in section 212(a)(4) of the INA.

## **B. Definitions of Public Charge and Related Terms**

DHS proposes to add several definitions that apply to public charge inadmissibility determinations.

### **1. Public Charge**

Under section 212(a)(4) of the INA, 8 U.S.C. 212(a)(4), an alien who is “likely at any time to become a public charge is inadmissible.” Public charge is not defined in the statute. DHS is proposing to define public charge as a person who uses or receives one or more public benefits as defined in this rule.<sup>94</sup>

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<sup>94</sup> See proposed 8 CFR 212.21(a) and (d).

When developing the proposed definition, DHS considered proposing or finalizing the definition of public charge found in the interim policy guidance of May 20, 1999 and the proposed rule on May 26, 1999.<sup>95</sup> INS defined a public charge as one who is likely to become (for admission/adjustment purposes) 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.<sup>96</sup> DHS contemplated the advantages and challenges of retaining the 50 percent threshold or lowering the threshold to some percentage less than 50 percent.

One of the principal problems with the current definition of public charge is the use of the “primarily dependent on the government” standard. Primary dependence entails a finding that an applicant for admission or adjustment of status is 50 percent or more dependent on the government. DHS does not believe that an alien must be 50 percent or more dependent on the government to be considered a public charge. DHS looked at the common meaning of public charge as contained in various dictionaries.<sup>97</sup> The current edition of the Merriam-Webster Dictionary defines public charge as “one that is supported at public expense.”<sup>98</sup> Another dictionary defines public charge as “a person who is in economic distress and is supported at government expense.”<sup>99</sup> Black’s Law Dictionary (6th<sup>th</sup> ed.) defines public charge as “an indigent; a person whom it is necessary to support at public expense by reason of poverty alone or illness and poverty.”<sup>100</sup> These

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<sup>95</sup> See 64 FR 28676 (May 26, 1999) and 64 FR 28689 (May 26, 1999).

<sup>96</sup> See *Id.*

<sup>97</sup> See e.g., *Smith v. United States*, 508 U.S. 223, 228 (1993) (“when a word is not defined by statute, we normally construe it in accord with its ordinary or natural meaning.”).

<sup>98</sup> See <https://www.merriam-webster.com/dictionary/public%20charge>. See also Leo M. Alpert, *The Alien And The Public Charge Clauses*, 49 Yale L. J. 18 (1939)

<sup>99</sup> Available at: <http://www.dictionary.com/browse/public-charge>.

<sup>100</sup> Available at: [http://www.republicsg.info/dictionaries/1990\\_black's-law-dictionary-edition-6.pdf](http://www.republicsg.info/dictionaries/1990_black's-law-dictionary-edition-6.pdf).

definitions generally suggest that a public charge is one who is supported at public expense, *i.e.*, one who uses or receives public benefits.

Legislative history also links public charge to use or receipt of public benefits. According to a 1950 Senate Judiciary Committee report, which preceded the passing of the 1952 Act, the Senate subcommittee discussed the concern of aliens receiving public benefits.<sup>101</sup>

Before passing IIRIRA in 1996, debates on public charge exclusion and deportation involved an alien's use of public benefits and self-sufficiency.<sup>102</sup> One Senator opined that immigrants upon seeking admission make a "promise to the American people that they will not become a burden on the taxpayers,"<sup>103</sup> and he did not "believe it is unreasonable for the taxpayers of this country to require recently arrived immigrants to depend on their sponsors for the first 5 years under all circumstances if the sponsor has the assets."<sup>104</sup>

Finally, courts have tied public charge determinations to use and receipt of public benefits. For example, the court in *Ex parte Kichmiriantz* opined that the words "public charge" should be interpreted according to their ordinary meaning, "a money charge upon, or an expense to, the public for support and care."<sup>105</sup> In addition, the BIA advised

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<sup>101</sup> See The 1950 Omnibus Report of the Senate Judiciary Committee, S.Rep. 1515, 349, 81st Cong., 2d Sess. (Apr. 20, 1950) (an immigration inspector raised the issue that it is unjust that elderly parents of U.S. citizens can qualify for old age assistance after only a few years in the country, thereby being supported for the rest of their lives at taxpayer expense).

<sup>102</sup> See, Statement from Sen. Byrd, 142 Cong. Rec. 59, page S4609 (May 2, 1996) ("self-sufficiency will be the watchword for those coming to the United States. By making noncitizens ineligible for Federal means-tested programs, and by "deeming" a sponsor's income attributable to an immigrant, the American taxpayer will no longer be financially responsible for new arrivals"). available at <https://www.congress.gov/crec/1996/05/02/CREC-1996-05-02-pt1-PgS4592.pdf>.

<sup>103</sup> See Statement from Sen. Simon, 142 Cong. Rec. 59, page S4495 (May 1, 1996), available at <https://www.congress.gov/crec/1996/05/01/CREC-1996-05-01-pt1-PgS4457.pdf>.

<sup>104</sup> See *Id.*

<sup>105</sup> See 283 F. 697, 698 (N.D. Cal. 1922).

that an alien likely to become a public charge is an alien “who for some cause is about to be supported at public expense ‘by reason of poverty, insanity and poverty, disease and poverty, idiocy and poverty...’”<sup>106</sup> DHS’s definition of public charge, which focuses on the dependence on the government for public benefits, is based on the ordinary meaning of public charge, legislative history, and case law.

## **2. Dependent**

For purposes of public charge inadmissibility determinations under INA section 212(a)(4), DHS proposes to consider the alien’s support to dependents, and whether the alien is a dependent of another. Dependent relationships have an effect on the alien’s resources, and in many cases will influence the likelihood that an alien may become a public charge. DHS would define a dependent as a person listed as a dependent on the alien’s most recent tax return; any other individual whom the alien is legally required to support; or any other individual who lives with the alien, and who is being cared for or provided for by the alien, and benefits from but does not contribute to the alien’s income or financial resources, to the extent such person is not claimed on the alien’s tax return.<sup>107</sup> This may include but is not limited to the alien’s spouse, parent, child, legal ward or person who is under a legal guardianship.

This definition is similar to how USCIS interprets dependent for purposes of determining the income threshold for demonstrating fee waiver eligibility, as well as how dependents are counted on the Form I-864 for purposes of a sponsor’s household size, but it does not necessarily include the sponsor or the sponsor’s family members. In proposing this definition, DHS aims to account both for the persons the alien is

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<sup>106</sup> See *Matter of Harutunian*, 14 I & N Dec. at 587-588.

<sup>107</sup> See proposed 8 CFR 212.21(b).

supporting, as well as those he or she has a legal obligation to support, and those who have such relationships to the alien. These types of relationships between the alien and other people are relevant to DHS's consideration of the alien's assets, resources, and financial status, and frequently family status as well.

### 3. Public Benefit

DHS is also proposing to define "public benefit" within the context of public charge determinations.<sup>108</sup> Specifically, DHS is proposing to define public benefit as any government assistance in the form of cash, checks or other forms of money transfers, or instruments and non-cash government assistance in the form of aid, services, or other relief, that is means-tested or intended to help the individual meet basic living requirements such as housing, food, utilities, or medical care. This includes certain non-cash as well as cash public assistance.<sup>109</sup> For example, consideration of some refundable income tax credits, such as the earned income tax credit (EITC), would be relevant to the determination of public charge inadmissibility.<sup>110</sup> The EITC is a "benefit for working people with low to moderate income."<sup>111</sup> A refundable income tax credit for low-income people is similar to other public assistance benefits for low-income individuals because such a credit can result in a payment from the government to the individual, and is intended to help the individual meet basic living requirements.<sup>112</sup>

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<sup>108</sup> See proposed 8 CFR 212.21(d).

<sup>109</sup> See *id*

<sup>110</sup> See proposed 8 CFR 212.23(o).

<sup>111</sup> See Internal Revenue Service (IRS), Earned Income Tax Credit (EITC), available at <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit>.

<sup>112</sup> See IRS Pub. 596, Cat. No. 15173A, *Earned Income Credit (EIC)* (Jan. 16, 2018); Spreng, J., *When "Welfare" Becomes "Work Support": Exempting Earned Income Tax Credit Payments in Consumer Bankruptcy*, 78 Am. Bankr. L.J. 279, 281 (2004). See also, e.g., *In re Hardy*, 787 F.3d 1189, 1194-96 (8th Cir. 2015) (discussing the federal "Additional Child Tax Credit," 26 U.S.C. 24(d)); The Earned Income Tax Credit (EITC): Administrative and Compliance Challenges, CRS Report for Congress, 2015 WL 188021 (April 9 2015); The Earned Income Tax Credit: A Growing Form of Aid to Low-Income Work, CRS 93-384 EPW, 1993 WL 739665 (Oct. 20, 1993).

In formulating the proposed definition of public benefits, DHS contemplated the definition of public benefits in PRWORA and the exclusion of certain public benefits under current public charge inadmissibility policy. In 1996, PRWORA, with certain exceptions, defined Federal public benefits as “any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and . . . any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.”<sup>113</sup> Despite this broad definition of public benefits, DHS currently focuses on only on public benefits that involve the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense.<sup>114</sup> DHS’s current policy excludes non-cash, supplemental, and certain limited cash, special purpose benefits entirely from the public charge determination.

DHS believes the definition of public benefits as stated in PRWORA is in some respects too broad for public charge purposes, but DHS also believes that current consideration of only public cash assistance for income maintenance or institutionalization for long-term care at government expense is too narrow. As explained above, the ordinary meaning of public charge focuses on the alien’s ability to support him or herself and any dependents. Considering public charge, the BIA expanded on this point by differentiating “individualized public support to the needy”

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<sup>113</sup> See 8 U.S.C. 1611(c)(1) and (2).

<sup>114</sup> See 64 FR 28689 (May 26, 1999).

from essentially supplementary benefits that are available to “the general welfare of the public as a whole.”<sup>115</sup> The proposed definition of “public benefits” therefore focuses on individual receipt of benefits based on means-testing or with the intention of fulfilling basic human needs, rather than forms of government assistance that are provided to the public more generally.

Since 1999, cash assistance for income maintenance has explicitly been considered as part of the public charge inadmissibility determination, but non-cash public benefits have been excluded from the determination.<sup>116</sup> Consideration of non-cash public benefits, however, is also relevant to the definition of public charge and to public charge determinations. Using the 2014 Panel of the Survey of Income and Program Participation (SIPP), DHS analyzed data detailing the participation rates for various cash and non-cash federal public benefits programs.<sup>117</sup> The results suggest that receipt of certain non-cash public benefits is generally more prevalent than receipt of cash benefits, and that use or receipt of non-cash benefits therefore should be considered in public charge determinations.<sup>118</sup> When parsed by nativity and citizenship status, the results also suggest

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<sup>115</sup> See *Matter of Harutunian*, 14 I&N Dec. at 589.

<sup>116</sup> See 64 FR 28689 (May 26, 1999).

<sup>117</sup> The 2014 Panel represents the most recent full year of data, and may not represent current participation rates.

<sup>118</sup> The SIPP is a longitudinal survey providing detailed information about public benefit receipt and the economic status of the U.S. civilian non-institutionalized population residing in households or group quarters. See U.S. Census Bureau, *Survey of Income and Program Participation: 2014 Panel Users' Guide* (2016), available at <https://www.census.gov/content/dam/Census/programs-surveys/sipp/methodology/2014-SIPP-Panel-Users-Guide.pdf> (last visited Feb. 3, 2018). In this proposed rule, estimates of income, poverty, and program participation by immigration status are produced from the September 27, 2017 re-release of Wave 1 of the SIPP. See: **Release Notes: 2014 SIPP Wave 1**, <https://www2.census.gov/programs-surveys/sipp/tech-documentation/2014/2014-wave1-releasenotes.pdf>. The 2014 Panel may be used for estimates representative of any month in calendar year 2013. In Tables 1 through 22, below, annual averages are presented, which are averages across the 12 monthly estimates for the calendar year. Estimates represent persons residing in the household at the time of the interview, and exclude those who lived in the household during the month but not at the time of interview (referred to as “Type 2” people in SIPP documentation). See *id.*; see also Memorandum from James B. Treat, Chief, Demographic Statistical Methods Division, to Jason Fields, Survey Director, Source and Accuracy Statement for Wave 1 Public Use Files (S&A-20)

comparable levels of program participation by foreign-born and native-born individuals. DHS recognizes that the SIPP Panel provides data based on nativity and citizenship status, but does not provide data based on immigration classification. As a result, the SIPP data do not align precisely with the populations covered by this rule – for instance, the results include refugees, asylees, and other populations that may access public benefits but are not subject to the public charge ground of inadmissibility. Notwithstanding this limitation, DHS believes the SIPP data on foreign-born participation is instructive with respect to the use of non-cash benefits by this population on the whole. DHS welcomes comments on its use of this data, and whether alternative reliable data sources are available.

Table 2 shows public benefit participation, by nativity, in 2013. The total population studied was 310,867,000. The data show that the rate of receipt for non-cash public benefits was almost 19 percentage points higher than the receipt of cash public benefits among the total population of people receiving public benefits. Specifically, 3.5 percent (10,799,000) of the total population receiving public benefits received cash benefits and 22.3 percent (69,303,000) received non-cash benefits.<sup>119</sup>

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(Apr. 7, 2017) (hereinafter Source and Accuracy Statement), *available at* <https://www2.census.gov/programs-surveys/sipp/tech-documentation/source-accuracy-statements/2014/sipp-2014-source-and-accuracy-statement.pdf> (last visited Dec. 3, 2018).

<sup>119</sup> In the discussion of SIPP data in this proposed rule, the estimates provided are based on a sample, which may not be identical to the totals and rates if all households and group quarters in the population were interviewed. The standard errors provided in the tables give an indication of the accuracy of the estimates. Any estimate for which the estimate divided by its standard error (the relative standard error) is greater than 30 percent is considered unreliable. The standard errors themselves are estimates, and were calculated using design effects described in the Source and Accuracy Statement (U.S. Census Bureau, 2017). Participation in Supplemental Nutrition Assistance Program (SNAP), Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), Temporary Assistance for Needy Families (TANF), and General Assistance (GA) for a given month are identified by the monthly coverage variables for those benefits. These variables identify household members who were eligible for the benefit and were reported as being covered in the given month. Supplemental Security Income (SSI) and Medicaid reciprocity are defined by the coverage spell; if a given month is contained in the range of months of coverage, then the individual is identified as a recipient of the benefit for that month. Monthly data for energy assistance and



Table 2 also shows a comparison between public benefit participation among native-born and foreign-born<sup>120</sup> individuals.<sup>121</sup> The data show that participation rates were generally comparable for these populations. For example, 3.4 percent of native-born individuals (9,285,000) and 3.7 percent of foreign-born individuals (1,514,000) participated in some form of cash benefit program. Similarly, 22.1 percent of native-born individuals (59,578,000) and 22.7 percent of foreign-born individuals (9,408,000) participated in some form of non-cash benefit program. Among non-cash benefits programs, participation rates were highest for Medicaid and the Supplementary Nutrition Assistance Program (SNAP) for both the native and foreign-born populations. Medicaid participation rates were 16.1 percent (43,301,000) among native-born individuals and

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indicators of whether gas vouchers for transportation were received is not available. The indicator of energy assistance identifies households that received assistance in any month of the year, and receipt of gas vouchers identifies households for which an individual present in the household was eligible for and received assistance in the last month of the reference period. The housing benefit is an indicator of receipt of housing vouchers for the given month. For general reference, see the following publications, in addition to the cited sources in the preceding footnotes: Carmen DeNavas-Walt and Bernadette D. Proctor, U.S. Census Bureau, Current Population Reports: Income and Poverty in the United States: 2013, No. P60-249 (2014); Kayla Fontenot, Lewis H. Warren, and Abinash Mohanty, U.S. Census Bureau, Current Population Reports: Monthly and Average Monthly Poverty Rates by Selected Demographic Characteristics: 2013, No. P70BR-145 (2017).

<sup>120</sup> The U.S. Census Bureau uses the terms native and native-born to refer to anyone born in the United States, Puerto Rico, a U.S. Island Area (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the U.S. Virgin Islands), or abroad of a U.S. citizen parent or parents. The foreign-born population includes anyone who is not a U.S. citizen at birth. This includes naturalized U.S. citizens, lawful permanent residents (immigrants), temporary migrants (such as foreign students), humanitarian migrants (such as refugees and asylees), and unauthorized migrants. The U.S. Census Bureau collects data from all foreign-born who participate in its censuses and surveys, regardless of legal status. Status on the public-use files is limited to foreign-born status, U.S. citizenship, naturalization status, and an indicator of lawful permanent resident status at entry, year of entry, and region of birth. Further status classification, such as visa type, refugee and asylee status, and country of birth, are unavailable. See U.S. Census Bureau, About Foreign-Born Population, <https://www.census.gov/topics/population/foreign-born/about.html> (last visited Feb. 3, 2018).

<sup>121</sup> Throughout this preamble, DHS cites studies, surveys, and its own data analysis of public benefits programs, participation rates, poverty levels, and other variables. The purpose of this discussion is to demonstrate how variables such as cash benefits, non-cash benefits, age, health, family considerations, income, education, and skills are relevant to poverty levels, public benefit participation rates, and ultimately prospective public charge determinations. In citing studies, surveys, and data analysis that compare native-born to foreign-born individuals and households, DHS does not argue or infer that either native-born or foreign-born individuals are more or less healthy, financially secure, impoverished, educated, or skilled than each other.

15.1 percent (6,272,000) among foreign-born persons, while participation rates in SNAP among native-born and foreign-born populations are 11.6 percent (31,308,000) and 8.7 percent (3,605,000), respectively. Although these results do not precisely align with the categories of aliens subject to this rule, they support the general proposition that non-cash public benefits play a significant role in the Nation’s social safety net, including with respect to the foreign-born population generally.

**Table 2: Public Benefit Participation by Nativity, 2013 (in thousands)**<sup>122</sup>

Program	Total population			Native-born			Foreign-born		
	Population			Population	% of Total Population		Population	% of Total Population	
	310,867			269,413	86.7%		41,454	13.3%	
	Total	Pct.	S.E.	Total	Rate	S.E.	Total	Rate	S.E.
<i>Cash benefits</i>									
Cash	10,799	3.5%	0.1%	9,285	3.4%	0.1%	1,514	3.7%	0.3%
SSI	7,906	2.5%	0.1%	6,590	2.4%	0.1%	1,316	3.2%	0.3%
TANF	2,254	0.7%	0.0%	2,124	0.8%	0.0%	130	0.3%	0.1%
GA	947	0.3%	0.0%	844	0.3%	0.0%	*103	*0.2%	0.1%
<i>Non-cash ben.</i>									
Medicaid	68,987	22.2%	0.2%	59,578	22.1%	0.2%	9,408	22.7%	0.7%
SNAP	49,573	15.9%	0.2%	43,301	16.1%	0.2%	6,272	15.1%	0.6%
WIC	34,913	11.2%	0.2%	31,308	11.6%	0.2%	3,605	8.7%	0.4%
Housing Subsidy	6,449	2.1%	0.1%	5,848	2.2%	0.1%	601	1.4%	0.2%
Energy Assist.	4,932	1.6%	0.1%	4,215	1.6%	0.1%	718	1.7%	0.2%
	12,431	4.0%	0.1%	10,455	3.9%	0.1%	1,976	4.8%	0.3%
	14,922	4.8%	0.1%	13,244	4.9%	0.1%	1,679	4.1%	0.3%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).

\* Estimate is considered unreliable due to a high relative standard error.

- Estimate of zero

Tables 3 and 4 show a more detailed analysis of the welfare participation data for foreign-born persons. Although the definition of foreign-born includes naturalized citizens and lawful permanent residents, for these groups, the data evince a similar pattern: greater non-cash program participation than cash program participation. Table 3

<sup>122</sup> Public Benefit program acronyms highlighted in this table and those that follow include Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), General Assistance (GA), Supplemental Nutrition Assistance Program (SNAP), and Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

also reflects that naturalized citizens were less likely to receive non-cash benefits (20.6 percent) compared to foreign-born who had not naturalized (24.9 percent) and were more likely to receive cash benefits (5.4 percent) than those who had not naturalized (1.8 percent).

Total Population 310,867	Naturalized			Not naturalized		
	Population 21,291	% of Total Population 6.8%		Population 20,163	% of Total Population 6.5%	
<b>Program</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>
<i>Cash benefits</i>	1,144	5.4%	0.5%	370	1.8%	0.3%
SSI	1,062	5.0%	0.5%	254	1.3%	0.2%
TANF	57	0.3%	0.1%	73	0.4%	0.1%
GA	56	0.3%	0.1%	47	0.2%	0.1%
<i>Non-cash ben.</i>	4,377	20.6%	0.9%	5,031	24.9%	0.9%
Medicaid	3,142	14.8%	0.8%	3,130	15.5%	0.8%
SNAP	1,776	8.3%	0.6%	1,828	9.1%	0.6%
WIC	151	0.7%	0.2%	450	2.2%	0.3%
Housing	431	2.0%	0.3%	287	1.4%	0.3%
Rent Subsidy	1,107	5.2%	0.5%	869	4.3%	0.4%
Energy Assist.	910	4.3%	0.5%	769	3.8%	0.4%

Source: USCIS analysis of Wave 1 of the 2014 SIPP.

\* Estimate is considered unreliable due to a high relative standard error.

- Estimate of zero

Table 4 reflects that foreign-born lawful permanent residents showed comparable rates of program participation as the native-born population and overall foreign-born population. For example, 3.8 percent of lawful permanent residents received cash benefits and 23.1 percent received non-cash benefits. These results cover both naturalized citizens and other foreign-born individuals.

<b>Table 4: Public Benefit Participation of Foreign-Born, by Class of Admission to the U.S. (Lawful Permanent Resident or Other), 2013 (in thousands)</b>						
<b>Total Population</b> 310,867	<b>LPR</b>			<b>Other</b>		
	<b>Population</b> 26,170	<b>% of Total Population</b> 8.4%		<b>Population</b> 15,283	<b>% of Total Population</b>	
<b>Program</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>
<i>Cash benefits</i>						
SSI	1,004	3.8%	0.4%	510	3.3%	0.4%
TANF	854	3.3%	0.3%	462	3.0%	0.4%
GA	109	0.4%	0.1%	21	0.1%	0.1%
	69	0.3%	0.1%	35	0.2%	0.1%
<i>Non-cash ben.</i>						
Medicaid	6,041	23.1%	0.8%	3,367	22.0%	1.0%
SNAP	4,116	15.7%	0.7%	2,155	14.1%	0.9%
WIC	2,292	8.8%	0.6%	1,313	8.6%	0.7%
Housing	336	1.3%	0.2%	265	1.7%	0.3%
Rent Subsidy	453	1.7%	0.3%	264	1.7%	0.3%
Energy Assist.	1,274	4.9%	0.4%	702	4.6%	0.5%
	1,167	4.5%	0.4%	512	3.4%	0.4%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).

\* Estimate is considered unreliable due to a high relative standard error.

- Estimate of zero

In short, the data from Tables 2 through 4 show that for native-born and foreign-born populations alike, non-cash public benefits play a significant role in many peoples' lives. DHS does not believe it is appropriate to set aside such benefits in its public charge analyses. DHS, therefore, proposes to consider cash and non-cash public benefits that are means-tested or otherwise used to meet basic living requirements.

#### **4. Government**

DHS is proposing to define “government” as any U.S. Federal, State, Territorial, tribal, or local government entity or entities.<sup>123</sup> The term government is generally used in the regulation to refer to the source of public benefits. Specifically, DHS may review any public benefits from any government entity, as permitted by law.

#### **5. Subsidized Health Insurance**

DHS is also proposing to define subsidized health insurance for the purposes of public charge determinations. DHS proposes to define subsidized health insurance as any health insurance for which the premiums are partially or fully paid by a government agency, on a non-earned basis, including but not limited to, advanced premium tax credits, tax credits, or other forms of reimbursement.<sup>124</sup> Subsidized health insurance may include non-emergency benefits under Medicaid, CHIP, and health insurance under the Patient Protection and Affordable Care Act (ACA) that has a premium tax credit or cost-sharing subsidy.<sup>125</sup>

#### **C. Public Charge Inadmissibility Determination**

DHS proposes codifying the public charge inadmissibility determination as a prospective determination. Except for the absence of a required affidavit of support, DHS intends to base a public charge inadmissibility determination on the totality of an alien’s circumstances at the time the determination is made.

#### **1. Prospective Determination**

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<sup>123</sup> See proposed 8 CFR 212.21(c).

<sup>124</sup> See generally, Health Care.gov, Subsidized Coverage, available at [www.healthcare.gov/glossary/subsidized-coverage](http://www.healthcare.gov/glossary/subsidized-coverage).

<sup>125</sup> See section V. Discussion, subsection E, Health. Information on whether the health insurance has a subsidy is available through Form 1095-A, Health Insurance Marketplace Statement.

Section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), uses the words “likely at any time.”<sup>126</sup> It is consistent with the plain language of the statute that the review is forward looking. DHS’s review, then, would be predictive: an assessment of an alien’s likelihood at any time in the future to become a public charge.<sup>127</sup>

## **2. Absence of a Required Affidavit of Support**

The absence of a statutorily required affidavit of support under section 213A of the INA, 8 U.S.C. 1183a, conclusively establishes an alien’s inadmissibility on public charge grounds.<sup>128</sup> Family-sponsored immigrants and employment-based immigrants petitioned by a relative are subject to such a requirement.<sup>129</sup>

Section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), also permits DHS to consider any submitted affidavit of support under 213A of the INA, 8 U.S.C. 1183a, in public charge inadmissibility determinations. Other than failure to submit an affidavit of support when required under section 213A of the INA, 8 U.S.C. 1183a, DHS would not make a public charge determination based on any single factor.<sup>130</sup>

## **3. Totality of Circumstances**

DHS proposes to codify the totality of the circumstances standard.<sup>131</sup> Since IIRIRA, a public charge inadmissibility determination has entailed consideration of the following statutory factors: an alien’s age, health, family status, assets, resources, financial status, education, skills, and sponsorship.<sup>132</sup> Courts previously considered

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<sup>126</sup> See *id.* The “likely” language in the public charge inadmissibility provision also appeared in the initial codification in the INA of 1952. See Pub. L. 4-14, 66 Stat. 163, 183 (June 27, 1952).

<sup>127</sup> See *Matter of Perez*, 15 I&N Dec. 136 (BIA 1974)

<sup>128</sup> See INA section 212(a)(4)(C), 8 U.S.C. 1182(a)(4)(C); 8 CFR 213a.2.

<sup>129</sup> See INA section 212(a)(4), 8 U.S.C. 1182(a)(4), and INA section 213A, 8 U.S.C. 1183a.

<sup>130</sup> See generally *Matter of Martinez-Lopez*, 10 I&N 409, 421-422 (A.G. 1964).

<sup>131</sup> See proposed 8 CFR 212.22(a) and 212.22(b).

<sup>132</sup> See Pub. L. 104–208 (September 30, 1996). See also INA section 212(a)(4)(B), 8 U.S.C. 1182(a)(4)(B).

similar factors when evaluating the likelihood of an alien to become a public charge.<sup>133</sup>

INS and DHS have consistently reviewed the totality of the circumstances in determining whether an alien is likely to become a public charge.<sup>134</sup>

DHS's proposed standard would involve weighing all the positive and negative considerations related to an alien's age, health, family status, assets and resources, financial status, education and skills, any required affidavit of support, and any other factor or circumstance that may warrant consideration in the determination.<sup>135</sup> DHS would also consider the alien's immigration status as part of this determination.

DHS proposes that certain factors and circumstances would carry heavy weight, as discussed below. Otherwise, the weight given to an individual factor would depend on the particular facts and circumstances of each case and the relationship of the factor to other factors in the analysis. For negative factors, some facts and circumstances may be mitigating while other facts and circumstances may be aggravating. Any factor or circumstance that decreases the likelihood of an applicant becoming dependent on public benefits is mitigating. Similarly, any factor or circumstance that increases the likelihood of an applicant becoming dependent on public benefits is aggravating. Multiple factors operating together may be weighed more heavily since those factors in tandem may show that the alien may already be a public charge, he or she is likely to become a public charge, or he or she is not likely to be public charge.

For example, an alien's assets, resources, and financial status together would

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<sup>133</sup> See, e.g., *Matter of Perez*, 15 I&N Dec. 136 (BIA 1974). See also, *Zambrano v. INS*, 972 F.2d 1122 (9th Cir. 1992), judgment vacated on other grounds, 509 U.S. 918 (1993). See also, 64 FR 28689 (May 26 1999); *Matter of Martinez-Lopez*, 10 I&N at 421-422.

<sup>134</sup> See *Matter of A-*, 19 I&N Dec. 867, 869 (BIA 1988) (citing *Matter of Perez*, 15 I&N Dec. at 137.)

<sup>135</sup> See proposed 8 CFR 212.22.

frequently carry the most weight, because they are the most tangible factors to consider in public charge determinations. An alien's assets, resources, and financial status examined together may show that the alien is not likely to be a public charge despite concerns about the alien's age, education, skills, and health. At the same time, an alien's assets, resources, and financial status examined together may show that the alien is likely to become a public charge despite positive attributes associated with the alien's education, skills, health, family status, age, and sponsorship.

Ultimately, if the positive factors and circumstances outweigh the negative factors and circumstances, then DHS would find that the alien is not likely to become a public charge. If the negative factors and circumstances outweigh the positive factors and circumstances, then DHS would conclude that the applicant is likely to become a public charge.

#### **D. Age**

An alien's age is a mandatory factor that must be considered when making a public charge determination.<sup>136</sup> As discussed below, a person's age may impact his or her ability to legally or physically work or otherwise be self-sufficient, and is therefore relevant to the public charge determination. Accordingly, DHS proposes to consider the alien's age in relation to employment primarily, and other factors as relevant to the public charge determination. Specifically, DHS proposes to assess whether the alien is between the minimum age for full-time employment (*see, e.g.*, 29 U.S.C. 213(c)) and the minimum "early retirement age" for social security purposes (*see* 42 U.S.C. 416(l)(2)) (between 18 and 61 as of 2017), and whether the alien's age otherwise makes the alien

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<sup>136</sup> *See* proposed 8 CFR 212.22(b)(1). *See* INA section 212(a)(4)(B), 8 U.S.C. 1182(a)(4)(B).



more or less likely to become a public charge, such as by impacting alien's ability to work.

The 18 through 61 age range is based on the age at which at which people are generally able to work full time and the age at which people are generally able to retire with some social security retirement benefits under Federal law.<sup>137</sup> At one end of the spectrum, children under the age of 18 years generally face difficulties working full time.<sup>138</sup> In general, the Fair Labor Standards Act generally sets 14 years of age as the minimum age for employment, and limits the number of hours worked by children until the age of 16.<sup>139</sup> Most children under the age of 18 are full-time students and most States require children to attend school.<sup>140</sup>

At the other end of the age range, full retirement is the age at which a person may receive full retirement benefits from Social Security.<sup>141</sup> The minimum age for retirement is generally 62.<sup>142</sup> Under the Social Security program, a U.S. worker is generally eligible for Social Security benefits if he or she has paid social security taxes after having worked at least 10 years during which he or she has earned 40 quarters of credit for income. In addition, as people age, they may become eligible for other earned or paid for benefits, including Medicare and benefits from an employer pension or retirement benefit.

Other age-related considerations may also be relevant to public charge

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<sup>137</sup> See proposed 8 CFR 212.22(b)(1). See 29 U.S.C. 213(c) and 42 U.S.C. 416(l)(2).

<sup>138</sup> See 29 U.S.C. 213(c), and 29 CFR Part 570. See also Department of Labor, Table of Employment/Age Certification Issuance Practice Under State Child Labor Laws, <https://www.dol.gov/whd/state/certification.htm> (last visited Feb. 3, 2018).

<sup>139</sup> See *id.*

<sup>140</sup> See National Center for Education Statistics, Table 5.1. Compulsory school attendance laws, minimum and maximum age limits for required free education, by state: 2015, available at [https://nces.ed.gov/programs/statereform/tab5\\_1.asp](https://nces.ed.gov/programs/statereform/tab5_1.asp).

<sup>141</sup> See 42 U.S.C. 417(l). See also SSA, Retirement Planner: Benefits By Year of Birth, available at <https://www.ssa.gov/planners/retire/agereduction.html>.

<sup>142</sup> See *id.*

inadmissibility determinations, in individual circumstances. Individuals under the age of 18 may be more susceptible to and more likely to use and receive public benefits. The U.S. Census Bureau reported that 18 percent of persons under the age of 18 (13,253,000) lived below the poverty level in 2016.<sup>143</sup> The U.S. Census Bureau also reported that persons under the age of 18 were more likely to receive means-tested benefits than all other age groups. In an average month during 2012, 39.2 percent of children received some type of means-tested benefit.<sup>144</sup> Some benefits may only be available for people under the age of 18. For example, children are the primary beneficiaries of CHIP, which provides low-cost health coverage for children in families that earn too much money to qualify for Medicaid.<sup>145</sup>

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<sup>143</sup> See U.S. Census Bureau, *Income and Poverty in the United States: 2016*, Table 3. People in Poverty by Selected Characteristics: 2015 and 2016, available at <https://www.census.gov/content/dam/Census/library/publications/2017/demo/P60-259.pdf> (last visited Feb. 3, 2018).

<sup>144</sup> According to U.S. Census, persons under the age of 18 were more likely to receive means-tested benefits than all other age groups. In an average month during 2012, 39.2 percent of children received some type of means-tested benefit, See Shelley K. Irving and Tracy A. Loveless, U.S. Census Bureau, *Household Economic Studies, Dynamics of Economic Well-Being: Participation in Government Programs, 2009–2012: Who Gets Assistance?*, at 6 (May 2015), available at <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf> (last visited Feb. 3, 2018). See also U.S. Census Bureau, News Release, *21.3 Percent of U.S. Population Participates in Government Assistance Programs Each Month* (May 28, 2015) <https://www.census.gov/newsroom/press-releases/2015/cb15-97.html> (last visited Feb. 3, 2018).

<sup>145</sup> See 42 CFR Part 457; see also U.S. Centers for Medicare & Medicaid, The Children's Health Insurance Program (CHIP), <https://www.healthcare.gov/medicaid-chip/childrens-health-insurance-program> (last visited Feb. 3, 2018).

The relationship between advanced age and receipt of public benefits, however, is much less clear. DHS' analysis of SIPP data in Tables 4 and 5 shows foreign-born individuals age 62 and older were more likely to receive or use cash benefits than individuals in other age groups in 2013. 15.4 percent of foreign-born persons age 62 and older received or used some form of cash benefit in 2013 compared to 1 to 2 percent of foreign-born in other age groups. Among foreign-born persons, the receipt of non-cash benefits was much more pronounced among individuals over the age of 61 (29.9 percent) than individuals aged 18-61 (19.7 percent), particularly with respect to Medicaid and SNAP participation rates. **Table 5 Public Benefit Participation Among Native-Born by Age, 2013 (in thousands)**

Total Population	0-17			18-61			62+		
	Population	% of Total Population		Population	% of Total Population		Population	% of Total Population	
310,867	67,885	21.8%		151,990	48.9%		49,538	15.9%	
Program	Total	Pct.	S.E.	Total	Rate	S.E.	Total	Rate	S.E.
<i>Cash benefits</i>	2,707	4.0%	0.2%	5,018	3.3%	0.1%	1,561	3.2%	0.2%
SSI	1,005	1.5%	0.1%	4,105	2.7%	0.1%	1,480	3.0%	0.2%
TANF	1,556	2.3%	0.2%	558	0.4%	0.0%	11	0.0%	0.0%
GA	240	0.4%	0.1%	480	0.3%	0.0%	123	0.2%	0.1%
<i>Non-cash ben.</i>	28,129	41.4%	0.5%	25,835	17.0%	0.3%	5,614	11.3%	0.4%
Medicaid	24,927	36.7%	0.5%	15,348	10.1%	0.2%	3,025	6.1%	0.3%
SNAP	14,043	20.7%	0.4%	14,793	9.7%	0.2%	2,473	5.0%	0.3%
WIC	4,184	6.2%	0.3%	1,663	1.1%	0.1%	1	0.0%	0.0%
Housing	1,777	2.6%	0.2%	2,108	1.4%	0.1%	330	0.7%	0.1%
Rent Subsidy	3,857	5.7%	0.3%	5,173	3.4%	0.1%	1,425	2.9%	0.2%
Energy Assist.	4,863	7.2%	0.3%	6,526	4.3%	0.2%	1,855	3.7%	0.2%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).

\* Estimate is considered unreliable due to a high relative standard error.

- Estimate of zero

**Table 6 Public Benefit Participation among Foreign-Born by Age, 2013 (in thousands)**

Total Population	0-17		18-61		62+	
	Population	% of Total Population	Population	% of Total Population	Population	% of Total Population
310,867	2,509	0.8%	32,074	10.3%	6,871	2.2%

<b>Program</b>	<b>Total</b>	<b>Pct.</b>	<b>S.E.</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>
<i>Cash benefits</i>	37	1.5%	0.7%	419	1.3%	0.2%	1,057	15.4%	1.4%
SSI	-	-	-	281	0.9%	0.2%	1,035	15.1%	1.4%
TANF	37	1.5%	0.7%	93	0.3%	0.1%	-	-	-
GA	-	-	-	59	0.2%	0.1%	44	0.6%	0.3%
<i>Non-cash ben.</i>	1,039	41.4%	2.9%	6,314	19.7%	0.7%	2,055	29.9%	1.8%
Medicaid	890	35.5%	2.8%	3,859	12.0%	0.6%	1,522	22.2%	1.6%
SNAP	373	14.9%	2.1%	2,284	7.1%	0.5%	947	13.8%	1.3%
WIC	40	1.6%	0.7%	556	1.7%	0.2%	6	0.1%	0.1%
Housing	75	3.0%	1.0%	397	1.2%	0.2%	246	3.6%	0.7%
Rent Subsidy	163	6.5%	1.5%	1,128	3.5%	0.3%	685	10.0%	1.1%
Energy Assist.	155	6.2%	1.4%	1,144	3.6%	0.3%	380	5.5%	0.9%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).

\* Estimate is considered unreliable due to a high relative standard error.

- Estimate of zero

Regardless of age, DHS recognizes that an alien may have financial assets, resources, earned benefits or support that decrease his or her likelihood of becoming a public charge.<sup>146</sup>

### **E. Health**

An alien's health is a factor that must be considered when making a public charge determination.<sup>147</sup> Prior to Congress establishing health as a factor for the public charge determination, courts, the BIA and INS had also held that a person's physical and mental condition was of major significance to the public charge determination, generally in

<sup>146</sup> For example, a person or the person's spouse may have sufficient income, or savings, investments, or other resources. In addition, as people age, they may become eligible for certain earned benefits including Social Security benefits, Old Age, Survivors, and Disability Insurance benefits, health insurance from Medicare, and benefits from an employer pension or retirement benefit.

<sup>147</sup> See proposed 8 CFR 212.22(b)(2). See INA section 212(a)(4), 8 U.S.C. 1182(a)(4).

relation to the ability to earn a living.<sup>148</sup> Accordingly, DHS proposes that when considering an alien's health, DHS will consider whether the alien has any medical condition, and whether such condition makes it more or less likely that the alien will become a public charge, including whether the alien's ability to work is affected by the medical condition, or has non-subsidized health insurance or the assets and resources to pay for medical costs. The mere presence of a medical condition would not necessarily render an alien inadmissible. Instead, DHS would consider the existence of a medical condition in light of the effect that such medical condition is likely to have on the alien's ability to work, as well as whether the alien has unsubsidized health insurance or the financial resources to pay for the medical costs, among other relevant considerations.

Research and data establish healthcare is costly, particularly for the government. In 2016, the National Health Expenditure (NHE) grew to \$3.3 trillion, or 10,348 per person, which represents an increase of 4.3 percent from 2015.<sup>149</sup> Medicaid spending, which is 17 percent of the total NHE, grew by 3.9 percent to \$565.5 billion.<sup>150</sup> The Federal Government (28.3 percent) and households (28.1 percent) paid the largest shares of total health spending.<sup>151</sup>

An alien's medical conditions may impose costs that a person is unable to afford, and may also reduce that person's ability to work or financially support him or herself. Such medical conditions may also increase the likelihood that the alien could need

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<sup>148</sup> See, e.g., *Matter of Martinez-Lopez*, 10 I&N Dec. at 421–423; see also *Matter of A-*, 19 I&N Dec. at 869 (citing *Matter of Harutunian*, 14 I&N Dec. 583 (R.C. 1974); *Matter of Vindman*, 16 I&N Dec. 131 (R.C. 1977)).

<sup>149</sup> See U.S. Centers for Medicare & Medicaid Services, *NHE Fact Sheet*, available at <https://www.cms.gov/research-statistics-data-and-systems/statistics-trends-and-reports/nationalhealthexpenddata/nhe-fact-sheet.html> (last visited Feb. 3, 2018).

<sup>150</sup> See *id.*

<sup>151</sup> See *id.*

Medicaid or other government funded health insurance programs. However, DHS recognizes that regardless of the alien's health status, the alien may have financial assets, resources, or support, including private health insurance, that allows him or her to be self-sufficient.<sup>152</sup>

DHS also recognizes that the Rehabilitation Act of 1973 and other laws prevent discrimination by employers and others against individuals with disabilities.<sup>153</sup> In another context, Congress has stated that “[d]isability is a natural part of the human experience and in no way diminishes the right of individuals to . . . contribute to society; pursue meaningful careers; and enjoy full inclusion and integration in the economic, political, social, cultural, and educational mainstream of American society.”<sup>154</sup>

Individuals and aliens with disabilities make substantial contributions to the American economy. In addition, while some disabilities are related to medical conditions that require ongoing medical care, others conditions may not require ongoing medical care.

Nevertheless, an alien's inability to work due to a medical condition could keep the alien from being self-sufficient, and failure to maintain health insurance could make it particularly difficult for aliens with medical conditions to remain self-sufficient. In addition, long-term health care expenses could decrease an individual's available financial resources.

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<sup>152</sup> For example, a person may have savings, investments or trust funds.

<sup>153</sup> Rehabilitation Act of 1974, Pub. L. 93-112, § 504, codified as amended at 29 U.S.C. § 794 (prohibiting employment discrimination solely on the basis of disability in Federal and federally-funded programs and activities); Americans with Disabilities Act of 1990, Pub. L. 101-336, § 102, 104 Stat. 331, codified as amended at 42 U.S.C. § 12112 (prohibiting several forms of disability discrimination in hiring for covered entities). In addition, State and Federal law prohibiting many forms of discrimination against persons with disabilities in the workplace helps ensure that mere disability, on its own, does not represent an adverse factor in predicting an individual's ability to earn a sufficient income to support himself or herself and any dependents.

<sup>154</sup> See 29 U.S.C. 701.

## 1. USCIS Evidentiary Requirements

DHS also proposes that USCIS will consider the following types of evidence, at a minimum, as part of the health factor: (1) any Report of Medical Examination and Vaccination Record (Form I-693) or Medical Examination For Immigrant or Refugee Applicant (Form DS-2054) submitted in support of the application for the diagnosis of any medical conditions; (2) evidence of non-subsidized health insurance; and (3) evidence of assets and resources.

### *(i) Medical Conditions Identified in Medical Examination*

DHS proposes that USCIS would assess the alien's health for purposes of the public charge determination based on a civil surgeon's findings in a Form I-693 or a panel physician's findings in a Form DS-2054 and any related documents, where such forms are otherwise required for the immigration benefit that the person seeks.<sup>155</sup> Requiring USCIS to base its public charge inadmissibility determination on these forms would help standardize USCIS's application of this factor.

Civil surgeons and panel physicians test for Class A<sup>156</sup> and Class B<sup>157</sup> medical conditions, and report the findings on the appropriate medical examination form. Class A medical conditions as defined in HHS regulations include the following:<sup>158</sup>

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<sup>155</sup> Most applicants need a medical examination and vaccination record with their immigrant visa or adjustment of status application to establish that they are not inadmissible under section 212(a)(1) of the INA. The medical examination documentation indicates whether the applicant has either a Class A or Class B medical condition. In addition, the alien must provide a vaccination record.<sup>155</sup> Class A and Class B medical conditions are defined in the HHS regulations. *See* 42 CFR 34.2.

<sup>156</sup> The alien would be inadmissible for health-related grounds under section 212(a)(1) of the INA, 8 U.S.C. 1182(a)(1).

<sup>157</sup> Class B medical conditions do not make an alien inadmissible on health-related grounds under section 212(a)(1) of the INA, 8 U.S.C. 1182(a)(1), but are relevant to the public charge determination.

<sup>158</sup> *See* 42 CFR 34.2(d). The alien would be inadmissible based on health-related grounds under section 212(a)(1) of the INA, 8 U.S.C. 1182(a)(1). However, these health conditions are also considered as part of the public charge inadmissibility determination.

- Communicable disease of public health significance, including gonorrhea, leprosy (infectious), syphilis (infectious stage), and active tuberculosis;<sup>159</sup>
- Failure to meet vaccination requirements;<sup>160</sup>
- Present or past physical or mental disorders with associated harmful behavior or harmful behavior that is likely to recur;<sup>161</sup> and
- Drug abuse or addiction.<sup>162</sup>

A waiver of the health-related ground of inadmissibility is available for communicable diseases of public health significance, physical or mental disorder accompanied by harmful behavior, and lack of vaccinations.<sup>163</sup> Because Class A medical conditions are part of the immigration medical examination and may also be waived, DHS proposes to consider Class A medical conditions as part of the alien's health factor in the totality of the circumstances.

A Class B medical condition is defined as: a physical or mental disorder that, although does not constitute a specific excludable condition, represents a departure from normal health or well-being that is significant enough to possibly interfere with the person's ability to care for him- or herself, to attend school or work, or that may require extensive medical treatment or institutionalization in the future.<sup>164</sup> The civil surgeon or panel physician must indicate if the alien has a Class B medical condition that amounts to

<sup>159</sup> See 42 CFR 34.2(b) and (d)(1). See also, INA section 212(a)(1)(i), 8 U.S.C. 1182(a)(1)(i).

<sup>160</sup> See 42 CFR 34.2(d). See also, INA section 212(a)(1)(ii), 8 U.S.C. 1182(a)(1)(ii).

<sup>161</sup> See 42 CFR 34.2(d). See also, INA section 212(a)(1)(iii), 8 U.S.C. 1182(a)(1)(iii).

<sup>162</sup> See 42 CFR 34.2(d), (h), (i). See also, INA section 212(a)(1)(iv), 8 U.S.C. 1182(a)(1)(iv).

<sup>163</sup> See INA section 212(g)(1), 8 U.S.C. 1182(g)(1); INA section 212(a)(1)(A)(i), 8 U.S.C. 1182(a)(1)(A)(i). Although a waiver is unavailable for inadmissibility due to drug abuse or addiction, an applicant may still overcome this inadmissibility if his or her drug abuse or addiction is found to be in remission.

<sup>164</sup> See also *Technical Instructions for Panel Physicians and Civil Surgeons*, available at <https://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/technical-instructions/civil-surgeons/medical-history-physical-examination.html>. See also, 42 CFR 34.2.



a substantial departure from normal well-being.<sup>165</sup> Further, the civil surgeon or panel physician must indicate the likelihood, that because of the condition, the alien will require extensive medical care or institutionalization.<sup>166</sup>

Because Class A and Class B medical conditions are part of the immigration medical examination and may decrease an alien's ability to work, DHS proposes to consider these conditions as part of the alien's health factor in the totality of the circumstances. The diagnosis on Form I-693 or DS-2054 of a Class A medical condition and other Class B medical conditions may be considered in the totality of the circumstances but would not serve as the sole factor considered in a public charge inadmissibility determination. Absence of a diagnosis of either a Class A or Class B medical condition is a positive factor.

A person with a medical condition may have increased costs associated with medical care; these costs can strain assets and resources and increase the likelihood that the person will require public benefits such as Medicaid or other subsidized health insurance.<sup>167</sup>

Accordingly, DHS proposes to utilize any findings in the Form I-693 or Form DS-2054, specifically Class A or Class B medical conditions, to evaluate health in the totality of the circumstances. The presence or absence of a medical condition will not receive any particular weight, except insofar as it pertains to estimated ability to work or to estimated health care needs. Conversely, DHS proposes that the absence of any Class A or Class B medical conditions would generally be a positive factor in the totality of the

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<sup>165</sup> See 42 CFR 34.2(b)(2).

<sup>166</sup> See 42 CFR 34.2(c).

<sup>167</sup> In addition, a person may be eligible for Supplemental Security Income (SSI).

circumstances. DHS also proposes to take into consideration any additional medical records or related information provided by the alien to clarify any health condition or health risk included on the medical form or other information that may outweigh any negative factors. Documentation may include proof of health insurance, sufficient funds to cover the costs of medical treatment, and a licensed doctor's attestation of prognosis and treatment of a health issue.

*(ii) Non-Subsidized Health Insurance*

DHS also proposes that USCIS would consider evidence of whether an alien has health insurance as part of the health factor for public charge inadmissibility determinations. Health insurance helps cover the cost of health care. Absent other considerations, a person who has medical conditions or disabilities and lacks unsubsidized health insurance is more likely to need public benefits to cover health costs. Therefore, absent financial resources to cover the costs of medical care and treatment, the lack of unsubsidized health insurance is a negative factor in the totality of the circumstances, while having unsubsidized health insurance is a positive factor.<sup>168</sup>

Subsidized health insurance, as defined in proposed 8 CFR 212.21, may include non-emergency benefits under Medicaid, CHIP, and health insurance under the ACA that has a premium tax credit or cost-sharing subsidy. Some aliens are currently able to obtain subsidized health insurance.<sup>169</sup> The ACA also provides a Basic Health Program

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<sup>168</sup> In 2016, 6,147,000 (26 percent) noncitizens and 1,726,000 (8.4 percent) naturalized citizens did not have health insurance. See U.S. Census Bureau, Current Population Survey, available at <https://www.census.gov/cps/data/cpstablecreator.html> (last visited Feb. 20, 2018) (Nativity and Health Insurance Coverage). In 2005, the estimated number of uninsured noncitizens was 45 percent (9.6 million people). See HHS, Office of the Assistant Secretary for Planning and Evaluation, *Estimating The Number Of Individuals in the U.S. Without Health Insurance*, Table: Immigration Status (Apr. 8, 2005), available at <https://aspe.hhs.gov/dataset/table-1-immigration-status> (last visited Feb. 20, 2018).

<sup>169</sup> See U.S. Census Bureau, *Health Insurance Coverage in the United States: 2016 Current Population Reports* (Sept. 2017), available at

coverage option for lawfully present non-citizens who do not qualify for Medicaid, CHIP, or other minimum essential coverage, but who have an income between 133 and 200 percent of the federal poverty level (FPL).<sup>170</sup> In addition, certain aliens are eligible for Medicaid or CHIP coverage or for exchange subsidies under the ACA and are permitted to purchase unsubsidized coverage through the exchange.<sup>171</sup> While having health insurance is generally a positive factor in the totality of the circumstances, having subsidized insurance will generally be considered a heavily weighed negative factor.

Health insurance helps cover the cost of health care. Therefore, DHS proposes that USCIS would consider whether an alien has non-subsidized health insurance as part of the health factor for public charge determinations. Lack of health insurance would be a negative factor in the totality of the circumstances for any person, while having non-subsidized health insurance would be a positive factor for a person with a medical condition.

**F. Family Status** An applicant's family status is a factor that must be considered when an immigration officer is making a public charge determination.<sup>172</sup>

DHS proposes that when considering this factor, DHS will consider whether the alien being a dependent or having dependent(s), as defined in 8 CFR 212.21, makes it more or less likely that the alien will become a public charge. DHS notes that it would frequently

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<https://www.census.gov/content/dam/Census/library/publications/2017/demo/p60-260.pdf> (last visited Feb. 20, 2018).

<sup>170</sup> See generally U.S. Centers for Medicare and Medicaid Services, Basic Health Program Funding Methodology Final Notice CMS.gov Centers for Medicare & Medicaid Services (Feb. 19, 2015), available at <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2015-Fact-sheets-items/Archived-2015-Fact-sheets-items/2015-02-19-Old.html> (last visited Feb. 20, 2018).

<sup>171</sup> See HHS, Office of The Assistant Secretary for Planning and Evaluation, The Affordable Care Act: Coverage Implications and Issues for Immigrant Families (Apr. 30, 2012), available at <https://aspe.hhs.gov/pdf-report/affordable-care-act-coverage-implications-and-issues-immigrant-families> (last visited Feb. 20, 2018). See also U.S. Centers for Medicare and Medicaid Services, *Serving Special Populations: Immigrants Fast Facts for Agents & Brokers* (undated) available at <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/Immigration-Fact-Sheet.pdf> (last visited Feb. 20, 2018).

<sup>172</sup> See proposed 8 CFR 212.22. See INA section 212(a)(4), 8 U.S.C. 1182(a)(4).

view family status in connection with the alien's assets and resources, because the amount of assets and resources necessary to support a larger number of dependents is generally greater. Thus, as described in the Assets and Resources section below, DHS's proposed standard for evaluating assets and resources requires DHS to consider whether the alien can support him or herself and any dependents as defined in 8 CFR 212.21, at the level of at least 125 percent of the most recent Federal Poverty Guidelines (FPG) based on the household size.

The FPG do not define who should be part of the household as different agencies and programs have different requirements.<sup>173</sup> For the purposes of the FPG, the "poverty threshold" is the original federal poverty measure as defined by the U.S. Census Bureau.<sup>174</sup> The poverty threshold is adjusted to take into account family size, number of children, and age of the family householder (head of household) or unrelated individual.<sup>175</sup>

For the purpose of public charge inadmissibility determinations, the household an alien would need to support includes the alien plus any dependents as provided in the DHS proposed definition.<sup>176</sup> An alien who has no dependents will have a household of 1 and only has to support him or herself.<sup>177</sup> The research and data below discuss how the number of dependents may affect the receipt of public benefits.

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<sup>173</sup> See *Annual Update of the HHS Poverty Guidelines*, 83 FR 2642 (Jan 18, 2018).

<sup>174</sup> See *U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs*, available at <https://aspe.hhs.gov/poverty-guidelines>.

<sup>175</sup> See *Current Population Survey 2017 Annual Social and Economic (ASEC) Supplement*, available at <https://www2.census.gov/programs-surveys/cps/techdocs/cpsmar17.pdf>.

<sup>176</sup> See proposed 8 CFR 212.21(b).

<sup>177</sup> An alien who is someone else's dependent will have to demonstrate that the alien's head of household or a sponsor can support the alien.

The FPG do not define who should be part of the household as different agencies and programs have different requirements.<sup>178</sup> For the purposes of the FPG, the “poverty threshold” is the original federal poverty measure as defined by the U.S. Census Bureau.<sup>179</sup> The poverty threshold is adjusted to take into account family size, number of children, and age of the family householder (head of household) or unrelated individual.<sup>180</sup>

For the purpose of public charge inadmissibility determinations, the household an alien would need to support includes the alien plus any dependents as provided in the DHS proposed definition.<sup>181</sup> An alien who has no dependents will have a household of 1 and only has to support him or herself.<sup>182</sup> The research and data below discuss how the number of dependents may affect the receipt of public benefits.

Tables 7 and Table 8 show that among both the native-born and foreign-born populations, the receipt of non-cash benefits tended to increase as family size increased in 2013. Among the native-born population, individuals in families with 3 or 4 persons were more likely to receive non-cash benefits compared to families of 2, while families of 5 or more were over twice as likely to receive non-cash benefits. Among the foreign-born in families with 3 or 4 people, about 20 percent received non-cash assistance, while about 30 percent of foreign-born families of 5 or more received non-cash benefits.

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<sup>178</sup> See *Annual Update of the HHS Poverty Guidelines*, 83 FR 2642 (Jan. 18, 2018).

<sup>179</sup> See *U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs*, available at <https://aspe.hhs.gov/poverty-guidelines>.

<sup>180</sup> See *Current Population Survey 2017 Annual Social and Economic (ASEC) Supplement*, available at <https://www2.census.gov/programs-surveys/cps/techdocs/cpsmar17.pdf>.

<sup>181</sup> See proposed 8 CFR 212.21(b).

<sup>182</sup> An alien who is someone else’s dependent will have to demonstrate that the alien’s head of household or a sponsor can support the alien.

<b>Table 7. Public Benefit Participation of Native-Bborn, by Family Size, 2013 (in thousands)</b>									
<b>Total Population</b> 310,867	<b>Household of 1</b>			<b>Household of 2</b>			<b>Household of 3</b>		
	<b>Population</b>	<b>% of Total Population</b>	<b>S.E.</b>	<b>Population</b>	<b>% of Total Population</b>	<b>S.E.</b>	<b>Population</b>	<b>% of Total Population</b>	<b>S.E.</b>
	55,887	18.0%		71,080	22.9%		47,282	15.2%	
<b>Program</b>	<b>Total</b>	<b>Pct.</b>	<b>S.E.</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>
<i>Cash benefits</i>	2,743	4.9%	0.3%	1,848	2.6%	0.2%	1,802	3.8%	0.3%
SSI	2,479	4.4%	0.3%	1,427	2.0%	0.2%	1,156	2.4%	0.2%
TANF	80	0.1%	0.0%	269	0.4%	0.1%	530	1.1%	0.1%
GA	261	0.5%	0.1%	192	0.3%	0.1%	185	0.4%	0.1%
<i>Non-cash ben.</i>	10,894	19.5%	0.5%	9,615	13.5%	0.4%	11,080	23.4%	0.6%
Medicaid	6,088	10.9%	0.4%	6,436	9.1%	0.3%	8,386	17.7%	0.5%
SNAP	5,709	10.2%	0.4%	4,865	6.8%	0.3%	5,885	12.4%	0.4%
WIC	247	0.4%	0.1%	780	1.1%	0.1%	1,219	2.6%	0.2%
Housing	927	1.7%	0.2%	611	0.9%	0.1%	883	1.9%	0.2%
Rent Subsidy	3,125	5.6%	0.3%	1,842	2.6%	0.2%	1,908	4.0%	0.3%
Energy Assist.	2,882	5.2%	0.3%	2,540	3.6%	0.2%	2,455	5.2%	0.3%
<b>Total Population</b> 310,867	<b>Household of 4</b>			<b>Household of 5+</b>					
	<b>Population</b>	<b>% of Total Population</b>	<b>S.E.</b>	<b>Population</b>	<b>% of Total Population</b>	<b>S.E.</b>			
	49,861	16.0%		45,303	14.6%				
<b>Program</b>	<b>Total</b>	<b>Pct.</b>	<b>S.E.</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>			
<i>Cash benefits</i>	1,253	2.5%	0.2%	1,639	3.6%	0.3%			
SSI	633	1.3%	0.1%	894	2.0%	0.2%			
TANF	579	1.2%	0.1%	665	1.5%	0.2%			
GA	80	0.2%	0.1%	124	0.3%	0.1%			
<i>Non-cash ben.</i>	11,161	22.4%	0.5%	16,829	37.1%	0.6%			
Medicaid	8,882	17.8%	0.5%	13,510	29.8%	0.6%			
SNAP	5,667	11.4%	0.4%	9,182	20.3%	0.5%			
WIC	1,459	2.9%	0.2%	2,143	4.7%	0.3%			
Housing	742	1.5%	0.2%	1,052	2.3%	0.2%			
Rent Subsidy	1,567	3.1%	0.2%	2,013	4.4%	0.3%			
Energy Assist.	2,176	4.4%	0.3%	3,190	7.0%	0.3%			

<b>Table 8. Public Benefit Participation of Foreign-Born, by Family Size, 2013 (in thousands)</b>									
<b>Total Population</b> 310,867	<b>Household of 1</b>			<b>Household of 2</b>			<b>Household of 3</b>		
	<b>Population</b> 6,959	<b>% of Total Population</b> 2.2%	<b>S.E.</b>	<b>Population</b> 8,681	<b>% of Total Population</b> 2.8%	<b>S.E.</b>	<b>Population</b> 7,646	<b>% of Total Population</b> 2.5%	<b>S.E.</b>
<b>Program</b>	<b>Total</b>	<b>Pct.</b>	<b>S.E.</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>
<i>Cash benefits</i>	425	6.1%	0.9%	454	5.2%	0.8%	233	3.0%	0.6%
SSI	394	5.7%	0.9%	424	4.9%	0.7%	195	2.6%	0.6%
TANF	7	0.1%	0.1%	25	0.3%	0.2%	21	0.3%	0.2%
GA	32	0.5%	0.3%	34	0.4%	0.2%	17	0.2%	0.2%
<i>Non-cash ben.</i>	1,384	19.9%	1.5%	1,621	18.7%	1.4%	1,653	21.6%	1.5%
Medicaid	838	12.0%	1.2%	1,044	12.0%	1.1%	1,081	14.1%	1.3%
SNAP	611	8.8%	1.1%	581	6.7%	0.9%	509	6.7%	0.9%
WIC	36	0.5%	0.3%	91	1.0%	0.4%	141	1.8%	0.5%
Housing	128	1.8%	0.5%	205	2.4%	0.5%	104	1.4%	0.4%
Rent Subsidy	541	7.8%	1.0%	537	6.2%	0.8%	280	3.7%	0.7%
Energy Assist.	290	4.2%	0.7%	296	3.4%	0.6%	324	4.2%	0.7%
	<b>Household of 4</b>			<b>Household of 5+</b>					
<b>Total Population</b> 310,867	<b>Population</b> 8,079	<b>% of Total Population</b> 2.6%	<b>S.E.</b>	<b>Population</b> 10,090	<b>% of Total Population</b> 3.2%	<b>S.E.</b>			
<b>Program</b>	<b>Total</b>	<b>Pct.</b>	<b>S.E.</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>			
<i>Cash benefits</i>	141	1.7%	0.5%	261	2.6%	0.5%			
SSI	117	1.5%	0.4%	185	1.8%	0.4%			
TANF	21	0.3%	0.2%	56	0.6%	0.2%			
GA	2	0.0%	0.1%	19	0.2%	0.1%			
<i>Non-cash ben.</i>	1,638	20.3%	1.4%	3,112	30.8%	1.4%			
Medicaid	1,160	14.4%	1.2%	2,149	21.3%	1.2%			
SNAP	571	7.1%	0.9%	1,332	13.2%	1.0%			
WIC	112	1.4%	0.4%	221	2.2%	0.4%			
Housing	99	1.2%	0.4%	182	1.8%	0.4%			
Rent Subsidy	212	2.6%	0.6%	406	4.0%	0.6%			
Energy Assist.	330	4.1%	0.7%	439	4.3%	0.6%			

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).

\*Estimate is considered unreliable due to a high relative standard error.

- Estimate of zero

In light of the above data on the relationship between family size and receipt of public benefits, DHS proposes that in evaluating family status for purposes of the public charge inadmissibility determination, DHS would consider whether the alien being a dependent or having dependent(s), as defined in 8 CFR 212.21, makes it more or less likely that the alien will become a public charge.

### **G. Assets and Resources**

An applicant's assets and resources must be considered in the public charge inadmissibility determination.<sup>183</sup> The more assets and resources an alien has, the more self-sufficient the alien is able to be, and the less likely to use or receive public benefits. Conversely, an alien's lack of assets, resources, or income may make an alien more likely to use or receive public benefits. Accordingly, DHS proposes that when considering an alien's assets and resources, DHS will consider whether the alien can support him or herself and any dependents as defined in 8 CFR 212.21, at the level of at least 125 percent of the most recent Federal Poverty Guidelines based on the household size.

Assets and resources including through employment income is an important factor in determining whether a person may use or receive public benefits in the future. Public benefits, as defined in this proposed rule, are benefits that are either means-tested (i.e., dependent on assets, resources, and/or income) or intended to help the individual beneficiary meet basic living requirements, such as housing, food, utilities, and medical care. By definition, the alien's assets and resources are relevant to the alien's likelihood to use or receive public benefits.

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<sup>183</sup> See INA section 212(a)(4), 8 U.S.C. 1182(a)(4).



At a minimum, an alien should be able to support him or herself and any dependents with assets, resources, or annual income equal to at least at 125 percent of the FPG based on the household size.<sup>184</sup> The proposed 125 percent of the FPG standard is consistent with the affidavit of support requirement under section 213A of the INA, and therefore serves as a touchpoint for public charge inadmissibility determinations.<sup>185</sup> As of February 2018, within the contiguous United States, 125 percent of FPG ranges from approximately \$20,300 for a family of two, through \$51,650 for a family of eight.

### **1. USCIS Evidentiary Requirements**

DHS also proposes that USCIS will consider certain types of evidence, at a minimum, when reviewing this factor. USCIS consideration of an alien's assets and resources would include review of such information as the alien's annual gross income (i.e., all sources of income before deductions), any additional income or support to the alien from another person or source during the most recent full year (for example, income of a dependent or a spouse who is not a dependent); the alien's cash assets and resources, including as reflected in checking and savings account statements; and the alien's non-cash assets and resources that can be converted into cash within 12 months. Such non-cash assets may include real estate holdings, securities, and retirement and educational accounts, as well as any other assets that can be easily converted into cash. All of this information is potentially relevant to a determination of the alien's assets and resources, and likelihood of becoming a public charge.

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<sup>184</sup> See proposed 8 CFR 212.22(b).

<sup>185</sup> See INA section 213A(f)(1)(E), 8 U.S.C. 1183a(f)(1)(E).

## **H. Financial Status**

An applicant's financial status must be considered in the public charge determination.<sup>186</sup> A person with a stable financial status may be less likely to use or receive public benefits. Accordingly, DHS proposes that when considering an alien's financial status, DHS will consider whether any aspect of the alien's financial status other than the alien's assets and resources, such as the alien's liabilities or past reliance on public benefits, makes the alien more or less likely to become a public charge.

### **1. USCIS Evidentiary Requirements**

DHS also proposes that USCIS will consider certain types of evidence, at a minimum, when reviewing this factor. USCIS's review would include the alien's and any dependent's past request or receipt of public benefits, receipt of fee waivers for immigration purposes, and credit reports and scores.<sup>187</sup> The following discussion addresses each consideration. *(i) Public Benefits*

Use or receipt of public benefits, as defined in the proposed regulation, suggests that the alien's overall financial status is so weak that he or she is unable to fully support him or herself or any dependents without government assistance. DHS, therefore, proposes to consider receipt or use of public benefits as a negative factor in the totality of the circumstances, because it is indicative of a weak financial status and likelihood that the alien will become a public charge. In addition, DHS is proposing to consider request, receipt, or use of public benefits by any dependents, including U.S. citizen children.

According to the U.S. Census Bureau, in 2012 approximately 52.2 million (or 21.3 percent) people in the United States participated in major means-tested government

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<sup>186</sup> See INA section 212(a)(4), 8 U.S.C. 1182(a)(4).

<sup>187</sup> See proposed 8 CFR 212.22.

assistance programs each month.<sup>188</sup> In addition, among those with family income below the poverty level<sup>189</sup> an average of 61.3 percent participated in at least one major means tested benefit.<sup>190</sup> Participation rates were highest for Medicaid (15.3 percent) and SNAP (13.4 percent).<sup>191</sup> The largest share of participants (43.0 percent) who benefited from one or more means-tested assistance programs between January 2009 and December 2012 stayed in the programs between 37 and 48 months.<sup>192</sup>

Whether a person may be qualified for public benefits frequently depends on where the person's household income falls with respect to the FPG.<sup>193</sup> Federal, State, and local public benefit granting agencies frequently use the FPG to determine eligibility for public benefits.<sup>194</sup> Some major means-tested programs, however, do not use the FPG.<sup>195</sup>

In addition, as noted above, DHS proposes that USCIS would consider evidence of request or receipt of public benefits by any dependents, including U.S. citizen children,

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<sup>188</sup> See Shelley K. Irving and Tracy A. Loveless, U.S. Census Bureau, *Dynamics of Economic Well-Being: Participation in Government Programs, 2009–2012: Who Gets Assistance?* (May 2015), available at <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf> (last visited Feb. 20, 2018). See also U.S. Census Bureau, *News Release: 21.3 Percent of U.S. Population Participates in Government Assistance Programs Each Month* (May 28, 2015), available at <https://www.census.gov/newsroom/press-releases/2015/cb15-97.html>. The U.S. Census Bureau included Temporary Assistance for Needy Families (TANF), General Assistance (GA), Supplemental Security Income (SSI), Supplemental Nutrition Assistance Program (SNAP), Medicaid, and housing assistance as major means-tested benefits as major means-tested government benefits. See *id.*

<sup>189</sup> See *id.* Note that the Census reports uses the term income to poverty ratio". A ratio of less than 1 indicates a person's income is below the poverty level. The census report refers to average monthly participation rates.

<sup>190</sup> See *id.* This report includes Temporary Assistance for Needy Families (TANF), General Assistance (GA), Supplemental Security Income (SSI), Supplemental Nutrition Assistance Program (SNAP), Medicaid, and housing assistance as major means-tested benefits.

<sup>191</sup> See *id.*

<sup>192</sup> See *id.*

<sup>193</sup> The poverty guidelines are updated periodically in the *Federal Register* by HHS. The U.S. Census Bureau definition of family and family household is available at <https://www2.census.gov/programs-surveys/cps/techdocs/cpsmar17.pdf>.

<sup>194</sup> Different Federal programs use different percentages of the FPG such as 125 percent, 150 percent, or 185 percent. However, some major means-tested programs do not use the poverty guidelines but use their own standards. See HHS ASPE, *Frequently Asked Questions Related to the Poverty Guidelines and Poverty, What Programs Use the Federal Poverty Guidelines*, available at <https://aspe.hhs.gov/frequently-asked-questions-related-poverty-guidelines-and-poverty#collapseExample9>.

<sup>195</sup> See *id.*

as part of this factor. Self-sufficiency also includes an ability to support any dependents. According to U.S. Census Bureau Current Population Survey, U.S.-Is born children of foreign-born parents also receive public benefits.<sup>196</sup> As discussed above, the data from Tables 2 through 4 show that for native-born and foreign-born populations alike, non-cash public benefits play a significant role in many peoples' lives. The Annual Social and Economic Supplement of the Current Population Survey (ASEC) Table C8 provides data on poverty and receipt of public assistance based on where the children's parents were born.<sup>197</sup> The data show a non-trivial degree of use and receipt of public benefits by persons in the United States, including foreign-born persons and their dependents. For example, for native-born child who have a foreign-born parent, 3,373,000 children received food stamps (SNAP), and 392,000 received public assistance.<sup>198</sup> This usage tends to be correlated to the individual's financial status.

DHS would consider past request, receipt, or use of public benefits in the totality of the circumstances. For example, an alien who previously requested public benefits may be able to establish that he or she sought the benefits for a short time period while unemployed but that he or she is currently working and has sufficient income to no longer require such public benefits.

*(ii) Fee Waivers for Immigration Benefits*

As noted above, DHS is also proposing that USCIS would consider past request or receipt of a fee waiver as part of the financial status factor. Requesting or receiving a

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<sup>196</sup> See U.S. Census Bureau, Table C8. Poverty Status, Food Stamp Receipt, and Public Assistance for Children Under 18 Years by Selected Characteristics: 2016, , available at <https://www2.census.gov/programs-surveys/demo/tables/families/2016/cps-2016/tabc8-all.xls>.,

<sup>197</sup> See U.S. Census Bureau, Table C8. *Poverty Status, Food Stamp Receipt, and Public Assistance for Children Under 18 Years by Selected Characteristics: 2016*, available at <https://www2.census.gov/programs-surveys/demo/tables/families/2016/cps-2016/tabc8-all.xls>.

<sup>198</sup> See *id.*

fee waiver for an immigration benefit suggests a weak financial status. In general, a fee waiver is granted based on an alien's inability to pay to the fee. An inability to pay a fee for an immigration benefit suggests an inability to be self-sufficient.

In addition, the Senate Appropriations Report, Senate Report 114-264,<sup>199</sup> which accompanies the FY 2017 Department of Homeland Security Appropriations Act (Public Law 115-31), expresses concern about the increased use of fee waivers, as those paying fees are forced to absorb costs for which they receive no benefit. The committee specifically expressed concern that those unable to pay fees are less likely to live in the United States independent of government assistance.<sup>200</sup>

*(iii) Credit Report and Score*

As also noted above, DHS is also proposing that USCIS would consider an alien's credit report and score as part of the financial status factor. Not everyone has a credit history or may be able to transfer credit history from country to country. Nevertheless, a good credit score is a positive factor that indicates a person is likely to be self-sufficient and support any dependents. Conversely, a lower credit score or negative credit history may indicate that a person's assets and resources are limited and may not be self-sufficient. Credit reports contain information about a person's bill payment history, loans, current debt, and other financial information.<sup>201</sup> Credit reports may also provide information about work and residences, lawsuits, arrests, and bankruptcies.<sup>202</sup>

A credit score is a number that rates a person's credit risk at one point in time.<sup>203</sup>

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<sup>199</sup> Available at <https://www.congress.gov/congressional-report/114th-congress/senate-report/264/1>.

<sup>200</sup> See Senate Appropriations Report, S. Rept. 114-264, available at <https://www.congress.gov/congressional-report/114th-congress/senate-report/264/1>.

<sup>201</sup> See *Credit Reports and Scores*, available at <https://www.usa.gov/credit-reports>.

<sup>202</sup> See *id.*

<sup>203</sup> See *id.*

It can help creditors determine whether to give the person credit, decide the terms the person is offered, or determine the rate the person will pay for the loan.<sup>204</sup> Banks and entities use credit scoring to determine whether a person is likely to repay any loan or debt. A credit report takes into account a person's bill-paying history, the number and type of accounts with overdue payments, collection actions, outstanding debt, and the age of the accounts.<sup>205</sup> Because credit reports and scores provide information on a person's financial status, DHS is proposing that USCIS would review any available credit reports as part of its public charge inadmissibility determinations. USCIS would generally consider a credit score as a positive factor if the score is characterized as "fair" or better, depending on the reporting agency and weighed in the totality of the circumstances.

DHS recognizes that not everyone has a credit report. The absence of an established credit history would not be an adverse factor when evaluating public charge in the totality of the circumstances. Absent a credit report or score, USCIS may give positive weight to an alien who can show little to no debt and a history of paying bills timely. An alien may provide evidence of continued payment of bills, and limited balances. In addition, USCIS would not consider any error on a credit score in the public charge determination that has been verified by the credit agency.

### **I. Education and Skills**

An applicant's education and skills are mandatory factors that must be considered in the public charge determination.<sup>206</sup> In general, an alien with educational credentials and skills is more employable and less likely to become a public charge. DHS, therefore,

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<sup>204</sup> See *id.*

<sup>205</sup> See Federal Trade Commission, *Consumer Information: Credit Scores, available at <https://www.consumer.ftc.gov/articles/0152-credit-scores#how>*.

<sup>206</sup> See section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4).

proposes that when considering this factor, DHS would consider whether the alien has sufficient education and skills to obtain or maintain full-time employment, if authorized for employment.<sup>207</sup>

Various studies and data support the concept that a person's education and skills are positive factors for self-sufficiency. The U.S. Bureau of Labor Statistics (BLS) observed in 2016 that there was a correlation between the educational level and unemployment rate.<sup>208</sup> The unemployment rate for an individual with a doctoral degree was only 1.6 percent compared to 7.4 percent for an individual with less than a high school diploma.<sup>209</sup> According to the U.S. Census Bureau, lower educational attainment was associated with higher public benefit program participation rates for people over the age of 18.<sup>210</sup> In 2012, 37.3 percent of people who did not graduate from high school received means-tested benefits, compared with 21.6 percent of high school graduates and 9.6 percent of individuals with 1 or more years of college.<sup>211</sup>

Additionally, the data suggest that people who have lower education levels are not only more likely to receive public benefits but they tend to stay on them longer. For example, 49.4 percent of people with less than 4 years of high school who received public benefits from a major means-tested program between January 2009 and December

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<sup>207</sup> The level of education may be an indicator for continued employment. See BLS, *Employment Projections, Unemployment Rates and Earnings by Educational Attainment, 2016*, available at [https://www.bls.gov/emp/ep\\_chart\\_001.htm](https://www.bls.gov/emp/ep_chart_001.htm).

<sup>208</sup> See BLS, *Employment Projections, Unemployment Rates and Earnings by Educational Attainment, 2016, Data Table*, available at [https://www.bls.gov/emp/ep\\_chart\\_001.htm](https://www.bls.gov/emp/ep_chart_001.htm).

<sup>209</sup> See BLS, *Employment Projections, Unemployment Rates and Earnings by Educational Attainment, 2016*, available at [https://www.bls.gov/emp/ep\\_table\\_001.htm](https://www.bls.gov/emp/ep_table_001.htm).

<sup>210</sup> See Shelley K. Irving and Tracy A. Loveless, *Dynamics of Economic Well-Being: Participation in Government Programs, 2009–2012: Who Gets Assistance?* (May 2015), available at <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf>.

<sup>211</sup> See Shelley K. Irving and Tracy A. Loveless, *Dynamics of Economic Well-Being: Participation in Government Programs, 2009–2012: Who Gets Assistance?* (May 2015), available at <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf>.

2012 stayed on the benefit program for 37 to 48 months. In contrast, only 39.3 percent of high school graduates and 29.0 percent of those with 1 or more years of college who received public benefits during the same time period stayed on the public benefit program for 37 to 48 months.<sup>212</sup> The National Center for Education Statistics found that “[i]n 2015, the poverty rate for children under age 18 was highest for those whose parents had not completed high school (52 percent) and lowest for those whose parents had attained a bachelor’s or higher degree (4 percent).”<sup>213</sup> The data suggests that a lack of education increases the likelihood of poverty and unemployment, which may in turn increase the likelihood to need public assistance.

The results of DHS’s analysis of the SIPP data also show a relationship between education level and self-sufficiency. Tables 9 and 10 indicate a strong correlation between education level and welfare participation rates among both the native-born and foreign-born populations in 2013. Native-born and foreign-born individuals with a high school education or less were more likely to participate in both cash and non-cash welfare programs compared to native-born and foreign-born individuals with some college-level education or higher. For example, 38.3 percent of the native-born population and 33.3 percent of the foreign-born population with less than a high school education received non-cash benefits. Comparably, only 5.0 percent of native-born and 12.9 percent of the foreign-born populations with a bachelor’s degree received non-cash assistance.

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<sup>212</sup> See Shelley K. Irving and Tracy A. Loveless, *Dynamics of Economic Well-Being: Participation in Government Programs, 2009–2012: Who Gets Assistance?* (May 2015), available at <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf>.

<sup>213</sup> See National Center for Education Statistics, *Characteristics of Children’s Families*, (last updated: May 2017); available at [https://nces.ed.gov/programs/coe/indicator\\_cce.asp#](https://nces.ed.gov/programs/coe/indicator_cce.asp#).



<b>Table 9. Public Benefit Participation of Native-Born Age 18+, by Education Level, 2013 (in thousands)</b>									
<b>Total Population</b> 310,867	<b>Less than High School</b>			<b>High School graduate</b>			<b>Some college/Associate's degree</b>		
	<b>Population</b>	<b>% of Total Population</b>	<b>S.E.</b>	<b>Population</b>	<b>% of Total Population</b>	<b>S.E.</b>	<b>Population</b>	<b>% of Total Population</b>	<b>S.E.</b>
	19,542	6.3%		60,845	19.6%		62,401	20.1%	
<b>Program</b>	<b>Total</b>	<b>Pct.</b>	<b>S.E.</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>
<i>Cash benefits</i>	2,270	11.6%	0.6%	2,600	4.3%	0.2%	1,342	2.2%	0.2%
SSI	1,960	10.0%	0.6%	2,217	3.6%	0.2%	1,087	1.7%	0.2%
TANF	188	1.0%	0.2%	229	0.4%	0.1%	130	0.2%	0.1%
GA	202	1.0%	0.2%	228	0.4%	0.1%	148	0.2%	0.1%
<i>Non-cash ben.</i>	7,488	38.3%	0.9%	12,452	20.5%	0.5%	9,044	14.5%	0.4%
Medicaid	4,815	24.6%	0.8%	7,414	12.2%	0.4%	4,951	7.9%	0.3%
SNAP	4,585	23.5%	0.8%	6,957	11.4%	0.4%	4,745	7.6%	0.3%
WIC	276	1.4%	0.2%	686	1.1%	0.1%	577	0.9%	0.1%
Housing	601	3.1%	0.3%	903	1.5%	0.1%	770	1.2%	0.1%
Rent Subsidy	1,760	9.0%	0.5%	2,471	4.1%	0.2%	1,820	2.9%	0.2%
Energy Assist.	1,979	10.1%	0.6%	3,286	5.4%	0.3%	2,525	4.0%	0.2%
	<b>Bachelor's degree</b>			<b>Graduate degree</b>					
<b>Total Population</b> 310,867	<b>Population</b>	<b>% of Total Population</b>	<b>S.E.</b>	<b>Population</b>	<b>% of Total Population</b>	<b>S.E.</b>			
	37,764	12.1%		20,976	6.7%				
<b>Program</b>	<b>Total</b>	<b>Pct.</b>	<b>S.E.</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>			
<i>Cash benefits</i>	233	0.6%	0.1%	133	0.6%	0.2%			
SSI	206	0.5%	0.1%	115	0.5%	0.2%			
TANF	2	0.0%	0.0%	19	0.1%	0.1%			
GA	25	0.1%	0.0%	-	-	-			
<i>Non-cash ben.</i>	1,895	5.0%	0.4%	572	2.7%	0.3%			
Medicaid	904	2.4%	0.2%	289	1.4%	0.3%			
SNAP	707	1.9%	0.2%	271	1.3%	0.2%			
WIC	112	0.3%	0.1%	14	0.1%	0.1%			
Housing	137	0.4%	0.1%	27	0.1%	0.1%			
Rent Subsidy	435	1.2%	0.2%	113	0.5%	0.2%			
Energy Assist.	449	1.2%	0.2%	141	0.7%	0.2%			



<b>Program</b>	<b>Total</b>	<b>Pct.</b>	<b>S.E.</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>
<i>Cash benefits</i>	193	2.7%	0.6%	58	1.3%	0.6%
SSI	164	2.3%	0.6%	56	1.2%	0.5%
TANF	15	0.2%	0.2%	-	-	-
GA	21	0.3%	0.2%	2	0.0%	0.1%
<i>Non-cash ben.</i>	928	12.9%	1.3%	282	6.1%	1.2%
Medicaid	593	8.3%	1.1%	168	3.7%	0.9%
SNAP	292	4.1%	0.8%	84	1.8%	0.7%
WIC	57	0.8%	0.3%	2	0.0%	0.1%
Housing	78	1.1%	0.4%	8	0.2%	0.2%
Rent Subsidy	203	2.8%	0.7%	80	1.7%	0.6%
Energy Assist.	184	2.6%	0.6%	86	1.9%	0.7%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).

\*Estimate is considered unreliable due to a high relative standard error.

- Estimate of zero

Moreover, according to National Center for Education Statistics, increased education is associated with increased employment productivity and increased earnings.<sup>214</sup> The unemployment rate decreases with the increase in skills gained through education.<sup>215</sup> In 2013, only 27 percent of U.S. jobs required less than a high school degree, while 74 percent required skills associated with formal education (39 percent required a high school degree, 18 percent required a bachelor's degree, and 16 percent required more than a bachelor's degree).<sup>216</sup>

Tables 11 and 12 below show that among the native-born and foreign-born populations, individuals holding professional certificates or licenses had lower rates of cash and non-cash means-tested public benefits participation compared to their respective overall populations in 2013. For example, 9.8 percent of the native-born population with

<sup>214</sup> See National Center for Education Statistics, *Education and the Economy: An Indicators Report* (Mar. 1997), available at <https://nces.ed.gov/pubs97/web/97939.asp>.

<sup>215</sup> See BLS, *Employment Projections, Unemployment Rates and Earnings by educational Attainment, 2016*, available at [https://www.bls.gov/emp/ep\\_chart\\_001.htm](https://www.bls.gov/emp/ep_chart_001.htm).

<sup>216</sup> See BLS, *Education level and jobs: Opportunities by state*, available at <https://www.bls.gov/careeroutlook/2014/article/education-level-and-jobs.htm>.

professional certificates or licenses received non-cash benefits compared to 22.1 percent of the overall native-born population. Similarly, 13.2 percent of the foreign-born population with professional certificates or licenses received non-cash benefits compared to 22.7 percent of the overall foreign-born populations. In addition, both foreign and native-born persons with a professional certificate or license were also less likely to receive non-cash assistance compared to those with a high-school degree or less. Native-born individuals with a professional certificate or licenses are also much less like to receive cash assistance compared to those with a high school degree or less. Only 1.3 percent of native-born individuals with a professional certificate or license received cash assistance compared to 3.1 percent of native-born high school graduates and 7.7 percent of native-born individuals with less than a high school degree.

Total Population	Native-born			Native-born with prof. cert.		
	Population	% of Total Population	S.E.	Population	% of Total Population	S.E.
310,867	269,413	86.7%		29,417	9.5%	
Program	Total	Rate	S.E.	Total	Rate	S.E.
<i>Cash benefits</i>	9,285	3.4%	0.1%	644	1.3%	0.2%
SSI	6,590	2.4%	0.1%	493	1.0%	0.1%
TANF	2,124	0.8%	0.0%	76	0.2%	0.1%
GA	844	0.3%	0.0%	91	0.2%	0.1%
<i>Non-cash ben.</i>	59,578	22.1%	0.2%	4,709	9.8%	0.4%
Medicaid	43,301	16.1%	0.2%	2,473	5.2%	0.3%
SNAP	31,308	11.6%	0.2%	2,427	5.1%	0.3%
WIC	5,848	2.2%	0.1%	324	0.7%	0.1%
Housing	4,215	1.6%	0.1%	343	0.7%	0.1%

Rent Subsidy	10,455	3.9%	0.1%	944	2.0%	0.2%
Energy Assist.	13,244	4.9%	0.1%	1,410	2.9%	0.2%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).

\*Estimate is considered unreliable due to a high relative standard error.

- Estimate of zero

**Table 12. Public Benefit Participation of Foreign-Born Overall, and with Professional Certification or License, 2013 (in thousands)**

Total Population	Foreign-born			Foreign-born with prof. cert.		
	Population	% of Total Population	S.E.	Population	% of Total Population	S.E.
310,867	41,454	13.3%		6,552	2.1%	
<b>Program</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>
<i>Cash benefits</i>	1,514	3.7%	0.3%	88	1.3%	0.5%
SSI	1,316	3.2%	0.3%	86	1.3%	0.5%
TANF	130	0.3%	0.1%	-	-	-
GA	103	0.2%	0.1%	2	0.0%	0.1%
<i>Non-cash ben.</i>	9,408	22.7%	0.7%	865	13.2%	1.4%
Medicaid	6,272	15.1%	0.6%	532	8.1%	1.1%
SNAP	3,605	8.7%	0.4%	215	3.3%	0.7%
WIC	601	1.4%	0.2%	60	0.9%	0.4%
Housing	718	1.7%	0.2%	55	0.8%	0.4%
Rent Subsidy	1,976	4.8%	0.3%	153	2.3%	0.6%
Energy Assist.	1,679	4.1%	0.3%	227	3.5%	0.7%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).

\*Estimate is considered unreliable due to a high relative standard error.

- Estimate of zero

Similar to those holding professional certificates or licenses, the rates of cash and non-cash participation among the native-born and foreign-born populations were lower for those having an educational certificate compared to their respective overall populations in 2013, as highlighted in Tables 13 and 14. For example, among native-born, the participation rate for cash benefits was 2.4 percent for those having an

educational certificate compared to 3.4 percent overall, and the rate of non-cash benefits was 14.7 percent for those with an educational certificate compare to 22.1 percent overall. Among the foreign-born, the participation rate for non-cash benefits was 16.0 percent among those having an educational certificate compared to 22.7 percent overall.

Total Population 310,867	Native-born			Native-born with ed. certificate		
	Population 269,413	% of Total Population 86.7%		Population 29,417	% of Total Population 9.5%	
<b>Program</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>
<i>Cash benefits</i>	9,285	3.4%	0.1%	699	2.4%	0.3%
SSI	6,590	2.4%	0.1%	565	1.9%	0.2%
TANF	2,124	0.8%	0.0%	68	0.2%	0.1%
GA	844	0.3%	0.0%	82	0.3%	0.1%
<i>Non-cash ben.</i>	59,578	22.1%	0.2%	4,337	14.7%	0.6%
Medicaid	43,301	16.1%	0.2%	2,257	7.7%	0.5%
SNAP	31,308	11.6%	0.2%	2,461	8.4%	0.5%
WIC	5,848	2.2%	0.1%	248	0.8%	0.2%
Housing	4,215	1.6%	0.1%	415	1.4%	0.2%
Rent Subsidy	10,455	3.9%	0.1%	950	3.2%	0.3%
Energy Assist.	13,244	4.9%	0.1%	1,419	4.8%	0.4%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).<sup>217</sup>

<sup>217</sup> The SIPP includes questions on professional certification and licenses developed by the Interagency Working Group on Expanded Measures of Enrollment and Attainment (GEMEnA). See National Center for Education Statistics, *Working definitions of Non-Degree Credentials*, available at <https://nces.ed.gov/surveys/gemena/definitions.asp>. See also BLS, *Adding questions on certifications and licenses to the Current Population Survey*, available at <https://www.bls.gov/opub/mlr/2016/article/pdf/adding-questions-on-certifications-and-licenses-to-the-current-population-survey.pdf>. They developed working definitions that categorize certification as a credential awarded by a non-governmental body, and involving successfully passing an examination. A license is awarded by a government agency and provides legal authority to do a specific job. Both

\*Estimate is considered unreliable due to a high relative standard error.  
 - Estimate of zero

<b>Table 14. Public Benefit Participation of Foreign-Born Overall, and with an Educational Certificate from a College, University, or Trade School, 2013 (in thousands)</b>						
<b>Total Population</b>	<b>Foreign-born</b>			<b>Foreign-born with ed. certificate</b>		
	<b>Population</b>	<b>% of Total Population</b>	<b>S.E.</b>	<b>Population</b>	<b>% of Total Population</b>	<b>S.E.</b>
310,867	41,454	13.3%		3,829	1.2%	
<b>Program</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>
<i>Cash benefits</i>						
SSI	1,514	3.7%	0.3%	74	1.9%	0.7%
TANF	1,316	3.2%	0.3%	67	1.8%	0.7%
GA	130	0.3%	0.1%	7	0.2%	0.2%
	103	0.2%	0.1%	3	0.1%	0.2%
<i>Non-cash ben.</i>						
Medicaid	9,408	22.7%	0.7%	614	16.0%	1.9%
SNAP	6,272	15.1%	0.6%	354	9.2%	1.5%
WIC	3,605	8.7%	0.4%	182	4.7%	1.1%
Housing	601	1.4%	0.2%	55	1.4%	0.6%
Rent Subsidy	718	1.7%	0.2%	31	0.8%	0.5%
Energy Assist.	1,976	4.8%	0.3%	112	2.9%	0.9%
	1,679	4.1%	0.3%	184	4.8%	1.1%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).<sup>218</sup>  
 \* Estimate is considered unreliable due to a high relative standard error.  
 - Estimate of zero

certifications and licenses are time-limited so must be renewed periodically. Educational certificates are awarded by an educational institution and need not be renewed. *See Id.*

<sup>218</sup> The SIPP includes questions on professional certification and licenses developed by the Interagency Working Group on Expanded Measures of Enrollment and Attainment (GEMEnA). *See* National Center for Education Statistics, *Working definitions of Non-Degree Credentials*, available at <https://nces.ed.gov/surveys/gemena/definitions.asp>. *See also* BLS, *Adding questions on certifications and licenses to the Current Population Survey*, available at <https://www.bls.gov/opub/mlr/2016/article/pdf/adding-questions-on-certifications-and-licenses-to-the-current-population-survey.pdf>. They developed working definitions that categorize certification as a credential awarded by a non-governmental body, and involving successfully passing an examination. A license is awarded by a government agency and provides legal authority to do a specific job. Both certifications and licenses are time-limited so must be renewed periodically. Educational certificates are awarded by an educational institution and need not be renewed. *See Id.*

English language proficiency is also relevant to the public charge determination. An inability to speak and understand English may adversely affect whether an alien can obtain employment.<sup>219</sup> Aliens may not be able to obtain employment in areas where only English is spoken.

People with the lowest English speaking ability tend to have the lowest employment rate, lowest rate of full-time employment, and lowest median earnings. According to U.S. Census Bureau data, people who spoke a language other than English at home were less likely to be employed, and less likely to find full-time work when employed.<sup>220</sup> In addition, people who spoke a language other than English at home who found full-time employment, experience lower median earnings than those who spoke only English at home.<sup>221</sup> In a 2005 study, “on average, workers who spoke only English earned \$5,600 more than people who spoke another language,”<sup>222</sup> however, between the people “very well” and people who only spoke English the difference was only \$966.<sup>223</sup> People who spoke English “very well” had higher earnings than people who spoke English “well” – an earning difference of \$7,000.<sup>224</sup> DHS may also consider an applicant’s

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<sup>219</sup> See Jennifer Cheeseman Day and Hyon B. Shin, U.S. Census Bureau, *How Does Ability to Speak English Affect Earnings?*, available at

[https://www.census.gov/hhes/socdemo/language/data/acs/PAA\\_2005\\_AbilityandEarnings.pdf](https://www.census.gov/hhes/socdemo/language/data/acs/PAA_2005_AbilityandEarnings.pdf).

<sup>220</sup> See Jennifer Cheeseman Day and Hyon B. Shin, U.S. Census Bureau, *How Does Ability to Speak English Affect Earnings?*, available at

[https://www.census.gov/hhes/socdemo/language/data/acs/PAA\\_2005\\_AbilityandEarnings.pdf](https://www.census.gov/hhes/socdemo/language/data/acs/PAA_2005_AbilityandEarnings.pdf).

<sup>221</sup> See Jennifer Cheeseman Day and Hyon B. Shin, U.S. Census Bureau, *How Does Ability to Speak English Affect Earnings?*, available at

[https://www.census.gov/hhes/socdemo/language/data/acs/PAA\\_2005\\_AbilityandEarnings.pdf](https://www.census.gov/hhes/socdemo/language/data/acs/PAA_2005_AbilityandEarnings.pdf)

<sup>222</sup> See Jennifer Cheeseman Day and Hyon B. Shin, U.S. Census Bureau, *How Does Ability to Speak English Affect Earnings?*, available at

[https://www.census.gov/hhes/socdemo/language/data/acs/PAA\\_2005\\_AbilityandEarnings.pdf](https://www.census.gov/hhes/socdemo/language/data/acs/PAA_2005_AbilityandEarnings.pdf); *See id.* at 7.

<sup>223</sup> *See id.*

<sup>224</sup> See Jennifer Cheeseman Day and Hyon B. Shin, U.S. Census Bureau, *How Does Ability to Speak English Affect Earnings?*, available at

[https://www.census.gov/hhes/socdemo/language/data/acs/PAA\\_2005\\_AbilityandEarnings.pdf](https://www.census.gov/hhes/socdemo/language/data/acs/PAA_2005_AbilityandEarnings.pdf). The differences in earnings between those who spoke English at the highest ability “very well” from English-only speakers was relatively small (\$966). *See id.* at 7.



proficiency in other languages, in addition to English proficiency, when reviewing the education and skills factor.

Table 13 highlights a relationship between English language proficiency and welfare participation in 2013. Among the foreign-born adults who speak a language other than English at home, the participation rates for both cash and non-cash benefits are higher among those who do not speak English well, or at all, than among those who speak the language well. The SIPP data indicate that the lowest rates of coverage of cash and non-cash benefits were among those who spoke English very well (1.6 percent and 16.2 percent, respectively) and the highest rates were among those who could not speak English (16.4 percent and 43.0 percent, respectively).

Total Population	Very well			Well		
	Population	% of Total Population		Population	% of Total Population	
310,867	11,451	3.7%		5,878	1.9%	
Program	Total	Rate	S.E.	Total	Rate	S.E.
<i>Cash benefits</i>	188	1.6%	0.4%	138	2.3%	0.6%
SSI	148	1.3%	0.3%	113	1.9%	0.6%
TANF	28	0.2%	0.1%	23	0.4%	0.3%
GA	13	0.1%	0.1%	9	0.2%	0.2%
<i>Non-cash ben.</i>	1,851	16.2%	1.1%	1,252	21.3%	1.7%
Medicaid	1,075	9.4%	0.9%	816	13.9%	1.4%
SNAP	597	5.2%	0.7%	514	8.7%	1.1%
WIC	119	1.0%	0.3%	105	1.8%	0.5%
Housing	97	0.8%	0.3%	119	2.0%	0.6%

Rent Subsidy	294	2.6%	0.5%	262	4.5%	0.8%
Energy Assist.	370	3.2%	0.5%	239	4.1%	0.8%
<b>Total Population</b> 310,867	<b>Not well</b>			<b>Not at all</b>		
	<b>Population</b> 5,069	<b>% of Total Population</b> 1.6%		<b>Population</b> 2,080	<b>% of Total Population</b> 0.7%	
<b>Program</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>
<i>Cash benefits</i>	333	6.6%	1.0%	340	16.4%	2.4%
SSI	297	5.9%	1.0%	330	15.9%	2.4%
TANF	20	0.4%	0.3%	-	-	-
GA	23	0.5%	0.3%	20	1.0%	0.6%
<i>Non-cash ben.</i>	1,604	31.6%	2.0%	895	43.0%	3.2%
Medicaid	1,049	20.7%	1.7%	651	31.3%	3.0%
SNAP	591	11.7%	1.3%	349	16.8%	2.4%
WIC	129	2.5%	0.7%	43	2.1%	0.9%
Housing	120	2.4%	0.6%	80	3.9%	1.3%
Rent Subsidy	397	7.8%	1.1%	214	10.3%	2.0%
Energy Assist.	341	6.7%	1.1%	142	6.8%	1.6%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).

\*Estimate is considered unreliable due to a high relative standard error.

- Estimate of zero

Additionally, numerous studies have shown that immigrants' English language proficiency or ability to acquire English proficiency directly correlate to a newcomer's economic assimilation into the United States.<sup>225</sup>

## 1. USCIS Evidentiary Requirements

<sup>225</sup> Chiswick, B., & Miller, P. (2002). *Immigrant earnings: Language skills, linguistic concentrations and the business cycle*. Journal of Population Economics, 15(1), 31-57; Dustmann, C. (1994). *Fluency, writing fluency, and earnings of migrants*. Journal of Populations Economics, 7, 133-156; Ingo E. Isphording, *Disadvantages of Linguistic Origin: Evidence from Immigrant Literacy Scores* (The Institute for the Study of Labor and Ruhr University Bochum, 2013), available at <http://ftp.iza.org/dp7360.pdf>; and OECD/European Union, *Indicators of Immigrant Integration 2015: Settling In* (Paris: OECD Publishing, 2015) <http://www.oecd.org/els/mig/Indicators-of-Immigrant-Integration-2015.pdf>.

DHS proposes that USCIS will consider certain types of evidence, at a minimum, when reviewing this factor. For the reasons expressed above, USCIS' review would include evidence of the alien's history of employment; the alien's high school degree or higher education; the alien's occupational skills, certifications, or licenses; and the alien's proficiency in English or another language as relevant to working full-time.

## **J. Sponsorship**

Failure to submit a required affidavit of support when required under section 212(a)(4)(C) or section 212(a)(4)(D) of the INA statutorily results in a determination of inadmissibility based on public charge grounds without review of any other factors.<sup>226</sup> For aliens who submit an affidavit of support, the statute allows DHS to consider any affidavit of support under section 213A of the INA in public charge inadmissibility determinations.<sup>227</sup> DHS, therefore, proposes to consider any required affidavit of support<sup>228</sup> as part of the totality of the circumstances.

### **1. General Consideration of Sponsorship and Affidavits of Support**

DHS would consider a sponsor's sufficient affidavit of support a positive factor, but a sufficient affidavit of support alone would not carry presumptive weight to demonstrate that an applicant is not inadmissible on public charge grounds. Despite efforts to strengthen sponsorship requirements over the years, DHS has concerns about relying on sponsors to ensure that aliens will not become a public charge.

With the passage of PRWORA and IIRIRA, amendments to the INA set forth requirements for submitting what would be an enforceable affidavit of support, i.e.,

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<sup>226</sup> Certain applicants are exempt from filing the affidavit of support under INA 213A.

<sup>227</sup> See INA section 212(a)(4)(B)(ii), 8 U.S.C. 1182(a)(4)(B)(ii). See also proposed 8 CFR 212.22(b)(7).

<sup>228</sup> See INA section 212(a)(4)(C), (a)(4)(D).

current Form I-864.<sup>229</sup> Approximately 1 month after PRWORA was enacted, Congress amended the public charge inadmissibility ground in IIRIRA to require certain applicants for lawful permanent resident status to submit an affidavit of support under INA section 213A.<sup>230</sup> An Affidavit of Support under Section 213A of the INA (Form I-864),<sup>231</sup> is a contract between the sponsor and the U.S. Government that imposes on the sponsor a legally enforceable obligation to support the alien. The sponsor must demonstrate that he or she is able to maintain the sponsored alien at an annual income of not less than 125 percent of the FPG.<sup>232</sup> By creating these requirements in section 213A of the INA, Congress intended to ensure that affidavits of support were enforceable and that public benefit-granting agencies could be reimbursed for certain aid provided to the sponsored alien.<sup>233</sup>

In practice, sponsorship may have limited value in ensuring that sponsored aliens do not use or receive public benefits. As part of PRWORA and IIRIRA, benefit-granting agencies assess the combined income and resources of the sponsor (and his or her spouse) and the alien to determine whether the combined income meets the eligibility requirements.<sup>234</sup> This is called “income deeming.” Public benefits agencies, however, have encountered challenges obtaining information about the sponsor’s income when determining the alien’s eligibility for public benefits. A U.S. Government Accountability

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<sup>229</sup> INA sections 212(a)(4) and 213A, 8 U.S.C. 1182(a)(4) and 1183a.

<sup>230</sup> See section 531(b) of IIRIRA, Pub. L. No. 104-208, 1001 Stat. 3009 (September 30, 1996).

<sup>231</sup> The Affidavit of Support Under Section 213A of the INA, Form I-864EZ, may be used instead of Form I-864 in certain circumstances. References to the affidavit of support in this rule include Form I-864EZ.

<sup>232</sup> See INA 213A, 8 U.S.C. 1183a.

<sup>233</sup> In explaining the provision, Congress continued to emphasize that the affidavits of support (before 1996) were previously unenforceable. Congress highlighted the difference between the situation at the time, before 1996, and the new law which would make the affidavits enforceable and permit benefit-providing agencies to seek reimbursement. See H.R. Rep. 104-651.

<sup>234</sup> This process is known as “sponsor deeming.” See 423 of PRWORA, Pub. L. 104-193, 11 Stat. 2105 (Aug. 22, 1996).

Office (GAO) 2009 report found that although the number of sponsored noncitizens potentially affected by such deeming is unknown, most recent information then available suggested that 11 percent (473,000) of sponsored aliens in 2007 applied for TANF, Medicaid, or SNAP during the course of 2007, and less than one percent applied for SSI.<sup>235</sup> In addition, according to a 2002 study of the New York and Los Angeles areas by the Urban Institute for the Office of the Assistant Secretary for Planning and Evaluation of HHS, individuals who have become lawful permanent residents since the affidavit of support under section 213A of the Act was enacted in 1996 were poorer (with incomes below 100 percent of the FPL) than those who arrived earlier.<sup>236</sup> “Legal immigrants who entered the country since 1996 are poorer than those who arrived earlier, despite new policies requiring their sponsors to demonstrate incomes over 125 percent of the FPL.”<sup>237</sup> The report also indicates that some immigrant families with incomes below twice the poverty level<sup>238</sup> received food stamps, TANF or Medicaid from 1999-2000.<sup>239</sup> For example, in Los Angeles 13 percent and in New York City 22 percent of noncitizen families with income below twice the poverty level received food stamps (SNAP).<sup>240</sup>

## **2. Proposal to Consider Required Affidavits of Support**

Certain aliens are required to submit an affidavit of support. With certain exceptions, the requirement to submit an affidavit of support applies to immediate

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<sup>235</sup> See GAO, *Sponsored Noncitizens and Public Benefits* (May 2009), available at <https://www.gao.gov/products/GAO-09-375>.

<sup>236</sup> See Randy Capps, Leighton Ku and Michael Fix et al., *How Are Immigrants Faring After Welfare Reform? Preliminary Evidence from Los Angeles and New York City*, The Urban Institute (March 4, 2002), available at <https://aspe.hhs.gov/system/files/pdf/72691/report.pdf>.

<sup>237</sup> *Id.*

<sup>238</sup> The report describes these families as low-income families.

<sup>239</sup> Randy Capps, Leighton Ku and Michael Fix et al., *How Are Immigrants Faring After Welfare Reform? Preliminary Evidence from Los Angeles and New York City*, The Urban Institute (March 4, 2002), available at <https://aspe.hhs.gov/system/files/pdf/72691/report.pdf>. Note that this report uses a household centered approach to evaluate data.

<sup>240</sup> *Id.*

relatives (including orphans), family-preference immigrants, and those employment-based immigrants who will work for a relative or for a firm in which a U.S. citizen or lawful permanent resident relative holds a significant ownership interest.<sup>241</sup> Immigrants seeking admission or adjustment of status in these categories are inadmissible under subparagraphs (C) and (D) of section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4)(C) and (D), respectively, unless an appropriate sponsor has completed and filed a sufficient affidavit of support.<sup>242</sup>

When determining the weight to give an enforceable affidavit of support (Form I-864) in the totality of the circumstances, USCIS would assess the sponsor's annual income, assets, resources, and financial status, relationship to applicant, and any other related considerations. Because, for the reasons cited above, DHS does not believe that an affidavit of support guarantees that the alien will not use or receive public benefits. DHS expects that a sponsor's signed agreement would not be an outcome-determinative factor in most cases. The inability or unwillingness of the sponsor to support the alien, however, may be viewed as a negative factor in the totality of the circumstances. In this instance, USCIS would request additional information from a sponsor or interview a sponsor to determine whether the sponsor is willing and able to support the alien on a long-term basis.

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<sup>241</sup> See INA sections 212(a)(4)(C) and (D), 8 U.S.C. 1182(a)(4)(C) and (D).

<sup>242</sup> Certain immigrant categories are exempt from the affidavit of support requirements including: qualified battered spouses and children (and their eligible family members) and qualified widow(er)s of citizens, if these aliens have filed visa petitions on their own behalf. For more information on who must file an affidavit of support, see AFM Ch. 20.5 <https://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-2872/0-0-0-3055.html>.

## **K. Heavily Weighed Factors**

DHS proposes a number of factors or factual circumstances that it has determined would generally weigh heavily in a public charge determination.<sup>243</sup> The mere presence of a heavily weighed factor would not, alone, create a presumption in favor of or against a public charge determination. Such a factor could be outweighed by countervailing evidence in the totality of the circumstances. Other negative and positive factors, including factors not enumerated elsewhere in this rule, may also be weighed heavily in individual determinations, as circumstances warrant.

### **1. Heavily Weighed Negative Factors**

DHS proposes to consider certain factors listed below as heavily negative because these factors are particularly indicative of a likelihood that the alien would become a public charge.

#### *(i) Lack of Employability*

As long as an alien is not a full-time student and is authorized to work, DHS proposes that the absence of current employment, employment history, and reasonable prospect of future employment will be a heavily weighed negative factor.<sup>244</sup> Self-sufficiency generally involves people being capable and willing to work and being able to maintain gainful employment. A person who is capable and able to work and does not work may not be able to be self-sufficient. DHS, however, recognizes that not everyone authorized to work needs to work. Some aliens may have sufficient assets and resources

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<sup>243</sup> See proposed 8 CFR 212.22.

<sup>244</sup> See proposed 8 CFR 212.22(c)(1)(ii). While a full-time student must still demonstrate he or she is not likely to become a public charge, the lack of employment or employment history is not counted as a heavily weighed negative factor. The full-time student is working toward a degree, which makes the student more employable in the future, and as such, has a reasonable prospect of employment in the future.

that may overcome any negative factor related to lack of employment. DHS would take those considerations into account in the totality of the circumstances.

*(ii) Receipt or Use of One or More Public Benefits*

DHS proposes that current receipt or use of one or more public benefits or past receipt of one or more public benefits within the last 36 months would be a heavily weighed negative factor in a public charge inadmissibility determination.<sup>245</sup> Past or current use or receipt of public benefits, alone, would not justify a finding of inadmissibility on public charge grounds. An alien's current receipt or use of one or more public benefits indicates that the alien is currently a public charge as defined under proposed 8 CFR 212.21, and suggests a high probability that the alien will be a public charge in the future. An alien's past use or receipt of public benefits within the last 36 months of his or her application carries similar weight in determining whether the alien is likely to become a public charge. The weight to give this factor will depend on whether such receipt or use of public benefits is ongoing or occurred recently.<sup>246</sup> Because of research indicating that the largest share of participants (43.0 percent) who benefited from one or more means-tested assistance programs between January 2009 and December 2012 stayed in the programs between 37 and 48 months,<sup>247</sup> DHS believes that the period of 36 months before an alien applies for admission or adjustment of status is a justifiable period to examine.

Absent heavily weighed positive factors, DHS would view past or current receipt

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<sup>245</sup> See proposed 8 CFR 212.22(c)(1)(ii) and (iii).

<sup>246</sup> This proposed policy is generally consistent with longstanding policy affording less weight to benefits that were used or received longer ago in the past. See 64 FR 2867896 (May 26, 1999).

<sup>247</sup> See U.S. Census Bureau, News Release: 21.3 Percent of U.S. Population Participates in Government Assistance Programs Each Month (May 28, 2015), available at <https://www.census.gov/newsroom/press-releases/2015/cb15-97.html>.



of public benefits a strong indicator that an alien will continue to receive or use public benefits and become a public charge.

*(iii) Medical Condition(s) without Non-Subsidized Health Insurance*

An alien is a high risk of becoming a public charge if he or she has a medical condition and is unable to show evidence of unsubsidized health insurance, the prospect of obtaining unsubsidized health insurance, or other non-governmental means of paying for treatment. DHS proposes this factual circumstance as a heavily weighed negative factor in 8 CFR 212.22(c)(1)(iv). Certain chronic health conditions can be costly to treat.<sup>248</sup> Certain conditions may adversely affect an applicant's ability and capacity to obtain and retain gainful employment and adequate health care. Other conditions could result in long-term institutionalization in a health care facility at government expense. According to the Multiple Chronic Conditions Chartbook 2010 Medical Expenditure Panel Survey Data,<sup>249</sup> 86 percent of the nation's \$2.7 trillion annual health care expenditures were for individuals with chronic and mental health conditions.<sup>250</sup> The Centers for Disease Control and Prevention (CDC) has listed the five most expensive health conditions as heart disease, cancer, trauma, mental disorders, and pulmonary

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<sup>248</sup> See HHS, *The High Concentration of U.S. Health Care Expenditures*, Research in Action, Issue #19 (Jun. 2006); available at <https://archive.ahrq.gov/research/findings/factsheets/costs/expriach>. See also Centers for Medicare & Medicaid Services, NHE Fact Sheet, available at <https://www.cms.gov/research-statistics-data-and-systems/statistics-trends-and-reports/nationalhealthexpenddata/nhe-fact-sheet.html> (in 2016, NHE grew to \$3.3 trillion). For a discussion of expenditures see generally NHE data available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData>.

See also the CDC, *Chronic Disease Prevention and Health Promotion*; available at <https://www.cdc.gov/chronicdisease/stats/index.htm>. The CDC collects large amounts of data on numerous major chronic diseases. In addition, the CDC provides an overview of chronic diseases in the United States, including prevalence and cost available at <https://www.cdc.gov/chronicdisease/overview/>.

<sup>249</sup> As cited by the CDC. See CDC, *Chronic Disease Prevention and Health Promotion, The Cost of Chronic Disease and Health Risk Behaviors*, available at <https://www.cdc.gov/chronicdisease/overview>.

<sup>250</sup> See CDC, *Chronic Disease Prevention and Health Promotion, The Cost of Chronic Disease and Health Risk Behaviors*, available at <https://www.cdc.gov/chronicdisease/overview>.

conditions.<sup>251</sup> These are all classified as costly medical conditions.<sup>252</sup> In the United States, chronic diseases and conditions that cause them account for most of the health care costs.<sup>253</sup>

- From 2012 to 2013, the total annual direct medical costs for cardiovascular disease was \$189.7 billion,<sup>254</sup>
- Cancer care cost \$157 billion in 2010 dollars,<sup>255</sup> and
- In 2012, the total estimated direct medical costs for diagnosed diabetes was \$176 billion.<sup>256</sup>

Individuals in poor to fair health may be more likely to access public benefits to treat their health condition. Tables 14 and 15 do not necessarily show a strong relationship between all categories of self-reported health status and public benefits among native-born and foreign-born persons in 2013. In some cases, individuals may have had to access public benefit programs like Medicaid and SNAP because of their compromised health. In other instances, the health of certain individuals may have improved because of their access to these programs.

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<sup>251</sup> See, HHS, *The High Concentration of U.S. Health Care Expenditures*, Mark W. Stanton, Research in Action, Issue #19 (Jun. 2006), available at <https://archive.ahrq.gov/research/findings/factsheets/costs/expriach/>. See CDC, *Chronic Disease Overview*, available at: <https://www.cdc.gov/chronicdisease/overview>. See also generally the [Centers for Disease Control and Prevention \(CDC\) statistics on Chronic Disease Prevention and Health Promotion](#), The CDC collects large amounts of data on numerous major chronic diseases, available at <https://www.cdc.gov/chronicdisease/stats/index.htm>. See also generally, CDC, *Chronic Disease Cost Calculator Version 2*, available at <https://www.cdc.gov/chronicdisease/calculator>.

<sup>252</sup> See *Id.*

<sup>253</sup> See CDC, *Chronic Disease Prevention and Health Promotion, The Cost of Chronic Disease and Health Risk Behaviors*, available at <https://www.cdc.gov/chronicdisease/overview/index.htm>. (Data available from 2002).

<sup>254</sup> See *id.*

<sup>255</sup> See National Cancer Institute, *Cancer Prevalence and Cost of Care Projections*, <http://costprojections.cancer.gov/> (last visited Feb. 22, 2018)

<sup>256</sup> See CDC, *Chronic Disease Prevention and Health Promotion, The Cost of Chronic Disease and Health Risk Behaviors*, available at <https://www.cdc.gov/chronicdisease/overview/index.htm>. (Data available from 2002).

A relationship, nonetheless, appears to exist between health and receipt of public benefits among individuals who reported their health as poor or fair irrespective of their native-born or foreign-born status. To illustrate, 15.7 percent of native-born persons and 25.9 percent of foreign-born individuals who described their health as poor received some form of cash public benefit, which was predominantly SSI. Moreover, 40.5 percent of native-born persons and 50.4 percent of foreign-born individuals who reported their health as poor participated in at least one type of non-case benefit program in 2013. This included 27.5 percent of native-born individuals and 38 percent of foreign-born persons receiving Medicaid and 24.3 percent of native-born persons and 26 percent of foreign-born persons receiving SNAP benefits. 9.5 percent of native-born persons and 11.7 percent of foreign-born individuals who described their health as fair received some form of cash public benefit, which was predominantly SSI. Moreover, 32.7 percent of native-born persons and 36.7 percent of foreign-born individuals who reported their health as fair participated in at least one type of non-case benefit program in 2013. This included 21.2 percent of native-born individuals and 26.3 percent of foreign-born persons receiving Medicaid and 19.9 percent of native-born persons and 16.7 percent of foreign-born persons receiving SNAP benefits.

<b>Table 14: Public Benefit Participation of Native-Born, by Health Status, 2013 (in thousands)</b>						
<b>Total Population</b>	<b>Excellent</b>		<b>Very good</b>		<b>Good</b>	
	<b>Population</b>	<b>% of Total Population</b>	<b>Population</b>	<b>% of Total Population</b>	<b>Population</b>	<b>% of Total Population</b>
310,867	94,134	30.3%	79,686	25.6%	60,504	19.5%

<b>Program</b>	<b>Total</b>	<b>Pct.</b>	<b>S.E.</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>
<i>Cash benefits</i>	1,591	1.7%	0.1%	1,510	1.9%	0.1%	2,214	3.7%	0.2%
SSI	540	0.6%	0.1%	865	1.1%	0.1%	1,693	2.8%	0.2%
TANF	910	1.0%	0.1%	535	0.7%	0.1%	448	0.7%	0.1%
GA	194	0.2%	0.0%	124	0.2%	0.0%	168	0.3%	0.1%
<i>Non-cash ben.</i>	20,199	21.5%	0.4%	14,094	17.7%	0.4%	13,013	21.5%	0.5%
Medicaid	15,944	16.9%	0.4%	10,365	13.0%	0.4%	8,919	14.7%	0.4%
SNAP	9,669	10.3%	0.3%	7,130	8.9%	0.3%	7,071	11.7%	0.4%
WIC	3,012	3.2%	0.2%	1,452	1.8%	0.1%	994	1.6%	0.1%
Housing	1,293	1.4%	0.1%	1,009	1.3%	0.1%	982	1.6%	0.1%
Rent Subsidy	2,952	3.1%	0.2%	2,428	3.0%	0.2%	2,382	3.9%	0.2%
Energy Assist.	3,425	3.6%	0.2%	3,139	3.9%	0.2%	3,186	5.3%	0.3%
	<b>Fair</b>			<b>Poor</b>					
<b>Total Population</b>		<b>% of Total Population</b>		<b>% of Total Population</b>					
310,867	24,881	8.0%		10,209	3.3%				
<b>Program</b>	<b>Total</b>	<b>Pct.</b>	<b>S.E.</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>			
<i>Cash benefits</i>	2,367	9.5%	0.5%	1,603	15.7%	1.0%			
SSI	2,079	8.4%	0.5%	1,412	13.8%	0.9%			
TANF	182	0.7%	0.1%	49	0.5%	0.2%			
GA	176	0.7%	0.1%	181	1.8%	0.3%			
<i>Non-cash ben.</i>	8,135	32.7%	0.8%	4,137	40.5%	1.3%			
Medicaid	5,267	21.2%	0.7%	2,806	27.5%	1.2%			
SNAP	4,957	19.9%	0.7%	2,480	24.3%	1.1%			
WIC	364	1.5%	0.2%	26	0.3%	0.1%			
Housing	618	2.5%	0.3%	312	3.1%	0.5%			
Rent Subsidy	1,730	7.0%	0.4%	963	9.4%	0.8%			
Energy Assist.	2,220	8.9%	0.5%	1,273	12.5%	0.9%			

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP). Medicaid coverage is associated with higher rates of self-reported health status as good, very good, or excellent, which would lead to higher rates of Medicaid enrollment in those categories.<sup>257</sup>

\* Estimate is considered unreliable due to a high relative standard error.

- Estimate of zero

<sup>257</sup> See: Finkelstein, A., et al., "The Oregon Health Insurance Experiment: Evidence from the First Year," National Bureau of Economic Research Working Paper Series No. 17190. <http://www.nber.org/papers/w17190.pdf>



Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP). Medicaid coverage is associated with higher rates of self-reported health status as good, very good, or excellent, which would lead to higher rates of Medicaid enrollment in those categories. *See*: Finkelstein, A., et al., “The Oregon Health Insurance Experiment: Evidence from the First Year,” National Bureau of Economic Research Working Paper Series No. 17190. <http://www.nber.org/papers/w17190.pdf>

\* Estimate is considered unreliable due to a high relative standard error.

- Estimate of zero

As noted in the discussion of the Health factor above, USCIS would rely on panel physician and civil surgeon medical examination. USCIS would consider it a heavily weighed negative factor if the panel physician or civil surgeon reports a medical condition and the alien is unable to show evidence of non-subsidized health insurance, the prospect of obtaining non-subsidized health insurance, or other non-governmental means of paying for treatment.

(iv) *Alien Previously Found Inadmissible or Deportable Based on Public Charge*

DHS is proposing to consider an alien previously found inadmissible or deportable based on public charge grounds to be a high risk of becoming a public charge in the future. *See* proposed 8 CFR 212.22(c)(1)(v). Absent countervailing positive factors and evidence to show that current circumstances have outweigh the conditions that supported the finding of inadmissibility or deportability, the previous finding will carry heavy weight in determining that an alien is likely to be a public charge again.

**2. Heavily Weighed Positive Factors**

Significant income, assets, and resources and play a major role in being self-sufficient. In addition, as described above, Tables 16 and 17 show a strong correlation between the FPL and welfare participation rates among both native-born and foreign-born households in both cash and non-cash benefit types in 2013. The percentage of people receiving public benefits goes down as the income percentage goes higher.

Specifically, the native-born living below 125 percent of the FPL were about twice as likely to be covered by cash and non-cash benefits compared to persons living between 125 and 250 percent of the FPL. For example, among the native-born population about 10 percent of persons below 125 percent of the FPL received cash benefits compared to 4.2 percent of the population between 125 and 250 percent of the FPL. Foreign-born participation rates in non-cash benefit programs among those living below 125 percent of the FPL were similar to rates among the native-born. Because many welfare benefit programs determine eligibility based on the FPL, person living above 250 percent of the FPL may be less likely to use or receive public benefits. For these reasons, and based on the data that follow, DHS proposes to consider it a heavily weighed positive factor if the alien has financial assets, resources, support, or annual income of at least 250 percent of the FPG.

The SIPP data provide estimates of the rates at which individuals participate in various welfare programs.<sup>258</sup> Tables 16 and 17 show a strong correlation between the FPL and welfare participation rates among both native-born and foreign-born households in both cash and non-cash benefit types in 2013.<sup>259</sup> Receipt of public benefits tends to be inversely correlated with income.

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<sup>258</sup> The annual average poverty estimates using SIPP data for calendar year 2013 are higher than the official estimates derived from the Annual Social and Economic Supplement of the Current Population Survey (ASEC). For example, the official estimate of poverty was 13.5 percent whereas the SIPP annual average was 17 percent. For each month in 2013, a household was identified as having received a benefit if any person in that household received the benefit.

<sup>259</sup> The following tables are annual averages of twelve monthly estimates from calendar year 2013, using data from Wave 1 of the 2014 Panel of the Survey of Income and Program Participation (SIPP), a longitudinal household survey that is sponsored and conducted by the U.S. Census Bureau.

<b>Table 16. Public Benefit Participation of Native-Born, by Federal Poverty Level (FPL), 2013 (in thousands)</b>									
<b>Total Population</b> 310,867	<b>0-125% FPL</b>			<b>&gt;125-250% FPL</b>			<b>&gt;250% FPL</b>		
	<b>Population</b>	<b>% of Total Population</b>	<b>S.E.</b>	<b>Population</b>	<b>% of Total Population</b>	<b>S.E.</b>	<b>Population</b>	<b>% of Total Population</b>	<b>S.E.</b>
	55,820	18.0%		58,045	18.7%		155,548	50.0%	
<b>Program</b>	<b>Total</b>	<b>Pct.</b>	<b>S.E.</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>
<i>Cash benefits</i>	5,571	10.0%	0.3%	2,428	4.2%	0.2%	1,286	0.8%	0.1%
SSI	3,582	6.4%	0.3%	1,889	3.3%	0.2%	1,119	0.7%	0.1%
TANF	1,664	3.0%	0.2%	353	0.6%	0.1%	107	0.1%	0.0%
GA	459	0.8%	0.1%	294	0.5%	0.1%	90	0.1%	0.0%
<i>Non-cash ben.</i>	32,984	59.1%	0.6%	18,207	31.4%	0.5%	8,387	5.4%	0.2%
Medicaid	25,638	45.9%	0.6%	12,193	21.0%	0.5%	5,470	3.5%	0.1%
SNAP	21,651	38.8%	0.6%	7,367	12.7%	0.4%	2,290	1.5%	0.1%
WIC	3,613	6.5%	0.3%	1,593	2.7%	0.2%	642	0.4%	0.0%
Housing	3,135	5.6%	0.3%	764	1.3%	0.1%	316	0.2%	0.0%
Rent Subsidy	7,159	12.8%	0.4%	2,443	4.2%	0.2%	853	0.5%	0.1%
Energy Assist.	7,934	14.2%	0.4%	3,964	6.8%	0.3%	1,346	0.9%	0.1%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).<sup>260</sup>

\*Estimate is considered unreliable due to a high relative standard error.

- Estimate of zero

<sup>260</sup> Estimates of poverty use the income cutoff for the family (RFPOV) within the poverty universe, which excludes children under the age of 15 who are not related to anyone in the household above age 15. This approach to defining poverty is consistent with the SIPP poverty estimates reported by the U.S. Census Bureau, although slight differences from our estimates may occur due either to changes made on the public-use files to avoid the risk of disclosure of survey respondents, or to differences in the approach to estimating an annual average. The estimated poverty rate using our methods is 16.8 percent, compared to the U.S. Census Bureau's estimate of 17.1 percent (*See: Monthly and Average Monthly Poverty Rates by Selected Demographic Characteristics: 2013, available at* <https://www.census.gov/content/dam/Census/library/publications/2017/demo/p70br-145.pdf>). Both of these are higher than the official estimate of poverty for 2013 of 14.5 percent, which is based on the Annual Social and Economic Supplement of the Current Population Survey (*See: Income and Poverty in the United States: 2013, available at* <https://www.census.gov/content/dam/Census/library/publications/2014/demo/p60-249.pdf>). Estimates are presented in terms of percentage of the FPL, which is 100 times the ratio of the total family income to the poverty threshold, so poverty may also be described as having an income no greater than 100 percent of the FPL.



<b>Table 17. Public Benefit Participation of Foreign-Born, by Federal Poverty Level (FPL), 2013 (in thousands)</b>									
<b>Total Population</b> 310,867	<b>0-125% FPL</b>			<b>&gt;125-250% FPL</b>			<b>&gt;250% FPL</b>		
	<b>Population</b>	<b>% of Total Population</b>	<b>S.E.</b>	<b>Population</b>	<b>% of Total Population</b>	<b>S.E.</b>	<b>Population</b>	<b>% of Total Population</b>	<b>S.E.</b>
	10,698	3.4%		10,911	3.5%		19,845	6.4%	
<b>Program</b>	<b>Total</b>	<b>Pct.</b>	<b>S.E.</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>	<b>Total</b>	<b>Rate</b>	<b>S.E.</b>
<i>Cash benefits</i>	812	7.6%	0.8%	367	3.4%	0.5%	334	1.7%	0.3%
SSI	673	6.3%	0.7%	349	3.2%	0.5%	294	1.5%	0.3%
TANF	110	1.0%	0.3%	-	-	-	20	0.1%	0.1%
GA	53	0.5%	0.2%	25	0.2%	0.1%	26	0.1%	0.1%
<i>Non-cash ben.</i>	4,846	45.3%	1.4%	2,977	27.3%	1.3%	1,585	8.0%	0.6%
Medicaid	3,478	32.5%	1.3%	1,873	17.2%	1.1%	921	4.6%	0.5%
SNAP	2,386	22.3%	1.2%	869	8.0%	0.8%	350	1.8%	0.3%
WIC	386	3.6%	0.5%	146	1.3%	0.3%	69	0.3%	0.1%
Housing	457	4.3%	0.6%	211	1.9%	0.4%	50	0.3%	0.1%
Rent Subsidy	1,251	11.7%	0.9%	487	4.5%	0.6%	238	1.2%	0.3%
Energy Assist.	831	7.8%	0.8%	564	5.2%	0.6%	284	1.4%	0.3%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).

\*Estimate is considered unreliable due to a high relative standard error.

- Estimate of zero

### **M. Public Benefits Considered for Public Charge Purposes**

DHS proposes to consider certain public benefits for the purpose of a public charge inadmissibility determination.<sup>261</sup> In addition, DHS is proposing to exclude certain public benefits, such as benefits paid for or earned by a person, public benefits when a minimal amount was received, and public education.<sup>262</sup> Below, DHS outlines the benefits that it proposes to include and exclude from consideration, respectively.

<sup>261</sup> See proposed 8 CFR 212.23.

<sup>262</sup> See proposed 8 CFR 212.24.

## 1. Benefits Considered

DHS proposes to consider certain public benefits as part of the public charge inadmissibility determination.<sup>263</sup> The receipt or use of these public benefits indicates a person is relying on the government for support to meet basic living requirements such as housing, food, utilities, and medical care. Therefore, DHS proposes to consider receipt or use of any of these benefits as a negative factor in the totality of the circumstances. The following is a non-exhaustive list of public benefits that DHS would consider:<sup>264</sup>

- Supplemental Security Income (SSI) under 42 U.S.C. 1381, et seq;
- Temporary Assistance to Needy Families (TANF), 42 U.S.C. 601;
- State or local cash benefit programs for income maintenance (often called State "General Assistance," but which may exist under other names);
- Any other Federal public benefits for purposes of maintaining the applicant's income, such as public cash assistance for income maintenance;
- Nonemergency benefits under the Medicaid Program, 42 U.S.C. 1396 to 1396w-5;
- Government-subsidized health insurance;
- Supplemental Nutrition Assistance Program (SNAP) (formerly called "Food Stamps"), 7 U.S.C. 2011 - 2036c;
- Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) 42 U.S.C. 1786;
- State Children's Health Insurance Program (CHIP or SCHIP), 42 U.S.C. 1397aa et seq.;

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<sup>263</sup> See proposed 8 CFR 212.23.

<sup>264</sup> See proposed 8 CFR 212.23.

- Housing assistance under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11401; Housing Choice Voucher Program (section 8), U.S. Housing Act of 1937 (42 U.S.C. 1437u), 24 CFR part 984;
- Means-tested energy benefits such as the Low Income Home Energy Assistance Program (LIHEAP), 42 U.S.C. 8621 to 8630;
- Institutionalization for both long-term and short-term care at government expense;
- Refundable income tax credits such as the earned income tax credit when the credit exceeds the tax liability; and
- Any other public benefit as described in proposed 8 CFR 212.21(d), except for those public benefits excluded in proposed 8 CFR 212.24.<sup>265</sup>

**1. Benefits Not Considered** *(i) Benefits Paid for or Earned*

DHS proposes to exclude a number of benefits from public charge consideration, as proposed in 8 CFR 212.24. DHS proposes to exclude such benefits because they are granted primarily because of the alien's past or current employment or contribution to the benefit system, rather than because the alien is unable to support him or herself.<sup>266</sup> These benefits may include, but are not limited to, the following:

- Federal Old-Age, Survivors, and Disability Insurance benefits;
- Veteran's benefits;
- Government pension benefits;
- Government employee health insurance;
- Government employee transportation benefits;

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<sup>265</sup> See proposed 8 CFR 212.24.

<sup>266</sup> See proposed 8 CFR 212.24(a).

- Unemployment benefits;
- Worker's compensation;
- Medicare benefits, unless the premiums are partially or fully paid by a government agency; and
- State disability insurance.

Similarly, there are certain benefits that involve payments from the person, such as loans provided by the government that require repayment; and in-state college tuition, and any subsidized or unsubsidized government student loans, including, but not limited to loan under the Williams D. Ford Federal Direct Loan Program, 34 CFR 685, and the Federal Perkins Loan Program, 34 CFR 674.

*(ii) De Minimis Amount of Public Benefits*

DHS proposes to exclude public benefits received where the total annual value in any 1 year does not exceed 3 percent of the total FPG threshold based on the household size.<sup>267</sup> For example, for a family of four, this amount (based on 2018 FPL<sup>268</sup>) would equal to approximately \$753 annually or approximately \$63 monthly. This exclusion is intended to ensure that small amounts of public benefits received or used by otherwise self-sufficient aliens are not negatively weighed in the totality of the circumstances. While DHS believes that 3 percent of the annual FPL is an appropriate threshold that will delineate individuals who relied on public benefits for support from those who generally do not need public benefits to meet their financial obligations, DHS is specifically soliciting public comments on the 3 percent threshold amount, and whether it should even

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<sup>267</sup> See proposed 8 CFR 212.24(b).

<sup>268</sup> See, *HHS Poverty Guidelines for 2018*, available at <https://aspe.hhs.gov/poverty-guidelines> (Last visited Feb. 11, 2018).

establish a numerical threshold. To the extent a numerical threshold is established, DHS seeks comments on (1) whether 3 percent is too low or too high, (2) whether this threshold should only be permitted for the initial year or two after the rule takes effect, and (3) whether this 3 percent exclusion should only apply where the public benefits are not received frequently or on a regular basis.

*(iii) Public Education*

DHS proposes to exclude elementary and secondary public education (Pre-K through 12th grade) as permitted under the law<sup>269</sup> including benefits under the Head Start Act.<sup>270</sup> Although public education may be considered a public benefit, public schools obtain funding as a whole for the number of children enrolled regardless of their income level or immigration status. In addition, states are prohibited from denying enrollment for alien children including children who were not legally admitted into the United States.<sup>271</sup> Therefore, DHS is proposing to exclude attendance of public schools from the public charge determination. The exclusion of public school attendance from the list of public benefits considered for public charge inadmissibility determinations in no way alters limitations on the attendance of public schools otherwise imposed by the INA or other law or regulation. For example, under section 214(m) of the INA as part of the nonimmigrant conditions to maintain status, an alien may not attend public school unless the aggregate attendance does not exceed 12 months and the alien demonstrates that he or she has reimbursed the school for the full, unsubsidized per capita cost of providing

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<sup>269</sup> See proposed 8 CFR 212.24(c).

<sup>270</sup>

See 42 U.S.C. section 9801 et seq.

<sup>271</sup> See *Plyler v. Doe*, 457 U.S. 202 (1981).

education for the attendance.<sup>272</sup> Similarly, 8 CFR 214.2(b)(7) prohibits an alien who is admitted as, changes status to, or extends stay in B-1 or B-2 nonimmigrant status from enrolling in a course of study.

*(iv) Non-Refundable Tax Credits and Deductions*

In addition, DHS proposes to exempt certain tax credits and deductions available for the general public which are non-refundable. Tax credits reduce the amount of tax owed by a person and a nonrefundable tax credit is a reduction in the tax liability for which a person does not get a refund of any remainder if the tax liability is less than zero.<sup>273</sup> A tax deduction is reduced amount of tax liability.<sup>274</sup>

*(v) Certain Benefits under PRWORA*

DHS also proposes to exclude any benefit as defined in 8 U.S.C. 1611(b) and 8 USC 1611(c)(2), including those benefits further defined as disaster relief under 42 U.S.C Ch. 68. During debates on PRWORA,<sup>275</sup> some senators emphasized that immigrants should have access to assistance in limited situations that concern the public health or similar overriding public interest including emergency medical care, immunization, and treatment for infectious diseases.<sup>276</sup> Congressional Reports for IIRIRA, specifically indicated that “[t]he immigration reforms in this bill will reduce access to public assistance by illegal immigrants. Illegal immigrants should have access to assistance only in limited situations, where the public health or similar overriding public interest

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<sup>272</sup> See INA 214(m).

<sup>273</sup> See IRS, *Credits & Deductions for Individuals*, available at <https://www.irs.gov/credits-deductions-for-individuals>.

<sup>274</sup> See *Id.*

<sup>275</sup> See 8 U.S.C. 1611(b).

<sup>276</sup> See 142 Cong. Rec. 47, page S3276 (Apr. 15, 1996), available at <https://www.congress.gov/crec/1996/04/15/CREC-1996-04-15-pt1-PgS3276.pdf>. See also generally 8 U.S.C. 1611(b)(1).

clearly requires it”.<sup>277</sup> Congress, under IIRIRA, ultimately exempted these programs from the prohibition of aliens receiving public benefits.<sup>278</sup> Furthermore, DHS proposes exempting any benefit under 8 U.S.C. 1611(c)(2), because these benefits are excluded from the definition of Federal public benefit. In exempting these benefits in the public charge determination, DHS is ensuring consistency with congressional intent.

*(vi) Benefits under the Individuals with Disabilities Education Act*

The Rehabilitation Act of 1974,<sup>279</sup> prohibits employment discrimination solely on the basis of disability in Federal and federally-funded programs and activities. Furthermore, the Americans with Disabilities Act of 1990,<sup>280</sup> prohibits several forms of disability discrimination in hiring for covered entities. The Individuals with Disabilities Education Act,<sup>281</sup> protects educational opportunities for all students with disabilities which provides services. Therefore, DHS is proposing to exempt all services related that preventing the discrimination of people with disabilities.

*Effective Date*

DHS is also proposing to establish an effective date for the consideration of public benefits. See proposed 8 CFR 212.22(e). Specifically, for public benefits that were previously excluded from consideration under the public charge guidance published in the *Federal Register* at 64 FR 28689, 28693 (May 26, 1999), DHS is proposing to consider those public benefits only if the alien or alien’s dependent child or household member received or used such benefits on or after the effective date of the final rule.

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<sup>277</sup> See *Immigration Control And Financial Responsibility Act Of 1996*, Congressional Records Issue and Section: April 15, 1996 - Senate (Vol. 142, No. 47) at S3282, available at <https://www.congress.gov/crec/1996/04/15/CREC-1996-04-15-pt1-PgS3276.pdf> .

<sup>278</sup> See also generally 8 U.S.C. 1611(b)(1).

<sup>279</sup> See Pub. L. 93-112, section 504, codified as amended at 29 U.S.C. section 794.

<sup>280</sup> See Pub. L. 101-336, section 102, 104 Stat. 331, codified as amended at 42 U.S.C. section 12112.

<sup>281</sup> See 20 U.S.C. sections 1400 to 1482.

Receiving or using such benefits be considered along with all other relevant factors in the totality of the circumstances analysis when determining whether an alien is inadmissible for being more likely than not to become a public charge. The effective date may provide an opportunity for public benefit granting agencies to communicate the consequences of receiving public benefits, to the extent they deem appropriate. In addition, this gives aliens time to stop accepting public benefits and obtain other means of support before filing for immigration benefits. DHS welcomes any public comments on additional public benefits that should be excluded from the public charge consideration.

## **O. Public Charge Bond for Adjustment of Status and Immigrant Visa**

### **Applicants**

DHS has the broad authority to prescribe forms of bonds as is deemed necessary for carrying out the Secretary's authority under the provisions of the INA.<sup>282</sup>

Additionally, an alien who DHS has determined to be inadmissible based on public charge grounds, may, if otherwise admissible, be admitted at the discretion of the Secretary upon giving a suitable and proper bond.<sup>283</sup> Currently, the regulatory authority for posting a public charge bond can be found in 8 CFR 103.6 and 8 CFR 213.

### **1. Overview of Immigration Bonds Generally**

Immigration bonds may generally be secured by cashier's checks or money orders, or may be underwritten by a surety company certified by the Department of Treasury under 31 U.S.C. 9304-9308.<sup>284</sup> A bond, including a surety bond, is a contract between the United States (the obligee) and an individual or a company (obligor) who

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<sup>282</sup> See section 103(a)(3) of the INA, 8 U.S.C. 1103(a)(3).

<sup>283</sup> See section 213 of the INA, 8 U.S.C. 1183.

<sup>284</sup> See generally 8 CFR 103.6.



pledges a sum of money to guarantee a set of conditions set by the government concerning an alien.<sup>285</sup> Surety bonds are bonds in which the surety company and its agents serve as co-obligors on the bond. Such company and its agents are jointly and severally liable for the payment of the face amount of the bond when the bond is breached.<sup>286</sup>

## 2. Overview of Public Charge Bonds

Public charge bonds are a unique form of bond intended to hold the United States and all states, territories, counties, towns, municipalities and districts harmless against aliens becoming a public charge.<sup>287</sup> A public charge bond is issued on the condition that the alien does not become a public charge. If the government permits the alien to submit a public charge bond, the government typically admits the alien despite having found the alien inadmissible as likely to become a public charge.

If an alien admitted on a public charge bond becomes a public charge, the bond is breached and forfeited. The public entity that provided the assistance underlying the breach may be reimbursed based on the public charge bond posted, regardless of whether a demand for payment of the public expense has been made otherwise, as reflected below.<sup>288</sup>

Although DHS has the authority to require public charge bonds, the authority has rarely been exercised since the passage of IIRIRA in 1996.<sup>289</sup> Consequently, USCIS does

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<sup>285</sup> See, e.g., *Matter of Allied Fidelity Insurance Company*, 19 I&N Dec. 124 (BIA 1984) (discussing the contractual nature of delivery bonds submitted under 8 CFR 103.6); see “Bond”, Merriam-Webster (2018), available at <https://www.merriam-webster.com/dictionary/bond>.

<sup>286</sup> See 8 CFR 103.6(e).

<sup>287</sup> See section 213 of the INA, 8 U.S.C. 1183.

<sup>288</sup> Section 213 of the INA, 8 U.S.C. 1183; see also *Matter of Viado*, 19 I&N Dec. 252 (BIA 1985).

<sup>289</sup> See AFM, Chapter 61.1: “(b) Policy. Although USCIS has the authority to require a public charge bond, such authority is rarely exercised in light of the statutory changes contained in the Illegal Immigration

not have a process in place to accept public charge bonds regularly. In this rule, DHS proposes to clarify when an alien seeking adjustment of status or an immigrant visa will be permitted to post a public charge bond under DHS's authority outlined in sections 103 and 213 of the INA, 8 U.S.C. 1103 and 1183. Additionally, as reflected below, DHS proposes to establish a new minimum bond amount of \$10,000 (adjusted annually for inflation), limit the circumstances in which a public charge bond will be cancelled, as well as establish specific conditions under which a public charge bond will be breached. *See* proposed 8 CFR 213.1. USCIS plans to establish a process to accept and process public charge bonds which would be available on the effective date of the final rule.

### **3. Permission to Post a Public Charge Bond**

First, the proposed regulation clarifies that accepting the public bond is within DHS's discretion. *See* proposed 8 CFR 213.1. It is within DHS's discretion to allow an alien to post a public charge bond if the alien is otherwise admissible. Therefore, DHS proposes that in circumstances in which USCIS determines after a finding of inadmissibility on public charge grounds, that a favorable exercise of discretion is warranted, USCIS will notify the alien of the bond amount and conditions and direct an alien to submit a bond on an appropriate form. DHS proposes that a public charge bond would only be submitted after USCIS makes this option available to the alien, and that USCIS would reject any unsolicited attempt to submit a bond.

The same factors that weigh in favor of finding a person likely to become a public charge will generally weigh in favor of setting a higher bond amount. Ultimately, the purpose of the bond is to allow DHS to appropriately admit an alien who is inadmissible

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Reform and Immigrant Responsibility Act of 1996 (IIRIRA) which created the enforceable affidavit of support (see [Chapter 20.5](#) of this field manual).”

due to the public charge ground of inadmissibility, but who warrants a favorable exercise of discretion. DHS believes that offering a public charge bond in the immigrant visa or adjustment of status adjudication context would only be warranted in limited circumstances in which the alien has no heavily weighed negative factors. As a matter of discretion DHS may take into account any of a range of considerations, such as whether allowing the alien to become a lawful permanent resident would offer benefits to national security, or would be justified for exceptional humanitarian reasons.

#### **4. Bond Amount and Submission of a Public Charge Bond**

DHS is proposing that a public charge bond be set at no less than \$10,000, annually adjusted for inflation based on the Consumer Price Index for All Urban Consumers (CPI-U), and rounded up to the nearest dollar.

Predicting an average amount sufficient for a public charge bond based on historical public benefit data (per person or household) is difficult, because the amount of average public benefit costs paid to a person or household depends on the program(s) the person or household uses and how long the person or household uses the program. The broad range of public assistance programs available to individuals on the Federal, State, and local level, but not necessarily to immigrants, render such a determination even more complex.

DHS proposes to set the base amount of the public charge bond at \$10,000 based on data showing the median of public benefits received in 2013 by household size in Table 18 below. In 2013, the median amount of public benefit benefits received (taking a consideration SSI, TANF, GA, SNAP, and WIC) ranged between \$2,160 (for 1 person) to \$4,538 (for 5 or more persons). Given the prospective nature of the public charge

determination, and the statutory conditions on the public charge bond – the bond may be cancelled if the alien naturalizes (generally no earlier than 5 years after obtaining lawful permanent resident status), dies, or permanently departs – DHS considered a general 5-year timeframe<sup>290</sup> as an objective multiplier for the base bond amount.

According to the U.S. Census Bureau, depending on the type of public benefit, the duration that individuals receive public benefit varies from 1 to 12 months for 35.6 percent of Medicaid recipients and between 37 and 48 months for another 35.3 percent of recipients.<sup>291</sup> The duration of participation for SNAP and housing assistance benefits varied from 37 to 48 months for 38.6 percent and 49.4 percent of participants, respectively. Additionally, the duration of participation of TANF ranged from 1 to 12 months for almost 63 percent of participants. While, as discussed above, the duration of public benefit receipt may last between 1 to 48 months, many aliens do not naturalize within 5 years, and may receive public benefit benefits at different times over the course of their lawful permanent resident status. Therefore the amount of benefits received based on 2013 data could be between \$10,800 to \$22,690. Accordingly, DHS proposes that \$10,000 would be an amount that would provide USCIS with an appropriate starting point when determining the public charge bond amount that is minimally necessary to ensure that United States can recoup and refund the cost of public benefits received by the alien.

<b>Table 18. Median Family Public Benefit Amount per Year Among those Receiving the Benefits, by Family Size (2013)</b>
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<sup>290</sup> INA section 316(a), 8 U.S.C. 1427(a); 8 CFR 316.2(a)(3)

<sup>291</sup> U.S Census Bureau. News Release. *21.3 Percent of U.S. Population Participates in Government Assistance Programs Each Month* (May 28, 2015); available at: <https://www.census.gov/newsroom/press-releases/2015/cb15-97.html> (accessed Feb. 22, 2018).

	Household of 1	Household of 2	Household of 3	Household of 4	Household of 5+
<b>Program</b>					
<i>Any benefit</i>	\$2,160	\$2,533	\$2,940	\$3,192	\$4,538
SSI	\$6,444	\$7,212	\$7,200	\$6,480	\$8,450
TANF	\$1,600	\$2,140	\$1,952	\$3,216	\$3,600
GA	\$2,400	\$1,800	\$2,856	\$2,740	\$4,368
SNAP	\$1,380	\$2,100	\$2,408	\$3,150	\$4,080
WIC	\$345	\$429	\$519	\$519	\$639

In addition, DHS requested information from Federal benefits-granting agencies regarding the amounts of money collected through affidavits of support sponsors. [ADD TO DISCUSSION FOLLOWING CONSULTATION WITH BENEFITS-GRANTING AGENCIES.]

If USCIS determines that the alien may submit a public charge bond, neither the alien nor an obligor, including a surety company, would be able to appeal the amount of the bond required.<sup>292</sup>

As indicated above, under this proposed rule, USCIS would notify the alien of the bond amount and conditions, including the type of bond the alien may submit. Each submission would be on the form designated and in accordance with the applicable instructions. While the proposed rule retains the options for a surety bond, or a cashier's check or money order deposit and agreement to secure a bond, due to operational feasibility considerations, USCIS plans to initially allow for only surety bonds.<sup>293</sup> DHS proposes to use new USCIS Form I-945, Public Charge Bond for this purpose.

For all public charge surety bonds, USCIS will require that the bond be underwritten by a surety company certified by the Department of the Treasury, as

<sup>292</sup> See proposed 8 CFR 213.1(b).

<sup>293</sup> See proposed 8 CFR 213.1(b)(1).

provided for in proposed 8 CFR 103.6. This requirement is consistent with existing DHS requirements for other immigration bonds.<sup>294</sup> Treasury-certified sureties have agents throughout the United States from whom aliens could seek assistance in procuring an appropriate bond.<sup>295</sup> The Department of the Treasury certifies companies only after having evaluated a surety company's qualifications to underwrite Federal bonds, including whether those sureties meet the specified corporate and financial standards. Under 31 U.S.C. 9305(b)(3), a surety (or the obligor) must carry out its contracts and comply with statutory requirements, including prompt payment of demands arising from an administratively final determination that the bond had been breached.

If an alien successfully posts a public charge bond in the amount and under the conditions specified in the form instructions and USCIS notice, USCIS will continue to adjudicate the alien's application for adjustment of status and will grant such application if all eligibility criteria are met. However, if the alien does not respond to the notice soliciting a public charge bond, or the bond submitted does not comply with the bond amount and conditions set by USCIS, USCIS will deny the alien's application. And as noted above, in addition to processing public charge bonds in adjustment of status cases, DHS proposes that USCIS process public charge bonds for immigrant visa applicants upon the request of a consular officer. Given the complexity of a bond process, DHS plans to issue separate guidance addressing the specifics of public charge bond submission.

## **5. Bond Cancellation**

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<sup>294</sup> See 8 CFR 103.6(b).

<sup>295</sup> See Department of the Treasury's Listing of Approved Sureties (Department Circular 570).

A public charge bond must remain in effect until the alien naturalizes, permanently departs the United States, or dies, or until the bond is substituted with another bond.<sup>296</sup> During this period, as a condition of the bond, an alien on whose behalf a public charge bond has been accepted agrees to not use or receive any public benefits, as defined in 8 CFR 212.21, after the date of submission of such a bond.

DHS proposes that USCIS would cancel the bond upon request, following a determination that the conditions of a bond have been met and the bond has not been breached.<sup>297</sup> A request is necessary because typically, after an alien obtains an immigration benefit from USCIS or enters as an immigrant, USCIS has little interaction with the alien until he or she seeks another immigration benefit. USCIS is typically not notified if an alien dies. Also, in many circumstances, USCIS would be unaware that an alien permanently departed. Information currently collected by DHS is insufficient for USCIS to determine on its own whether the alien intended a departure to be permanent.

As part of the cancellation request, USCIS would collect evidence that supports a finding that the bond conditions have been met. For example, DHS would require additional information of the alien's permanent departure.<sup>298</sup> In addition, USCIS would

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<sup>296</sup> See INA section 213, 8 U.S.C. 1183; see also proposed 8 CFR 213.1.

<sup>297</sup> Return of the bond amount is unavailable "to the extent [the bond] has been forfeited for violation of the terms thereof." See section 213 of the INA, 8 U.S.C. 1183. DHS proposes to interpret this authority to allow DHS to impose, as a condition of the bond, forfeiture of the entire bond amount in the event of a breach. This interpretation allows DHS to ensure that USCIS has adequate recourse in the aftermath of a bond breach, given the operational context in which USCIS makes bond cancellation determinations. USCIS often lacks full information regarding the alien's use of public benefits at the Federal, State, local, Tribal, or territorial level; once USCIS determines that the alien has violated the bond conditions by using or receiving public benefits, USCIS cannot responsibly reimburse a portion of the breached bond to the obligor.

<sup>298</sup> See, e.g., *Matter of De Los Santos*, 11 I&N Dec. 121 (BIA 1965) (cancellation of public charge bond upon permanent departure). Departure verification is not new to the DHS processes. Aliens who depart, for example, under a grant of Voluntary Departure under section 240B of the INA, 8 U.S.C. 1229c, must submit proof of departure. DHS envisions that, together with the request to cancel the public charge bond, an alien could submit information such as Record of Abandonment of Lawful Permanent Resident Status

collect the necessary information, to the extent possible and in accordance with relevant privacy laws, to ascertain whether an alien used or received public benefits as defined in 8 CFR 212.21. *See* proposed 8 CFR 213.1.

This constitutes a change from current regulations which allow for public charge bond cancellation after 5 years from the date of the alien's admission, or at any time if it is determined that an alien is not likely to become a public charge.<sup>299</sup> These changes are necessary because the 5-year timeframe in current regulations, although generally consistent with the 5-year period in the public charge ground of deportability under section 237(a)(5) of the Act, 8 U.S.C. 1227(a)(5), suggests that DHS will assume that the statutory conditions for bond cancellation have been met. Because not all aliens would naturalize within 5 years of admission or adjustment of status, this may not be the case.

In cases in which USCIS determines that the request warrants a cancellation of a bond, USCIS would notify the obligor, and return the full value of any cashier's check or money order deposited by the obligor to secure the bond plus interest, similar to current practice. *See* 8 CFR 103.6(c) and proposed 8 CFR 213.1. If USCIS denies the request to cancel the bond, it will notify the obligor of the reasons why and of the right to appeal in accordance with the requirements of 8 CFR part 103, subpart A. *See* proposed 8 CFR 213.1. When the bond is cancelled, the obligor is released from liability. *See* proposed 8 CFR 213.1.

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(Form I-407) evidencing that the alien permanently abandoned his or her residence status (green card status).

<sup>299</sup> *See* 8 CFR 103.6(c)(1).



DHS invites public comments on the proposed amount, duration of a surety bond, and any other aspects of a public charge bond.

## **6. Breach of a Public Charge Bond and Appeal**

A bond is considered breached if the alien uses or receives any public benefit (as defined in proposed 8 CFR 212.21) or if the obligor fails to timely substitute a bond of limited duration with another valid bond. *See* proposed 8 CFR 213.1. If USCIS learns of the breach, USCIS would notify the obligor that the alien breached the bond, including the reason(s) for the breach, and offer the obligor the right to appeal the determination in accordance with the requirements of 8 CFR 103, subpart A. *See* proposed 8 CFR 213.1(e). A bond obligor could appeal a breach determination to the Administrative Appeals Office of USCIS by filing, Notice of Appeal or Motion (Form I-290B) together with the appropriate fee and required evidence. *See* 8 CFR 103.1; 103.3. In the alternative, an obligor could also file a motion to reopen or reconsider by using the same form. *See* 8 CFR 103.5. If the appeal or motion is denied or the obligor fails to appeal, the breach determination becomes the final agency determination, and USCIS would issue a demand for payment pursuant to 31 CFR 901.2. *See* 8 CFR 103.6(e); *see generally United States v. Gonzales & Gonzales Bonds & Ins. Agency, Inc.* 728 F. Supp. 2d 1077, 1089-91 (N.D. Cal. 2010); *Safety Nat'l Cas. Corp. v. DHS*, 711 F. Supp. 2d 697, 703-04 (S.D. Tex. 2008).

## **7. Suit on the Bond**

[FOR DISCUSSION WITH DOJ]

## **8. Exhaustion of Administrative Remedies**

Under the proposed rule, a party must first exhaust all administrative remedies and obtain a final decision from USCIS in line with procedures in 8 CFR part 103, before being able to bring suit challenging USCIS cancellation or bond breach determination in Federal district court. *See* proposed 213.1(f).

## **9. Other Technical Changes**

In addition to amending 8 CFR 103.6 and 213.1 to updated and establish requirements specific to public charge bonds, this proposed rule would make technical changes to 8 CFR 103.6 to update references to offices and form names.

## **VI. Statutory and Regulatory Requirements**

### **A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs.

This proposed rule is a “significant regulatory action” although it is not economically significant since it does not meet the \$100 million threshold, under section

3(f) of Executive Order 12866. Accordingly, OMB has reviewed this proposed regulation.

Section 4(c) of Executive Order 13771 excludes from the definition of “regulation” or “rule” for its purposes, “any other category of regulations exempted by the Director.” The Administrator of the Office of Information and Regulatory Affairs has exempted this type of immigration regulation from regulations or rules covered by this the Executive Order.

### **1. Summary**

As previously discussed, DHS is proposing to modify its regulations to add new regulatory provisions for inadmissibility determinations based on public charge grounds under the INA. DHS is proposing to define the term “public charge” for immigration purposes and provide guidance on the types of public benefits that are considered in the public charge determinations. An alien applying for a visa, admission at the port of entry or adjustment of status must establish that he or she is not likely at any time to become a public charge. DHS proposes that certain factors may be weighed positively or negatively, depending on how the factor impacts the immigrant’s likelihood to become a public charge. DHS is also revising existing regulations to clarify when and how it considers public charge when adjudicating in change of status and extension of stay applications. Finally, DHS is proposing to revise its regulations governing the Secretary’s discretion to accept a public charge bond or similar undertaking under section 213 of the INA, 8 U.S.C. 1183a. Similar to a waiver, a public charge bond permits an alien deemed inadmissible on the public charge ground to be admitted, if otherwise

admissible.<sup>300</sup> Simultaneously, DHS is proposing to eliminate the use and consideration of unenforceable affidavits of support currently applicable to certain classes of aliens.

This proposed rule would impose new costs on the population applying to adjust status using Form I-485 that are subject to the public charge grounds on inadmissibility who would now be required to file the new Form I-944 as part of the public charge inadmissibility determination. DHS estimates that the total annual cost on the population applying to adjust status who would be required to file Form I-944 would be \$25.8 million.

Over the first 10 years of implementation, DHS estimates the total quantified new costs of the proposed rule would be as much as \$258,448,690 (undiscounted) for filing Form I-944 as part of the review for determination of inadmissibility based on public charge when applying for adjustment of status. DHS estimates that the 10-year discounted total costs of this proposed rule would be \$220,461,975 at a 3 percent discount rate and \$181,523,545 at a 7 percent discount rate.

The proposed rule would also potentially impose new costs on individuals or companies (obligors) if an alien has been found to be a public charge, but has been given the opportunity to submit a public charge bond, for which USCIS intends to use the new Public Charge Bond form (Form I-945). DHS estimates the total cost to file Form I-945 would be \$5.30 per filer.

In addition, the proposed rule would potentially impose new costs on the population seeking extension of stay or change of status using Form I-129 or Form I-539.

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<sup>300</sup> There is no mention of “waiver” or “waive” in section 213 of the INA, 8 U.S.C. 1183. However, the BIA has viewed that provision as functioning as a waiver of the public charge ground of inadmissibility. *See Matter of Ulloa*, 22 I&N Dec. 725, 726 (BIA 1999).

For either of these forms, USCIS adjudication officers would be able to exercise discretion regarding whether it would be necessary to issue a RFE whereby an applicant may then have to submit Form I-944. The costs to Form I-129 beneficiaries who may receive a RFE to file Form I-944 range from \$444,914 to \$52,730,601 annually. The costs to Form I-539 applicants who may receive a RFE to file Form I-944 range from \$231,318 to \$27,415,491 annually.

The primary benefit of the proposed rule would be to help ensure that aliens who are admitted to the United States, seek extension or change of status, or apply for adjustment of status are self-sufficient and would not use or receive one or more public benefits through an improved review process. DHS also anticipates that the proposed rule would produce some benefits from the elimination of Form I-864W. The elimination of Form I-864W would potentially reduce the number of forms USCIS would have to process. DHS estimates the amount of benefits that would accrue from eliminating Form I-864W would be \$34.84 per petitioner.<sup>301</sup> However, DHS notes that we are unable to determine the annual number of filings of Form I-864W who would now use other forms and therefore currently unable to estimate the total annual benefits. Additionally, a public charge bond process would also provide benefits to applicants as they potentially would be given the opportunity to be admitted despite the determination that he or she is likely to become a public charge.

Table 19 provides a more detailed summary of the proposed provisions and their impacts.

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<sup>301</sup> Calculation opportunity cost of time for completing and submitting Form I-864W: (\$34.84 per hour \* 1.0 hours) = \$34.84.

<b>Table 19. Summary of Major Provisions and Economic Impacts of the Proposed Rule</b>		
<b>Provisions</b>	<b>Purpose</b>	<b>Expected Impact of Proposed Rule</b>
Adding 8 CFR 212.20. Purpose and applicability of public charge inadmissibility.	To define the categories of aliens that are subject to the public charge determination.	<p><b>Quantitative:</b></p> <p><u>Benefits</u></p> <ul style="list-style-type: none"> <li>• \$34.84 per petitioner opportunity cost of time for eliminating Form I-864W.</li> </ul> <p><u>Costs:</u></p> <ul style="list-style-type: none"> <li>• DHS anticipates a likely increase in the number of denials for adjustment of status applicants based on public charge determinations due to formalizing and standardizing the criteria and process for public charge determination.</li> </ul> <p><b>Qualitative:</b></p> <p><u>Benefits</u></p> <ul style="list-style-type: none"> <li>• Ensure that aliens who are admitted to the United States or apply for adjustment of status are self-sufficient and would not become dependent on public benefits through an improved review process.</li> <li>• Potential to improve the efficiency for USCIS in the review process for public charge.</li> </ul>
Adding 8 CFR 212.21. Definitions.	To establish key definitions, including public charge, public benefit, dependent, government, and subsidized health insurance.	
Adding 8 CFR 212.22. Public charge determination.	<p>Clarifies that evaluating public charge is a prospective determination based on the totality of the circumstances.</p> <p>Outlines minimum and additional factors considered when evaluating whether an immigrant is inadmissible based on public charge. Factors are weighed, positively and negatively, to determine an individual's likelihood of becoming a public charge.</p>	
<p>Adding 8 CFR 212.23. Public benefits considered for purposes of public charge inadmissibility</p> <p>Adding 8 CFR 212.24. Public benefits not considered for purposes of public charge inadmissibility.</p>	<p>Outlines public benefits that, if alien used, received, currently uses or receives, or is likely to use or receive, constitutes a negative factor in the public charge determination.</p> <p>Outlines public benefits that cannot be considered when evaluating whether an alien is likely to become inadmissible based on public charge.</p>	

<p>Adding 8 CFR 212.25. Exemptions and waivers for public charge ground of inadmissibility.</p>	<p>Outlines exemptions and waivers for inadmissibility based on public charge grounds.</p>	
<p>Adding 8 CFR 214.1(a)(3)(iv) and amending 8 CFR 214.1(c)(4). Nonimmigrant general requirements; and Amending 8 CFR 248.1(a) and adding 8 CFR 248.1(c)(4). Change of nonimmigrant classification eligibility.</p>	<p>To provide, with limited exceptions, that an applicant for extension of nonimmigrant status must demonstrate that he or she is not using or receiving, nor likely to use or receive, public benefits as defined in proposed 8 CFR 212.21(d), before the applicant can be granted .</p>	<p><b>Quantitative:</b></p> <ul style="list-style-type: none"> <li>• None</li> </ul> <p><b>Qualitative:</b></p> <p><u>Benefits</u></p> <ul style="list-style-type: none"> <li>• Potential to improve the efficiency for USCIS in the review process for public charge.</li> </ul>
<p>Amending 8 CFR 245. Adjustment of status to that of a person admitted for permanent residence..</p>	<p>To outline requirements that aliens submit a declaration of self-sufficiency on the form designated by DHS and any other evidence requested by DHS in the public charge inadmissibility determination.</p>	<p><b>Quantitative:</b></p> <p><u>Costs</u></p> <ul style="list-style-type: none"> <li>• Total costs over 10-year period to applicants applying to adjust status who must file Form I-944 are: <ul style="list-style-type: none"> <li>• \$258.4 million for undiscounted costs;</li> <li>• \$220.5 million at a 3% discount rate; and</li> <li>• \$181.5 million at a 7% discount rate.</li> </ul> </li> <li>• Range of potential annual costs for those filing Form I-129 from \$0.44 million to \$52.7 million depending on how many applicants are sent a RFE by USCIS.</li> <li>• Range of potential annual costs for those filing Form I-539 from \$0.23 million to \$ 27.4 million depending on how many applicants are sent a RFE by USCIS.</li> </ul> <p><b>Qualitative:</b></p> <ul style="list-style-type: none"> <li>• None</li> </ul>
<p><b>Public Charge Bond Provisions</b></p>		

Amending 8 CFR 103.6. Public charge bonds.	To set forth the Secretary’s discretion to approve bonds, specify acceptable sureties, cancellation, bond schedules, and breach of bond and move principles governing public charge bonds to proposed 8 CFR 213.1.	<p><b>Quantitative:</b></p> <p><u>Costs</u></p> <ul style="list-style-type: none"> <li>• \$15.89 per applicant opportunity cost of time for completing Public Charge Bond (Form I-945).</li> <li>• \$2.65 per applicant opportunity cost of time for completing Request for Cancellation of Public Charge Bond (Form I-356).</li> <li>• Fees paid to surety bond companies to secure public charge bond. Fees could range from 1 – 15 percent of the public charge bond amount based on an individual’s credit score.</li> </ul>
Amending 8 CFR 213.1. Admission or adjustment of status of aliens on giving of a public charge bond.	To change the title of this section and add specifics to the public charge bond provision for individuals who are seeking an immigrant visa or adjustment of status, including the discretionary review and the minimum amount required for a public charge bond.	<p><b>Qualitative:</b></p> <p><u>Costs</u></p> <ul style="list-style-type: none"> <li>• Potentially enable an alien who was found inadmissibility on public charge grounds to be admitted by posting a public charge bond with DHS.</li> </ul>
Source: USCIS analysis.		

## 2. Background and Purpose of the Rule

As discussed in the preamble, DHS seeks to ensure that aliens who are admitted to the United States or apply for adjustment of status are self-sufficient and would not use or receive one or more public benefits. Under the INA, any alien who, at the time of application for a visa, admission, or adjustment of status, is deemed likely at any time to become a public charge is inadmissible to the United States.<sup>302</sup>

While the INA does not define public charge, Congress has specified that when determining if an alien is likely at any time to become a public charge, consular and

<sup>302</sup> See INA section 212(a)(4); 8 U.S.C. 1182(a)(4).



immigration officers must, at a minimum, consider certain factors including the alien's age, health, and family status; assets, resources, and financial status; and education and skills.<sup>303</sup> Additionally, DHS may consider any affidavit of support submitted under section 213A of the INA, 8 U.S.C. 1183a, on behalf of the applicant when determining whether the applicant may become a public charge.<sup>304</sup> For most family-based and some employment-based immigrant visas or adjustment of status applications, applicants must have a sufficient affidavit of support or they will be found inadmissible as likely to become a public charge.<sup>305</sup>

However, in general, there is a lack of academic literature or economic research examining the link between immigration and public benefits (i.e., welfare), and the strength of that connection.<sup>306</sup> It is also difficult to determine whether immigrants are net contributors or net users of government-supported public assistance programs since much of the answer depend on the data source, how the data are used, and what assumptions are made for analysis.<sup>307</sup> Moreover, DHS notes that we did not specifically estimate the impacts and costs of the proposed rule on the welfare system for US citizen children who could lose access to CHIP, SNAP, or other government-supported public assistance programs for which they are entitled. DHS also was not able to estimate potential lost productivity, early death, or increased disability insurance claims as a result of this proposed rule.

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<sup>303</sup> See INA section 212(a)(4)(B)(i); 8 U.S.C. 1182(a)(4)(B)(i).

<sup>304</sup> See INA section 212(a)(4)(B)(ii). When required, the applicant must submit Form I-864, Affidavit of Support Under Section 213A of the INA.

<sup>305</sup> See INA section 212(a)(4)(C) and (D), 8 U.S.C. 1182(a)(4)(C) and (D).

<sup>306</sup> See Borjas, G.J. (2016) *We wanted workers: Unraveling the immigration narrative*. Chapter 9. W.W. Norton & Company, New York.

<sup>307</sup> See Borjas, G.J. (2016) *We wanted workers: Unraveling the immigration narrative*. Chapter 9, p. 175. W.W. Norton & Company, New York.

Currently, the public charge inadmissibility ground does not apply to all applicants seeking a visa, admission, or adjustment of status. Several immigrant and nonimmigrant categories, by law or regulation, are exempt from the public charge ground of inadmissibility grounds..<sup>308</sup>

The costs and benefits for this proposed rule focuses on individuals applying for adjustment of status using Form I-485. Such individuals would be applying from within the United States, rather than applying for admission from outside the United States through consular processing at a DOS consulate abroad. In addition, nonimmigrant workers who are seeking an extension of stay or a change of status are also examined in this analysis.

The new process DHS is proposing for making a determination of inadmissibility based on public charge incorporates a new form—Form I-944—to the current process to apply for adjustment of status. Currently, as part of the requirements for filing Form I-485, applicants submit biometrics collection for fingerprints and signature, and also file Form I-693 which is to be completed by a designated civil surgeon. Form I-693 is used to report results of a medical examination to USCIS.

Form I-864 is also required for most family-based immigrants and some employment-based immigrants to show that they have adequate means of financial support and are not likely to become a public charge. When a sponsor completes and signs Form I-864 in support of an intending immigrant, the sponsor agrees to use his or her resources, financial or otherwise, to support the intending immigrant named in the affidavit, if it becomes necessary.

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<sup>308</sup> See proposed 8 CFR 212.25(a).

Immigrants required to submit Form I-864 completed by a sponsor to obtain an immigrant visa overseas or to adjust status to that of lawful permanent resident in the United States, include 1) immediate relatives of U.S. citizens (spouses, unmarried children under 21 years of age, and parents of U.S. citizens 21 years of age and older); 2) family-based preference immigrants (unmarried sons and daughters of U.S. citizens, spouses and unmarried sons and daughters of lawful permanent residents, married sons and daughters of U.S. citizens, and brothers and sisters of U.S. citizens 21 years of age and older); and 3) employment-based preference immigrants in cases only when a U.S. citizen, lawful permanent resident, or U.S. national relative filed the immigrant visa petition or such relative has a significant ownership interest (5 percent or more) in the entity that filed the petition. However, immigrants with certain visa classifications are exempt from the requirement to submit a Form I-864 as well as any intending immigrant who has earned or can receive credit for 40 qualifying quarters (credits) of work in the United States.

Additionally, some sponsors for intending immigrants may be able to file an Affidavit of Support Under Section 213A of the INA (Form I-864EZ). Form I-864EZ is a shorter version of Form I-864 and is designed for cases that meet certain criteria. A sponsor may file Form I-864EZ only if: 1) the sponsor is the person who filed or is filing a Petition for Alien Relative (Form I-130) for a relative being sponsored; 2) the relative being sponsored is the only person listed on Form I-130; and 3) the income the sponsor is using for qualification is based entirely on salary or pension and is shown on one or more Internal Revenue Service (IRS) Form W-2s provided by employers or former employers.

Form I-864 includes attachment, Contract Between Sponsor and Household Member (Form I-864A), which may be filed when a sponsor's income and assets do not meet the income requirements of Form I-864 and the qualifying household member chooses to combine his or her resources with the income and/or assets of a sponsor to meet those requirements. A sponsor must file a separate Form I-864A for each household member whose income and/or assets the sponsor is using to meet the affidavit of support income requirements. The Form I-864A contract must be submitted with Form I-864. The Form I-864A serves as a contractual agreement between the sponsor and household member that, along with the sponsor, the household member is responsible for providing financial and material support to the sponsored immigrant.

In cases where the petitioning sponsor cannot meet the income requirements by him or herself, an individual seeking an immigrant visa may also meet the affidavit of support requirement by obtaining a joint sponsor who is willing to accept joint and several liability with the petitioning sponsor as to the obligation to provide support to the sponsored alien. The joint sponsor must demonstrate income or assets that independently meet the requirements to support the sponsored immigrant(s) as required under section 213A(f)(2) of the INA, 8 U.S.C. 1883a(f)(2). The joint sponsor's income and assets may not be combined with the income/assets of the petitioning sponsor or the sponsored immigrant. Both the petitioning sponsor and the joint sponsor must each complete a Form I-864.

Certain classes of immigrants currently are exempt from the requirement to file Form I-864 or Form I-864EZ and therefore must file Form I-864W. DHS proposes to eliminate Form I-864W and instead individuals would now be required to provide the

information previously requested on the Form I-864W using Form I-485. Based on the information provided in the Form I-485, an officer can verify whether an alien is statutorily required to file an affidavit of support.

Some applicants seeking an adjustment of status may be eligible for a fee waiver when filing Form I-485. An applicant who is unable to pay the filing fees or biometric services fees for an application or petition may be eligible for a fee waiver by filing a Request for Fee Waiver (Form I-912). If an applicant's Form I-912 is approved, the agency will waive both the filing fee and biometric services fee. Therefore, DHS assumes for the purposes of this economic analysis that the filing fees and biometric services fees required for Form I-485 are waived if an approved Form I-912 accompanies the application.

When filing Form I-485, a fee waiver is only available if the applicant is applying for adjustment of status based on:

- Special Immigrant Status based on an approved Form I-360 as an Afghan or Iraqi Interpreter, or Afghan or Iraqi National employed by or on behalf of the U.S. Government; or
- An adjustment provision that is exempt from the public charge grounds of inadmissibility under section 212(a)(4) of the INA, including but not limited to the Cuban Adjustment Act, the Haitian Refugee Immigration Fairness Act (HRIFA), and the Nicaraguan Adjustment and Central American Relief Act (NACARA), or similar provisions; continuous residence in the United States since before January 1, 1972, "Registry," Asylum Status under section 209(b) of the INA, Special Immigrant Juvenile Status, and Lautenberg parolees.

Additionally, an individual may also apply for a fee waiver for Form I-485 for the following statuses:

- Battered spouses of A, G, E-3, or H nonimmigrants;
- Battered spouse or child of a lawful permanent resident or U.S. citizen under INA section 240A(b)(2);
- T nonimmigrant;
- U nonimmigrant; or
- VAWA self-petitioner.

DHS is proposing to facilitate the current Form I-485 application process by creating a new form—Form I-944—which would collect information to the extent allowed by relevant laws based on factors such as age, health, family status, finances, education and skills, and any additional financial support through an affidavit of support so that DHS could determine whether an applicant applying for adjustment of status who is subject to public charge review would be inadmissible to the United States based on public charge grounds. For the analysis of this proposed rule, DHS assumes that all individuals who apply for an adjustment of status using Form I-485 are required to submit Form I-944, unless he or she is in a class of applicants that is exempt from review for determination of inadmissibility based on public charge at the time of adjustment of status according to statute or regulation.

In addition to those applying for an adjustment of status, any alien applying for an extension of stay or change of status as a nonimmigrant in the United States would now be required to demonstrate that he or she is neither using nor receiving, nor likely to use or receive, public benefits as defined in this proposed rule unless the applicant is in a

class of admission or is seeking to change to a class of admission that is exempt from inadmissibility on public charge grounds.

For applicants seeking adjustment of status or an immigrant visa who are likely to become a public charge after the review for determination of inadmissibility based on public charge, DHS is proposing to establish a bond process for such aliens. DHS currently does not have a specific process or procedure in place to accept public charge bonds, though it has the authority to do so. The proposed public charge bond process would include DHS acceptance of a public charge bond posted on an immigrant visa or adjustment of status applicant's behalf if the immigrant visa applicant or adjustment of status applicant was deemed inadmissible based on public charge. The process would also include DHS determination of breach of a public charge bond, and the possibility to appeal the breach determination, and cancellation of a public charge bond.

### **3. Population**

This proposed rule would mostly affect individuals who are present in the United States who are seeking an adjustment of status. According to statute, an individual who is seeking adjustment of status and is at any time likely to become a public charge is inadmissible to the United States.<sup>309</sup> The grounds of inadmissibility apply whether the person enters the United States for a temporary purpose or permanently. However, the grounds of public charge inadmissibility do not apply to all applicants as there are various classes of admission that are exempt from adjudication for public charge based on statute or regulation. Within USCIS, this proposed rule would primarily affect individuals who apply for adjustment of status since these individuals would be required to be reviewed

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<sup>309</sup> See INA section 212(a)(4), 8 U.S.C. 1182(a)(4)

for a determination of inadmissibility based on public charge grounds as long as the individual is not in a class of admission that is exempt from review for public charge. In addition, the proposed rule would potentially affect individuals applying for an extension of stay or change of status because these individuals would have to demonstrate that they are neither using or receiving, nor likely to receive, public benefits as defined in the proposed rule. This analysis estimates the populations from each of these groups that would be subject to review for use or receipt of public benefits. DHS notes that the population estimates are based on aliens present in the United States who are applying for adjustment of status or extension of stay or change of status, rather than individuals outside the United States who must apply for an immigrant visa through consular processing at a DOS consulate abroad.

*(i) Population Seeking Adjustment of Status*

With this proposed rule, DHS intends to ensure that aliens who are admitted to the United States or who apply for an adjustment of their status are self-sufficient and do not intend to request public benefits. Therefore, DHS estimates the population of individuals who are applying for adjustment of status using Form I-485. Under the proposed rule, these individuals would undergo review for determination of inadmissibility based on public charge grounds, unless an individual is in a class of admission that is exempt from review for public charge determination.

Table 20 shows the total population in fiscal years 2012 to 2016 that applied for adjustment of status. In general, the annual population of individuals who applied to adjust status was consistent. Over the 5-year period, the population of individuals applying for adjustment of status ranged from a low of 530,802 in fiscal year 2013 to a



high of 565,427 in fiscal year 2016. In addition, the average population of individuals over 5 fiscal years who applied for adjustment of status over this period was 544,246.

<b>Table 20. Total Population that Applied for Adjustment of Status, Fiscal Year 2012 to 2016.</b>	
<b>Fiscal Year</b>	<b>Total Population Applying for Adjustment of Status</b>
<b>2012</b>	547,559
<b>2013</b>	530,802
<b>2014</b>	535,126
<b>2015</b>	542,315
<b>2016</b>	565,427
<b>Total</b>	<b>2,735,894</b>
<b>5-year average</b>	<b>544,246</b>

Source: USCIS analysis of DHS Yearbook of Immigration Statistics.

DHS welcomes any public comments on our estimates of the total number of individuals applying for adjustment of status in the United States as the primary basis for developing population estimates of those who would be subject to review for determination of inadmissibility based on public charge grounds. DHS notes that the population estimates are based on immigrants present in the United States who are applying for adjustment of status, rather than immigrants outside the United States who must apply for an immigrant visa through consular processing at a DOS consulate abroad.

*a. Exemptions from Determination of Inadmissibility Based on Public Charge Grounds*

There are exemptions and waivers for certain classes of admission that are not subject to review for determination of inadmissibility based on public charge grounds.

Table 21 shows the classes of applicants for admission, adjustment of status, or registry according to statute or regulation that are exempt from inadmissibility based on public charge grounds.

<b>Table 21. Classes of Applicants for Admission, Adjustment of Status, or Registry Exempt from Inadmissibility Based on Public Charge According To Statute or Regulation.</b>	
<ul style="list-style-type: none"> <li>Refugees and asylees as follows: at the time admission under section 207 of the Act (refugees) or grant under section 208 of the Act (asylees adjustment of status to lawful permanent resident under sections 207(c)(3) and 209(c) of the Act;</li> </ul>	<ul style="list-style-type: none"> <li>Amerasian immigrants at the time of application for admission as described in sections 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, Public Law 100-202, 101 Stat. 1329-183, section 101(e) (Dec. 22, 1987), as amended, 8 U.S.C. 1101 note;</li> </ul>
<ul style="list-style-type: none"> <li>Afghan and Iraqi Special immigrants serving as translators with United States armed forces as described in section 1059(a)(2) of the National Defense Authorization Act for Fiscal Year 2006 Public Law 109-163 (Jan. 6, 2006), as amended, and section 602(b) of the Afghan Allies Protection Act of 2009, Public Law 111-8, title VI (Mar. 11, 2009), as amended, 8 U.S.C. 1101 note;</li> </ul>	<ul style="list-style-type: none"> <li>Cuban and Haitian entrants applying for adjustment of status under in section 202 of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603, 100 Stat. 3359 (Nov. 6, 1986), as amended, 8 U.S.C. 1255a note;</li> </ul>
<ul style="list-style-type: none"> <li>Aliens applying for adjustment of status under the Cuban Adjustment Act, Public Law 89-732 (Nov. 2, 1966), as amended, 8 U.S.C. 1255 note;</li> </ul>	<ul style="list-style-type: none"> <li>Nicaraguans and other Central Americans applying for adjustment of status under sections 202(a) and section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), Public Law 105-100, 111 Stat. 2193 (Nov. 19, 1997), as amended, 8 U.S.C. 1255 note;</li> </ul>
<ul style="list-style-type: none"> <li>Haitians applying for adjustment of status under section 902 of the Haitian Refugee Immigration Fairness Act of 1998, Public Law 105-277, 112 Stat. 2681 (Oct. 21, 1998), as amended, 8 U.S.C. 1255 note;</li> </ul>	<ul style="list-style-type: none"> <li>Lautenberg parolees as described in section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Public Law 101-167, 103 Stat. 1195, title V (Nov. 21, 1989), as amended, 8 U.S.C. 1255 note;</li> </ul>
<ul style="list-style-type: none"> <li>Special immigrant juveniles as described in section 245(h) of the Act;</li> </ul>	<ul style="list-style-type: none"> <li>Aliens who entered the United States prior to January 1, 1972 and who meet the other conditions for being granted lawful permanent residence under</li> </ul>

	section 249 of the Act and 8 CFR part 249 (Registry);
<ul style="list-style-type: none"> <li>• Aliens applying for or re-registering for Temporary Protected Status as described in section 244 of the Act under section 244(c)(2)(A)(ii) of the Act and 8 CFR 244.3(a);</li> </ul>	<ul style="list-style-type: none"> <li>• A nonimmigrant classified under section 101(a)(15)(T) of the Act, in accordance with section 212(d)(13)(A) of the Act;</li> </ul>
<ul style="list-style-type: none"> <li>• An applicant for, or individual who is granted, nonimmigrant status under section 101(a)(15)(U) of the Act in accordance with section 212(a)(4)(E)(ii) of the Act;</li> </ul>	<ul style="list-style-type: none"> <li>• Nonimmigrants classified under section 101(a)(15)(U) of the Act applying for adjustment of status under section 245(m) of the Act and 8 CFR 245.24;</li> </ul>
<ul style="list-style-type: none"> <li>• An alien who is a VAWA self-petitioner under section 212(a)(4)(E)(i) of the Act;</li> </ul>	<ul style="list-style-type: none"> <li>• A qualified alien described in section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. 1641(c), under section 212(a)(4)(E)(iii) of the Act;</li> </ul>
<ul style="list-style-type: none"> <li>• Applicants adjusting status who qualify for a benefit under section 1703 of the National Defense Authorization Act, Public Law 108-136, 117 Stat. 1392 (Nov. 24, 2003), 8 U.S.C. 1151 note (posthumous benefits to surviving spouses, children, and parents);</li> </ul>	<ul style="list-style-type: none"> <li>• American Indians Born in Canada as described in section 289 of the Act;</li> </ul>
<ul style="list-style-type: none"> <li>• Nationals of Vietnam, Cambodia, and Laos applying for adjustment of status under section 586 of Public Law 106-429 under 8 CFR 245.21; and</li> </ul>	<ul style="list-style-type: none"> <li>• Polish and Hungarian Parolees who were paroled into the United States from November 1, 1989 to December 31, 1991 under section 646(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104-208, Div. C, Title VI, Subtitle D (Sept. 30, 1996), 8 U.S.C. 1255 note.</li> </ul>
Source: USCIS.	

To estimate the annual total population of individuals seeking to adjust status who would be subject to review for inadmissibility based on public charge grounds, DHS examined the annual total population of individuals who applied for adjustment of status for fiscal years 2012 to 2016. For each fiscal year, DHS removed individuals from the population whose classes of admission are exempt from public charge review for inadmissibility, leaving the total population that would be subject to such review.

Table 22 shows the total estimated population of individuals seeking to adjust status under a class of admission that is exempt from review for inadmissibility based on public charge grounds for fiscal years 2012 to 2016 as well as the total estimated population that would be subject to public charge review.<sup>310</sup> In fiscal year 2016, for example, the total number of persons who applied for an adjustment of status across various classes of admission was 565,427 (see table 3). After removing individuals from this population whose classes of admission are exempt from examination for public charge, DHS estimates the total population in fiscal year 2016 that would be subject to public charge review for inadmissibility is 382,769.<sup>311</sup>

<b>Table 22. Total Estimated Population of Individuals Seeking Adjustment of Status who Were Exempt from Public Charge Adjudication.</b>		
	<b>Total Population Seeking Adjustment of Status that is Exempt from Public Charge Review for Inadmissibility</b>	<b>Total Population Subject to Public Charge Review for Inadmissibility</b>
<b>2012</b>	163,333	384,226
<b>2013</b>	132,814	397,988
<b>2014</b>	154,912	380,214
<b>2015</b>	176,190	366,125
<b>2016</b>	182,658	382,769
<b>Total</b>	<b>810,783</b>	<b>1,925,111</b>
<b>5-year average</b>	<b>161,981</b>	<b>382,264</b>
Source: USCIS analysis.		

<sup>310</sup> Calculation of total estimated population that would be subject to public charge review: (Total Population Applying for Adjustment of Status) – (Total Population Seeking Adjustment of Status that is Exempt from Public Charge Review for Inadmissibility) = Total Population Subject to Public Charge Review for Inadmissibility.

<sup>311</sup> Calculation of total population subject to public charge review for inadmissibility for fiscal year 2016: 565,427 – 182,658 = 382,769.

DHS estimates the projected annual average total population that would be subject to public charge review for inadmissibility is 382,264. This estimate is based on the 5-year average of the annual estimated total population subject to public charge review for inadmissibility from fiscal year 2012 to fiscal year 2016. Over this 5-year period, the estimated population of individuals applying for adjustment of status subject to public charge review ranged from a low of 366,125 in fiscal year 2015 to a high of 397,988 in fiscal year 2013.

DHS welcomes any public comments on our estimates of the total population of individuals seeking to adjust status under a class of admission that is exempt from review for inadmissibility based on public charge grounds as well as the total population that would be subject to public charge review. DHS notes that the population estimates are based on immigrants present in the United States who are applying for adjustment of status, rather than immigrants outside the United States who must apply for an immigrant visa through consular processing at DOS consulate abroad.

*b. Exemptions from the Requirement to Submit an Affidavit of Support*

In addition to the exemptions from inadmissibility based on public charge, certain classes of admission are exempt from the requirement to submit an affidavit of support for applicants for admission, adjustment of status, or registry. Certain applicants applying for adjustment of status are required to submit an affidavit of support from a sponsor or they would otherwise be found inadmissible as likely to become a public charge. When an affidavit of support is submitted, a contract is established between the sponsor and the U.S. Government to establish a legally enforceable obligation to support the applicant financially.

Table 23 shows the estimated total population of individuals seeking adjustment of status who were exempt from the requirement to submit an affidavit of support from a sponsor based on the likelihood of becoming a public charge over the period fiscal year 2012 to fiscal year 2016. The table also shows the total estimated population that was required to submit an affidavit of support showing evidence of having adequate means of financial support so that an applicant would not be found inadmissible as likely become a public charge for failure to submit a sufficient affidavit of support. The estimated average population of individuals seeking to adjust status who were required to submit a public charge affidavit of support from a sponsor over the 5-year period was 257,610. Over this 5-year period, the estimated population of individuals required to submit a public charge affidavit of support from a sponsor ranged from a low of 247,011 in fiscal year 2015 to a high of 272,451 in fiscal year 2016.

<b>Table 23. Total Estimated Population of Individuals Seeking Adjustment of Status Who Are Exempt from the Requirement to Submit Public Charge Affidavit of Support.</b>		
	<b>Total Population Exempt from Submitting Affidavit of Support</b>	<b>Total Population Required to Submit a Public Charge Affidavit of Support</b>
<b>2012</b>	288,951	258,608
<b>2013</b>	272,222	258,580
<b>2014</b>	283,726	251,400
<b>2015</b>	295,304	247,011
<b>2016</b>	292,976	272,451
<b>Total</b>	<b>1,448,625</b>	<b>1,287,269</b>
<b>5-year average</b>	<b>286,636</b>	<b>257,610</b>
Source: USCIS analysis		

DHS estimates the projected annual average total population that would be subject to the requirement to submit an affidavit of support from a sponsor is 257,610.

This estimate is based on the 5-year average of the annual estimated total population of applicants applying for adjustment of status that would be subject to the requirement to submit an affidavit of support from a sponsor from fiscal year 2012 to fiscal year 2016. Over this 5-year period, the estimated population of such individuals applying for adjustment of status ranged from a low of 247,011 in fiscal year 2015 to a high of 272,451 in fiscal year 2016.

DHS welcomes any public comments on our estimates of the total population of individuals seeking adjustment of status who were exempt from the requirement to submit an affidavit of support from a sponsor based on the likelihood of becoming a public charge as well as the total population that was required to submit an affidavit of support showing evidence of having adequate means of financial support so that an applicant would not be found inadmissible as likely become a public charge for failure to submit a sufficient affidavit of support. DHS notes that the population estimates are based on immigrants present in the United States who are applying for adjustment of status, rather than immigrants outside the United States who must apply for an immigrant visa through consular processing at a U.S. Department of State consulate abroad.

*(ii) Population Seeking Extension of Stay or Change of Status*

Nonimmigrants in the United States may apply for an extension of stay or change of status by having Form I-129 filed by an employer on his or her behalf. An employer uses Form I-129 to petition USCIS for a beneficiary to enter the United States temporarily as a nonimmigrant to perform services or labor, or to receive training. The Form I-129 could also be used to request an extension or change in status. A nonimmigrant may also file Form I-539 so long as the nonimmigrant is currently in an

eligible nonimmigrant category.<sup>312</sup> A nonimmigrant must submit an application for extension of stay or change of status before his or her current authorized stay expires. In addition to determining inadmissibility based on public charge for individuals seeking adjustment of status, DHS is proposing to conduct reviews of nonimmigrants who apply for extension of stay or change of status to determine whether the applicant has demonstrated that he or she is not using or receiving, nor is likely to use or receive, public benefits as defined in the proposed rule. However, DHS proposes that such determinations would not require applicants seeking extension of stay or change of status to file Form I-944 detailing their financial, health, and education status. Instead, USCIS officers would be able to exercise discretion regarding whether it would be necessary to issue a RFE whereby an applicant would then have to submit Form I-944.

Table 24 shows the total estimated population of beneficiaries seeking extension of stay or change of status through an employer petition using Form I-129 for fiscal years 2012 to 2016. DHS estimated this population based on receipts of Form I-129 in each fiscal year. Over this 5-year period, the estimated population of individuals who would be subject to a determination of inadmissibility on public charge grounds ranged from a low of 282,225 in fiscal year 2013 to a high of 377,221 in fiscal year 2012. The estimated average population of individuals seeking extension of stay or change of status over the five-year period fiscal year 2012 to 2016 was 336,335. DHS estimates that 336,335 is the average annual projected population of beneficiaries seeking extension of

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<sup>312</sup> Form I-539 may also be used by Commonwealth of the Northern Mariana Islands (CNMI) residents applying for an initial grant of status; F and M nonimmigrants to apply for reinstatement; and persons seeking V nonimmigrant status or an extension of stay as a V nonimmigrant.



stay or change of status through an employer petition using Form I-129 and therefore subject to the discretionary RFEs for public charge determination.

**Table 24. Total Estimated Population of Beneficiaries Seeking Extension of Stay or Change of Status through an Employer Petition Using Form I-129, Fiscal Year 2012 – 2016.**

	Receipts	Approvals	Denials
<b>2012</b>	377,221	249,172	127,555
<b>2013</b>	282,225	221,229	60,413
<b>2014</b>	306,159	242,513	63,087
<b>2015</b>	340,338	277,010	62,175
<b>2016</b>	375,733	321,783	52,430
<b>Total</b>	<b>1,681,676</b>	<b>1,311,707</b>	<b>365,660</b>
<b>5-year average</b>	<b>336,335</b>	<b>262,341</b>	<b>73,132</b>
Source: USCIS analysis			
Notes: Denials include the number of applications that were denied, terminated, revoked, or withdrawn during the reporting period. Cases may have been adjudicated in a later year than the one in which they were received.			

Table 25 shows the total estimated population of individuals seeking extension of stay and change of status using Form I-539 for fiscal years 2012 to 2016. DHS estimated this population based on receipts of Form I-539 in each fiscal year. Over this 5-year period, the estimated population of individuals who would be subject to a determination of inadmissibility on public charge grounds ranged from a low of 149,583 in fiscal year 2013 to a high of 203,695 in fiscal year 2016. The estimated average population of individuals seeking extension of stay or change of status over the 5-year period from fiscal year 2012 to 2016 was 174,866. DHS estimates that 174,866 is the average annual projected population of individuals who would seek an extension of stay and change of

status using Form I-539 and therefore would be subject to the discretionary RFEs for public charge determination.

	<b>Receipts</b>	<b>Approvals</b>	<b>Denials</b>
<b>2012</b>	154,309	135,379	18,781
<b>2013</b>	149,583	130,600	18,826
<b>2014</b>	185,515	136,298	22,053
<b>2015</b>	181,226	154,184	26,162
<b>2016</b>	203,695	138,870	17,492
<b>Total</b>	<b>874,328</b>	<b>695,331</b>	<b>103,314</b>
<b>5-year average</b>	<b>174,866</b>	<b>139,066</b>	<b>20,663</b>

Source: USCIS analysis  
Notes: Denials include the number of applications that were denied, terminated, revoked, or withdrawn during the reporting period. Cases may have been adjudicated in a later year than the one in which they were received.

DHS welcomes any public comments on our estimates of the total population of employers filing on behalf of individuals seeking extension of stay or change of status using Form I-129 as well as the total of individuals seeking extension of stay or change of status using Form I-539, where DHS proposes that the total population using each of these forms would be subject to review on a discretionary basis for determination of inadmissibility based on public charge grounds. DHS notes that the population estimates are based on non-immigrants present in the United States who are applying for extension of stay or a change of status, rather than individuals outside the United States who must apply for a nonimmigrant visa through consular processing at a DOS consulate abroad.

#### **4. Cost-Benefit Analysis**

DHS expects this proposed rule to produce costs and benefits associated with the procedures for examining individuals seeking entry into the United States for inadmissibility based on public charge.

For this proposed rule, DHS generally uses the federal minimum wage of \$7.25 per hour to estimate the opportunity cost of time as a reasonable proxy of time valuation for individuals who are applying for adjustment of status and must be reviewed for determination of inadmissibility based on public charge grounds.<sup>313</sup> This analysis uses the federal minimum wage rate since approximately 80 percent of the total number of individuals who obtained lawful permanent resident status was in a class of admission other than employment-based.<sup>314</sup> As a result, DHS assumes these applicants hold positions in occupations that have a wage below the mean hourly wage across all occupations.

In addition, the federal minimum wage is an unweighted hourly wage that does not account for worker benefits. DHS accounts for worker benefits by calculating a benefits-to-wage multiplier using the most recent Department of Labor, BLS report detailing the average employer costs for employee compensation for all civilian workers in major occupational groups and industries. DHS estimates that the benefits-to-wage multiplier is 1.46 and, therefore, is able to estimate the full opportunity cost per applicant, including employee wages and salaries and the full cost of benefits such as paid leave, insurance, and retirement.<sup>315</sup> Due to data limitations, DHS assumes that individuals

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<sup>313</sup> See 29 USC § 206 - Minimum wage. Available at <https://www.gpo.gov/fdsys/pkg/USCODE-2011-title29/html/USCODE-2011-title29-chap8-sec206.htm> (accessed Jan. 24, 2018).

<sup>314</sup> See United States Department of Homeland Security. Yearbook of Immigration Statistics: 2016, Table 6. Washington, D.C., U.S. Department of Homeland Security, Office of Immigration Statistics, 2017. Available at <https://www.dhs.gov/immigration-statistics/yearbook/2016> (accessed Jan. 24, 2018).

<sup>315</sup> The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour) / (Wages and Salaries per hour) = \$35.64 / \$24.33 = 1.46. See Economic News Release, *Employer Cost for*

seeking to adjust status are widely dispersed throughout the various occupational groups and industry sectors of the U.S. economy. DHS notes that there are no employment requirements for filing Form I-485 and many applicants may not be employed. Therefore, in this proposed rule, DHS calculates the total rate of compensation for individuals applying for adjustment of status as \$10.59 per hour in this proposed rule using the benefits-to-wage multiplier, where the mean hourly wage is \$7.25 per hour worked and average benefits are \$3.34 per hour.<sup>316</sup>

However, DHS uses the unweighted mean hourly wage of \$23.86 per hour for all occupations to estimate the opportunity cost of time for some populations in this economic analysis, such as those submitting an affidavit of support for an immigrant seeking to adjust status and those requesting extension of stay or change of status. For populations such as this, DHS assumes that individuals are dispersed throughout the various occupational groups and industry sectors of the U.S. economy. For the population submitting an affidavit of support, therefore, DHS calculates the average total rate of compensation for these individuals as \$34.84 per hour, where the mean hourly wage is \$23.86 per hour worked and average benefits are \$10.98 per hour.<sup>317, 318</sup>

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*Employee Compensation (September 2017)*, U.S. Dept. of Labor, BLS, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group. December 15, 2017, *available at* [https://www.bls.gov/news.release/archives/ecec\\_12152017.pdf](https://www.bls.gov/news.release/archives/ecec_12152017.pdf) (viewed Jan. 8, 2018).

<sup>316</sup> The calculation of the weighted federal minimum hourly wage for applicants: \$7.25 per hour \* 1.46 benefits-to-wage multiplier = \$10.585 = \$10.59 (rounded) per hour.

<sup>317</sup> The national mean hourly wage across all occupations is reported to be \$23.86. *See* Occupational Employment and Wage Estimates United States. May 2016. Department of Labor, BLS, Occupational Employment Statistics program, *available at* [https://www.bls.gov/oes/2016/may/oes\\_nat.htm](https://www.bls.gov/oes/2016/may/oes_nat.htm).

<sup>318</sup> The calculation of the weighted mean hourly wage for applicants: \$23.86 per hour \* 1.46 = \$34.84 per hour.

DHS welcomes any public comments on its use of the federal minimum wage for most populations of this analysis and the average hourly wage for all occupations for some other populations.

*(i) Baseline Estimate of Current Costs*

The baseline estimate of current costs is the best assessment of costs and benefits absent the proposed action. For this proposed rule, DHS estimates the baseline according to current operations and requirement and to that compares the estimated costs and benefits of the provisions set forth in the proposed rule. Therefore, DHS defines the baseline by assuming “no change” to DHS regulations to establish an appropriate basis for evaluating the provisions of the proposed rule. DHS notes that costs detailed as part of the baseline include all current costs associated with completing and filing Form I-485, including required biometrics collection and medical examination (Form I-693) as well as any affidavits of support (Forms I-864, I-864A, I-864EZ, and I-864W) or requested fee waivers (Form I-912). As noted previously in the background section, the source of additional costs imposed by this proposed rule would come from the proposed requirements to submit Form I-944 detailing information about an applicant regarding factors such as age, health, family status, finances, and education and skills. These costs are analyzed later in this economic analysis.

Table 26 shows the estimated population and annual costs of filing for adjustment of status and requesting an extension of stay or change of status for the proposed rule. These costs primarily result from the process of applying for adjustment of status, including filing Form I-485 and Form I-693 as well as, if necessary, an affidavit of support and/or Form I-912. The sources of costs derived from the process of applying for extension of stay or change of status, including filing Form I-129 or Form I-539.

<b>Table 26. Total Annual Baseline (Current) Costs.</b>		
<b>Form</b>	<b>Estimated Annual Population</b>	<b>Total Annual Cost</b>
<b>I-485, Application to Register Permanent Residence or Adjust Status</b>	382,264	
Filing Fee		\$435,780,960
Opportunity Cost of Time (OCT)		\$25,302,054
Biometrics Services Fee		\$32,492,440
Biometrics Services OCT		\$14,858,602
Biometrics Services Travel Costs		\$10,416,694
<b>I-693, Report of Medical Examination and Vaccination Record</b>	382,264	
Medical Exam Cost		\$187,309,360
Opportunity Cost of Time (OCT)		\$10,122,351
Postage Costs		\$1,433,490
<b>I-912, Request for Fee Waiver</b>	53,285	
Opportunity Cost of Time (OCT)		\$725,534
Postage Costs		\$219,593
<b>Affidavit of Support Forms (I-864, I-864A, I-864EZ, I-864W)</b>	257,610	
Opportunity Cost of Time (OCT)		\$53,850,794
<b>I-129, Petition for a Nonimmigrant Worker</b>	336,335	
Filing Fee		\$154,714,100
Opportunity Cost of Time (OCT)		\$27,421,393
Postage Costs		\$1,261,256
<b>I-539, Application to Extend/Change Nonimmigrant Status</b>	174,866	
Filing Fee		\$64,700,420
Opportunity Cost of Time (OCT)		\$11,453,723
<b>Total Baseline Costs</b>		<b>\$1,032,062,764</b>
Source: USCIS analysis.		

*a. Determination of Inadmissibility based on Public Charge Grounds*

*(a) Form I-485, Application to Register Permanent Residence or Adjust Status*

The basis of the quantitative costs estimated for this proposed rule is the cost of filing for adjustment of status using Form I-485, the opportunity cost of time for completing this form, any other required forms, and any other incidental costs (e.g., travel costs) an individual must bear that are required in the filing process. DHS reiterates that costs examined in this section are not additional costs that would be imposed by the proposed rule, but costs that applicants currently incur as part of the application process to adjust status. The current filing fee for Form I-485 is \$1,140. As previously discussed in the population section, the estimated average annual population of individuals who apply for adjustment of status using Form I-485 is 382,264. Therefore, DHS estimates that the annual filing cost associated for Form I-485 is approximately \$435,780,960.<sup>319</sup>

DHS estimates the time burden of completing Form I-485 is 6.25 hours per response, including the time for reviewing instructions, gathering the required documentation and information, completing the application, preparing statements, attaching necessary documentation, and submitting the application.<sup>320</sup> Using the total rate of compensation for minimum wage of \$10.59 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-485 would be \$66.19 per applicant.<sup>321</sup> Therefore, using the total population estimate of 382,264 annual filings for

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<sup>319</sup> Calculation: (Form I-485 filing fee (\$1,140) \* (Estimated annual population filing Form I-485 (382,264)) = \$1,140 \* 382,264 = \$435,780,960 annual cost for filing Form I-485.

<sup>320</sup> Source: Paperwork Reduction Act (PRA) Supporting Statement for Form I-485 (OMB control number 1615-0023). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201706-1615-001](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201706-1615-001).

<sup>321</sup> Calculation for opportunity cost of time for filing Form I-485: (\$34.84 per hour \* 6.25 hours) = \$66.187 = \$66.19 (rounded) per applicant.

Form I-485, DHS estimates the total opportunity cost of time associated with completing Form I-485 is approximately \$25,302,054 annually.<sup>322</sup>

USCIS requires applicants who file Form I-485 to submit biometric information (fingerprints and signature) by attending a biometrics services appointment at a designated USCIS Application Support Center (ASC). The biometrics services processing fee is \$85.00 per applicant. Therefore, DHS estimates that the annual cost associated with biometrics services processing for the estimated average annual population of 382,264 individuals applying for adjustment of status is approximately \$32,492,440.<sup>323</sup>

In addition to the biometrics services fee, the applicant would incur the costs to comply with the biometrics submission requirement as well as the opportunity cost of time for traveling to an ASC, the mileage cost of traveling to an ASC, and the opportunity cost of time for submitting his or her biometrics. While travel times and distances vary, DHS estimates that an applicant's average roundtrip distance to an ASC is 50 miles and takes 2.5 hours on average to complete the trip.<sup>324</sup> Furthermore, DHS estimates that an applicant waits an average of 1.17 hours for service and to have his or her biometrics collected at an ASC, adding up to a total biometrics-related time burden of 3.67 hours.<sup>325</sup> Using the total rate of compensation of minimum wage of \$10.59 per

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<sup>322</sup> Calculation: Form I-485 estimated opportunity cost of time (\$66.19) \* Estimated annual population filing Form I-485 (382,264) = \$25,302,054.16 = \$25,302,054 (rounded) annual opportunity cost of time for filing Form I-485.

<sup>323</sup> Calculation: Biometrics services processing fee (\$85) \* Estimated annual population filing Form I-485 (382,264) = \$32,492,440 annual cost for associated with Form I-485 biometrics services processing.

<sup>324</sup> See "Employment Authorization for Certain H-4 Dependent Spouses; Final rule," 80 FR 10284 (25 Feb. 2015); and "Provisional and Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives; Final Rule," 78 FR 536, 572 (3 Jan. 2013).

<sup>325</sup> Source for biometric time burden estimate: Paperwork Reduction Act (PRA) Supporting Statement for Form I-485 (OMB control number 1615-0023). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201706-1615-001](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201706-1615-001).



hour, DHS estimates the opportunity cost of time for completing the biometrics collection requirements for Form I-485 is \$38.87 per applicant.<sup>326</sup> Therefore, using the total population estimate of 382,264 annual filings for Form I-485, DHS estimates the total opportunity cost of time associated with completing the biometrics collection requirements for Form I-485 is approximately \$14,858,602 annually.<sup>327</sup>

In addition to the opportunity cost of providing biometrics, applicants would incur travel costs related to biometrics collection. The cost of travel related to biometrics collection would equal \$27.25 per trip, based on the 50-mile roundtrip distance to an ASC and the General Services Administration's (GSA) travel rate of \$0.545 per mile.<sup>328</sup> DHS assumes that each applicant would travel independently to an ASC to submit his or her biometrics, meaning that this rule would impose a travel cost on each of these applicants. Therefore, DHS estimates that the total annual cost associated with travel related to biometrics collection for the estimated average annual population of 382,264 individuals applying for adjustment of status is approximately \$10,416,694.<sup>329</sup>

In sum, DHS estimates the total current annual cost for filing Form I-485 is \$518,850,750. The total current annual costs include Form I-485 filing fees, biometrics services fees, opportunity cost of time for completing Form I-485 and submitting biometrics information, and travel cost associated with biometrics collection.<sup>330</sup> DHS

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<sup>326</sup> Calculation for opportunity cost of time to comply with biometrics submission for Form I-485: (\$10.59 per hour \* 3.67 hours) = \$38.87 (rounded) per applicant.

<sup>327</sup> Calculation: Estimated opportunity cost of time to comply with biometrics submission for Form I-485 (\$38.87) \* Estimated annual population filing Form I-485 (382,264) = \$14,858,602 (rounded) annual opportunity cost of time for filing Form I-485.

<sup>328</sup> See U.S. General Services Administration website for Privately Owned Vehicle (POV) Mileage Reimbursement Rates, <https://www.gsa.gov/travel/plan-book/transportation-airfare-rates-pov-rates-etc/privately-owned-vehicle-pov-mileage-reimbursement-rates> (accessed January 7, 2018).

<sup>329</sup> Calculation: (Biometrics collection travel costs) \* (Estimated annual population filing Form I-485) = \$27.25 \* 382,264 = \$10,416,694 annual travel costs related to biometrics collection for Form I-485.

<sup>330</sup> Calculation: \$435,780,960 (Annual filing fees for Form I-485) + \$25,302,054 (Opportunity cost of time for filing Form I-485) + \$32,492,440 (Biometrics services fees) + \$14,858,602 (Opportunity cost of time

notes that a medical examination is generally required as part of the application process to adjust status. Costs associated with the medical examination are detailed in the next section. Moreover, costs associated submitting an affidavit of support and requesting fee waiver are also detailed in subsequent sections since such costs are not required for every individual applying for an adjustment of status.

*(b) Form I-693, Report of Medical Examination and Vaccination Record*

USCIS requires most applicants who file Form I-485 seeking adjustment of status to submit Form I-693 completed by a designated civil surgeon. Form I-693 is used to report results of a medical examination to USCIS. For this analysis, DHS assumes that all individuals who apply for adjustment of status using Form I-485 are required to submit Form I-693. DHS reiterates that costs examined in this section are not additional costs that would be imposed by the proposed rule, but costs that applicants currently incur as part of the application process to adjust status. The medical examination is required to establish that an applicant is not inadmissible to the United States on health-related grounds. While there is no filing fee associated with Form I-693, the applicant is responsible for paying all costs of the medical examination, including the cost of any follow-up tests or treatment that is required, and must make payments directly to the civil surgeon or other health care provider. In addition, applicants bear the opportunity cost of time for completing the medical exam form as well as sitting for the medical exam and the time waiting to be examined.

USCIS does not regulate the fees charged by civil surgeons for the completion of a medical examination. In addition, medical examination fees vary by physician. DHS

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for biometrics collection requirements) + \$10,416,694 (Travel costs for biometrics collection) = \$518,850,750 total current annual cost for filing Form I-485.

notes that the cost of the medical examinations may vary widely, from as little as \$20 to as much as \$1000 per respondent (including vaccinations to additional medical evaluations and testing that may be required based on the health conditions of the applicant).<sup>331</sup> DHS estimates that the average cost for these activities is \$490 and that all applicants would incur this cost.<sup>332</sup> Since DHS assumes that all applicants who apply for adjustment of status using Form I-485 must also submit Form I-693, DHS estimates that based on the estimated average annual population of 382,264 the annual cost associated with filing Form I-693 is \$187,309,360.<sup>333</sup>

DHS estimates the time burden associated with filing Form I-693 is 2.5 hours per applicant, which includes understanding and completing the form, setting an appointment with a civil surgeon for a medical exam, sitting for the medical exam, learning about and understanding the results of medical tests, allowing the civil surgeon to report the results of the medical exam on the form, and submitting the medical exam report to USCIS.<sup>334</sup> DHS estimates the opportunity cost of time for completing and submitting Form I-693 is \$26.48 per applicant based on the total rate of compensation of minimum wage of \$10.59 per hour.<sup>335</sup> Therefore, using the total population estimate of 382,264 annual filings for

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<sup>331</sup> Source for medical exam cost range: Paperwork Reduction Act (PRA) Report of Medical Examination and Vaccination Record (Form I-693) (OMB control number 1615-0033). The PRA Supporting Statement can be found at Question 13 on [Reginfo.gov](https://www.reginfo.gov) at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201609-1615-004](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201609-1615-004).

<sup>332</sup> Source for medical exam cost estimate: Paperwork Reduction Act (PRA) Report of Medical Examination and Vaccination Record (Form I-693) (OMB control number 1615-0033). The PRA Supporting Statement can be found at Question 13 on [Reginfo.gov](https://www.reginfo.gov) at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201609-1615-004](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201609-1615-004).

<sup>333</sup> Calculation: (Estimated medical exam cost for Form I-693) \* (Estimated annual population filing Form I-485) = \$490 \* 382,264 = \$187,309,360 annual estimated medical exam costs for Form I-693.

<sup>334</sup> Source for medical exam time burden estimate: Paperwork Reduction Act (PRA) Report of Medical Examination and Vaccination Record (Form I-693) (OMB control number 1615-0033). The PRA Supporting Statement can be found at Question 12 on [Reginfo.gov](https://www.reginfo.gov) at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201609-1615-004](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201609-1615-004).

<sup>335</sup> Calculation for medical exam opportunity cost of time: (\$10.59 per hour \* 2.5 hours) = \$26.475 = \$26.48 (rounded) per applicant.

Form I-485, DHS estimates the total opportunity cost of time associated with completing and submitting Form I-693 is approximately \$10,122,351 annually.<sup>336</sup>

In addition to the cost of a medical exam and the opportunity cost of time associated with completing and submitted Form I-693, applicants must bear the cost of postage for sending the Form I-693 package to USCIS. DHS estimates that each applicant will incur an estimated average cost of \$3.75 in postage to submit the completed package to USCIS.<sup>337</sup> DHS estimates the total annual cost in postage based on the total population estimate of 382,264 annual filings for Form I-693 is \$1,433,490.<sup>338</sup>

In sum, DHS estimates the total current annual cost for filing Form I-693 is \$198,865,201. The total current annual costs include medical exam costs, the opportunity cost of time for completing Form I-693, and cost of postage to mail the Form I-693 package to USCIS.<sup>339</sup>

*(c) Form I-912, Request for Fee Waiver*

Some applicants seeking an adjustment of status may be eligible for a fee waiver when filing Form I-485. An applicant who is unable to pay the filing fees or biometric services fees for an application or petition may be eligible for a fee waiver by filing Form I-912. If an applicant's Form I-912 is approved, USCIS, as a component of DHS, will waive both the filing fee and biometric services fee. Therefore, DHS assumes for the

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<sup>336</sup> Calculation: (Estimated medical exam opportunity cost of time for Form I-693) \* (Estimated annual population filing Form I-485) =  $\$26.48 * 382,264 = \$10,122,350.72 = \$10,122,351$  (rounded) annual opportunity cost of time for filing Form I-485.

<sup>337</sup> Source for medical exam form package postage cost estimate: Paperwork Reduction Act (PRA) Report of Medical Examination and Vaccination Record (Form I-693) (OMB control number 1615-0033). The PRA Supporting Statement can be found at Question 13 on Reginfo.gov at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201609-1615-004](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201609-1615-004).

<sup>338</sup> Calculation: (Form I-693 estimated cost of postage) \* (Estimated annual population filing Form I-693) =  $\$3.75 * 382,264 = \$1,433,490$  annual cost in postage for filing Form I-693.

<sup>339</sup> Calculation:  $\$187,309,360$  (Medical exam costs) +  $\$10,122,351$  (Opportunity cost of time for Form I-693) +  $\$1,433,490$  (Postage costs for biometrics collection) =  $\$198,865,201$  total current annual cost for filing Form I-693.

purposes of this economic analysis that the filing fees and biometric services fees required for Form I-485 are waived if an approved Form I-912 accompanies the application. Filing Form I-912 is not required for applications and petitions that do not have a filing fee. DHS also notes that costs examined in this section are not additional costs that would be imposed by the proposed rule, but costs that applicants currently could incur as part of the application process to adjust status.

Table 27 shows the estimated population of individuals that requested a fee waiver (Form I-912), based to receipts, when applying for adjustment of status in fiscal years 2012 to 2016 as well as the number of requests that were approved or denied each fiscal year. During this period, the number of individuals who requested a fee waiver when applying for adjustment of status ranged from a low of 42,126 in fiscal year 2012 to a high of 76,616 in fiscal year 2016. In addition, the estimated average population of individuals applying to adjust status who requested a fee waiver for Form I-485 over the 5-year period fiscal year 2012 to 2016 was 58,558. DHS estimates that 58,558 is the average annual projected population of individuals who would request a fee waiver using Form I-912 when filing Form I-485 to apply for an adjustment of status.<sup>340</sup>

<b>Table 27. Total Population Requesting A Fee Waiver (Form I-912) when Filing Form I-485, Adjustment of Status.</b>			
<b>Fiscal Year</b>	<b>Receipts</b>	<b>Approvals</b>	<b>Denials</b>
2012	42,126	34,890	7,236
2013	52,453	41,615	10,838

<sup>340</sup> DHS notes that the estimated population of individuals who would request a fee waiver for filing Form I-485 includes all visa classifications for those applying for adjustment of status. We are unable to determine the number of fee waiver requests for filing Form I-485 that are associated with specific visa classifications that are subject to public charge review.

2014	58,534	47,629	10,905
2015	63,059	53,615	9,444
2016	76,616	68,641	7,975
<b>Total</b>	<b>292,788</b>	<b>246,390</b>	<b>46,398</b>
<b>5-yr average</b>	<b>58,558</b>	<b>49,278</b>	<b>9,280</b>
Source: USCIS analysis.			

To provide a reasonable proxy of time valuation for applicants, as described previously, DHS assumes that applicants requesting a fee waiver for Form I-485 earn the total rate of compensation for individuals applying for adjustment of status as \$10.59 per hour, where the value of \$10.59 per hour represents the federal minimum wage with an upward adjustment for benefits. The analysis uses this wage rate because DHS expects that applicants who request a fee waiver are asserting that they are unable to afford to pay the USCIS filing fee. As a result, DHS expects such applicants to hold positions in occupations that have a wage below the mean hourly wage across all occupations.

DHS estimates the time burden associated with filing Form I-912 is 1 hour and 10 minutes per applicant (1.17 hours), including the time for reviewing instructions, gathering the required documentation and information, completing the request, preparing statements, attaching necessary documentation, and submitting the request.<sup>341</sup> Therefore, using \$10.59 per hour as the total rate of compensation, DHS estimates the opportunity cost of time for completing and submitting Form I-912 is \$12.39 per applicant.<sup>342</sup> Using the total population estimate of 58,558 requests for a fee waiver for Form I-485, DHS

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<sup>341</sup> Source for fee waiver time burden estimate: Paperwork Reduction Act (PRA) Request for Fee Waiver (Form I-912) (OMB control number 1615-0116). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201506-1615-006](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201506-1615-006).

<sup>342</sup> Calculation for fee waiver opportunity cost of time: (\$10.59 per hour \* 1.17 hours) = \$12.39.

estimates the total opportunity cost of time associated with completing and submitting Form I-912 is approximately \$725,534 annually.<sup>343</sup>

In addition to the opportunity cost of time associated with completing and submitting Form I-912, applicants must bear the cost of postage for sending the Form I-912 package to USCIS. DHS estimates that each applicant will incur an estimated average cost of \$3.75 in postage to submit the completed package to USCIS.<sup>344</sup> DHS estimates the annual cost in postage based on the total population estimate of 58,558 annual approved requests for a fee waiver for Form I-485 is \$219,593.<sup>345</sup>

In sum, DHS estimates the total current annual cost for filing a fee waiver request (Form I-912) for Form I-485 is \$945,127. The total current annual costs include the opportunity cost of time for completing Form I-912 and cost of postage to mail the Form I-912 package to USCIS.<sup>346</sup>

*(d) Affidavit of Support Forms*

As previously discussed, submitting an affidavit of support using Form I-864 is required for most family-based immigrants and some employment-based immigrants to show that they have adequate means of financial support and are not likely to become a public charge. Additionally, Form I-864 includes attachment Form I-864A which may be filed when a sponsor's income and assets do not meet the income requirements of Form

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<sup>343</sup> Calculation: (Estimated opportunity cost of time for Form I-912) \* (Estimated annual population of approved Form I-912) = \$12.39 \* 58,558 = \$725,533.62 = \$725,534 (rounded) annual opportunity cost of time for filing Form I-912 that are approved.

<sup>344</sup> Source for fee waiver postage cost estimate: Paperwork Reduction Act (PRA) Request for Fee Waiver (Form I-912) (OMB control number 1615-0116). The PRA Supporting Statement can be found at Question 13 on Reginfo.gov at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201506-1615-006](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201506-1615-006).

<sup>345</sup> Calculation: (Form I-912 estimated cost of postage) \* (Estimated annual population of approved Form I-912) = \$3.75 \* 58,558 = \$219,592.50 = \$219,593 (rounded) annual cost in postage for filing Form I-912 that is approved.

<sup>346</sup> Calculation: \$725,534 (Opportunity cost of time for Form I-912) + \$219,593 (Postage costs for biometrics collection) = \$945,127 total current annual cost for filing Form I-912.

I-864 and the qualifying household member chooses to combine his or her resources with the income and/or assets of a sponsor to meet those requirements. Some sponsors for intending immigrants may be able to file an affidavit of support using Form I-864EZ, provided certain criteria are met. Moreover, certain classes of immigrants currently are exempt from the requirement to file Form I-864 or Form I-864EZ and therefore must file Form I-864W, Request for Exemption for Intending Immigrant's Affidavit of Support. However, DHS proposes to eliminate Form I-864W and instead individuals would now be required to provide the information previously requested on the Form I-864W using Form I-485. Based on the information provided in the Form I-485, an officer can verify whether an immigrant is statutorily required to file an affidavit of support.

There is no filing fee associated with filing Form I-864 with USCIS. However, DHS estimates the time burden associated with a sponsor filing Form I-864 is 6 hours per petitioner, including the time for reviewing instructions, gathering the required documentation and information, completing the affidavit, preparing statements, attaching necessary documentation, and submitting the affidavit.<sup>347</sup> Therefore, using the average total rate of compensation of \$34.84 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-864 would be \$209.04 per petitioner.<sup>348</sup> DHS assumes that the average total rate of total compensation used to calculate the opportunity cost of time for Form I-864 is appropriate since the sponsor of an immigrant, who is agreeing to provide financial and material support, is instructed to complete and submit

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<sup>347</sup> Source for I-864 time burden estimate: Paperwork Reduction Act (PRA) Affidavit of Support Under Section 213A of the Act (Forms I-864, I-864A, I-864EZ, I-864W) (OMB control number 1615-0075). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201705-1615-004](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201705-1615-004).

<sup>348</sup> Calculation opportunity cost of time for completing and submitting Form I-864, Affidavit of Support Under Section 213A of the INA: (\$34.84 per hour \* 6.0 hours) = \$209.04 per applicant.



the form. Using the estimated annual total population of 257,610 individuals seeking to adjust status who are required to submit an affidavit of support using Form I-864, DHS estimates the opportunity cost of time associated with completing and submitting Form I-864 is \$53,850,794 annually.<sup>349</sup> DHS estimates this amount as the total current annual cost for filing Form I-864, as required when applying to adjust status.

There is also no filing fee associated with filing Form I-864A with USCIS. However, DHS estimates the time burden associated with filing Form I-864A is 1 hour and 45 minutes (1.75 hours) per petitioner, including the time for reviewing instructions, gathering the required documentation and information, completing the contract, preparing statements, attaching necessary documentation, and submitting the contract.<sup>350</sup> Therefore, using the average total rate of compensation of \$34.84 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-864A will be \$60.97 per petitioner.<sup>351</sup> DHS assumes the average total rate of compensation used for calculating the opportunity cost of time for Form I-864 since both the sponsor and another household member agree to provide financial support to an immigrant seeking to adjust status. However, the household member also may be the intending immigrant. While Form I-864A must be filed with Form I-864, DHS notes that we are unable to determine the number filings of Form I-864A since not all individuals filing I-864 need to file Form I-864A with a household member.

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<sup>349</sup> Calculation: (Form I-864 estimated opportunity cost of time) \* (Estimated annual population filing Form I-864) = \$209.04 \* 257,610 = \$53,850,794.40 = \$53,850,794 (rounded) total annual opportunity cost of time for filing Form I-864.

<sup>350</sup> Source for I-864A time burden estimate: Paperwork Reduction Act (PRA) Affidavit of Support Under Section 213A of the Act (Forms I-864, I-864A, I-864EZ, I-864W) (OMB control number 1615-0075). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201705-1615-004](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201705-1615-004).

<sup>351</sup> Calculation opportunity cost of time for completing and submitting Form I-864A, Contract Between Sponsor and Household Member: (\$34.84 per hour \* 1.75 hours) = \$60.97.

As with Form I-864, there is no filing fee associated with filing Form I-864EZ with USCIS. However, DHS estimates the time burden associated with filing Form I-864EZ is 2 hours and 30 minutes (2.5 hours) per petitioner, including the time for reviewing instructions, gathering the required documentation and information, completing the affidavit, preparing statements, attaching necessary documentation, and submitting the affidavit.<sup>352</sup> Therefore, using the average total rate of compensation of \$34.84 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-864EZ will be \$87.10 per petitioner.<sup>353</sup> However, DHS notes that we are unable to determine the number filings of Form I-864EZ and, therefore, rely on the annual cost estimate developed for Form I-864.

There is also no filing fee associated with filing Form I-864W with USCIS. However, DHS estimates the time burden associated with filing this form is 60 minutes (1 hour) per petitioner, including the time for reviewing instructions, gathering the required documentation and information, completing the request, preparing statements, attaching necessary documentation, and submitting the request.<sup>354</sup> Therefore, using the average total rate of compensation of \$34.84 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-864EZ will be \$34.84 per petitioner.<sup>355</sup> However, DHS notes that we are unable to determine the number filings of

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<sup>352</sup> Source for I-864EZ time burden estimate: Paperwork Reduction Act (PRA) Affidavit of Support Under Section 213A of the Act (Forms I-864, I-864A, I-864EZ, I-864W) (OMB control number 1615-0075). The PRA Supporting Statement can be found at Question 12 on [Reginfo.gov](https://www.reginfo.gov) at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201705-1615-004](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201705-1615-004).

<sup>353</sup> Calculation opportunity cost of time for completing and submitting Form I-864EZ, Affidavit of Support Under Section 213A of the INA: (\$34.84 per hour \* 2.5 hours) = \$87.10.

<sup>354</sup> Source for I-864W time burden estimate: Paperwork Reduction Act (PRA) Affidavit of Support Under Section 213A of the Act (Forms I-864, I-864A, I-864EZ, I-864W) (OMB control number 1615-0075). The PRA Supporting Statement can be found at Question 12 on [Reginfo.gov](https://www.reginfo.gov) at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201705-1615-004](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201705-1615-004).

<sup>355</sup> Calculation opportunity cost of time for completing and submitting Form I-864W: (\$34.84 per hour \* 1.0 hours) = \$34.84.

Form I-864W and, therefore, rely on the annual cost estimate developed for Form I-864. Moreover, the proposed rule would eliminate Form I-864W as a form for use in filing an affidavit of support. Filers who would have been required to file Form I-864W instead would be instructed to provide the information previously requested on the Form I-864W using Form I-485, as amended by this proposed rule. Based on the information provided in the Form I-485, an officer could verify whether an immigrant is statutorily required to file an affidavit of support.

DHS is also proposing to amend the HHS Poverty Guidelines for Affidavit of Support (Form I-864P), by removing certain language describing means-tested public benefits. Form I-864P is used to determine the minimum level of income required to sponsor most family-based immigrants and some employment-based immigrants. These income requirements are to show that a sponsor has adequate means of financial support and are not likely to rely on the government for financial support. Form I-864P is for informational purposes and used for completing Form I-864. DHS does not anticipate additional costs or benefits as a result of any proposed changes to Form I-864P.

*b. Consideration of Use or Receipt, or Likelihood of Use or Receipt of Public Benefits for Applicants Requesting Extension of Stay or Change of Status*

Nonimmigrants in the United States may apply for extension of stay or change of status by either having an employer file Form I-129 on his or her behalf, or by filing Form I-539 so long as the nonimmigrant is currently in an eligible nonimmigrant category.<sup>356</sup> This proposed rule seeks to require nonimmigrants who are seeking

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<sup>356</sup> Form I-539 may also be used by CNMI residents applying for an initial grant of status; F and M nonimmigrants to apply for reinstatement; and persons seeking V nonimmigrant status or an extension of stay as a V nonimmigrant.

extension of stay or change of status to demonstrate that they are not using or receiving, nor is likely to use or receive, public benefits as defined in this rule. DHS also notes that costs examined in this section are not additional costs that would be imposed by the proposed rule, but costs that petitioners and applicants currently would incur as part of the application process to request an extension of stay or change of status.

*(a) Form I-129, Petition for a Nonimmigrant Worker*

The current filing fee for Form I-129 is \$460.00. As previously discussed, the estimated average annual population of employers filing on behalf of nonimmigrant workers seeking EOS/COS using Form I-129 is 336,335. Therefore, DHS estimates that the annual cost associated with filing Form I-129 is approximately \$154,714,100.<sup>357</sup>

DHS estimates the time burden for completing Form I-129 is 2 hours and 50 minutes (2.84 hours), including the time for reviewing instructions, gathering the required documentation and information, completing the request, preparing statements, attaching necessary documentation, and submitting the request.<sup>358</sup> Using the average total rate of compensation of \$34.84 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-129 will be \$98.95 per petitioner.<sup>359</sup> Therefore, using the total population estimate of 336,335 annual filings for Form I-129, DHS estimates the

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<sup>357</sup> Calculation: (Form I-129 filing fee) \* (Estimated annual population filing Form I-129) = \$460 \* 336,335 = \$154,714,100 annual cost for filing Form I-129 seeking EOS/COS.

<sup>358</sup> Source for petition for nonimmigrant workers time burden estimate: Paperwork Reduction Act (PRA) Petition for Nonimmigrant Worker (Form I-129) (OMB control number 1615-0009). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201610-1615-001](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201610-1615-001).

<sup>359</sup> Calculation for petition for nonimmigrant workers opportunity cost of time: (\$34.84 per hour \* 2.84 hours) = \$98.946 = \$98.95 (rounded).

total opportunity cost of time associate with completing and submitting Form I-129 is approximately \$33,280,348 annually.<sup>360</sup>

In addition to the filing fee and the opportunity cost of time associated with completing and submitted Form I-129, applicants must bear the cost of postage for sending the Form I-129 package to USCIS. DHS estimates that each applicant will incur an estimated average cost of \$3.75 in postage to submit the completed package to USCIS.<sup>361</sup> DHS estimates the total annual cost in postage based on the total population estimate of 336,335 annual filings for Form I-129 is approximately \$1,261,256.<sup>362</sup>

In sum, DHS estimates the total current annual cost for filing Form I-129 is \$189,255,704. The total current annual costs include Form I-129 filing fees, opportunity cost of time for completing Form I-129, and cost of postage to mail the Form I-693 package to USCIS.<sup>363</sup>

*(b) Form I-539, Application to Extend/Change Nonimmigrant Status*

The current filing fee for Form I-539 is \$370 per application.<sup>364</sup> The fee is set at a level to recover the processing costs to DHS. As previously discussed, the estimated

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<sup>360</sup> Calculation: (Form I-129 estimated opportunity cost of time) \* (Estimated annual population filing Form I-129) =  $\$98.95 * 336,335 = \$33,280,348.25 = \$33,280,348$  (rounded) annual opportunity cost of time for filing Form I-129.

<sup>361</sup> Source for petition for nonimmigrant workers form package postage cost estimate: Paperwork Reduction Act (PRA) Petition for Nonimmigrant Worker (Form I-129) (OMB control number 1615-0009). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201610-1615-001](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201610-1615-001).

<sup>362</sup> Calculation: (Form I-129 estimated cost of postage) \* (Estimated annual population filing Form I-129) =  $\$3.75 * 336,335 = \$1,261,256.25 = \$1,261,256$  (rounded) annual cost in postage for filing Form I-129.

<sup>363</sup> Calculation:  $\$154,714,100$  (Filing fees for Form I-129) +  $\$33,280,348$  (Opportunity cost of time for Form I-129) +  $\$1,261,256$  (Postage costs for Form I-129) =  $\$189,255,704$  total current annual cost for filing Form I-129.

<sup>364</sup> Source for petition for nonimmigrant workers time burden estimate: Paperwork Reduction Act (PRA) Application to Extend/Change Nonimmigrant Status (Form I-539) (OMB control number 1615-0003). The PRA Supporting Statement can be found at Question 13 on Reginfo.gov at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201610-1615-006](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201610-1615-006). DHS notes that certain A and G nonimmigrants are not required to pay a filing fee for Form I-539. In addition, a biometrics services fee of \$85 is required for V nonimmigrants and for certain applicants in the CNMI applying for an initial grant of nonimmigrant status.

average annual population seeking EOS/COS using Form I-539 is 174,866. Therefore, DHS estimates that the annual cost associated with filing Form I-539 is approximately \$64,700,420.<sup>365</sup>

DHS estimates the time burden for completing Form I-539 is 2 hours and 23 minutes (2.38 hours), including the time necessary to read all instructions for the form, gather all documents required to complete the collection of information, obtain translated documents if necessary, obtain the services of a preparer if necessary, and complete the form.<sup>366</sup> Using the average total rate of compensation of \$34.84 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-539 will be \$82.92 per applicant.<sup>367</sup> Therefore, using the total population estimate of 174,866 annual filings for Form I-539, DHS estimates the total opportunity cost of time associate with completing and submitting Form I-539 is approximately \$14,499,889 annually.<sup>368</sup>

In sum, DHS estimates the total current annual cost for filing Form I-539 is \$79,200,309. The total current annual costs include Form I-539 filing fees and the opportunity cost of time for completing Form I-539.<sup>369</sup>

*(ii) Costs of Proposed Regulatory Changes*

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<sup>365</sup> Calculation: (Form I-539 filing fee) \* (Estimated annual population filing Form I-539) = \$370 \* 176,866 = \$64,700,420 annual cost for filing Form I-539.

<sup>366</sup> Source for petition for nonimmigrant workers time burden estimate: Paperwork Reduction Act (PRA) Application to Extend/Change Nonimmigrant Status (Form I-539) (OMB control number 1615-0003). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201610-1615-006](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201610-1615-006).

<sup>367</sup> Calculation for application for EOS/COS opportunity cost of time: (\$34.84 per hour \* 2.38 hours) = \$82.919 = \$82.92 (rounded).

<sup>368</sup> Calculation: (Form I-539 estimated opportunity cost of time) \* (Estimated annual population filing Form I-539) = \$82.92 \* 174,866 = \$14,499,888.72 = \$14,499,889 (rounded) annual opportunity cost of time for filing Form I-539.

<sup>369</sup> Calculation: \$64,700,420 (Filing fees for Form I-539) + \$14,499,889 (Opportunity cost of time for Form I-539) = \$79,200,309 total current annual cost for filing Form I-539.

The primary source of new costs for the proposed rule would be from the creation of Form I-944. This form would be used to collect information based on factors such as age, health, family status, assets, resources and financial status, education and skills, and any additional financial support through an affidavit of support so that USCIS could determine whether an applicant would be inadmissible to the United States based on public charge grounds. The proposed rule would require individuals who are applying for adjustment of status to complete and submit the form to ensure that he or she is not likely to become a public charge. At the agency's discretion, Form I-129 petitioners and Form I-539 applicants seeking and extension of stay or change of status may be required to submit Form I-944 to be reviewed for public charge determination.

The proposed rule would also impose new costs by establishing a public charge bond process. At the agency's discretion, certain individuals who are found likely to become a public charge may be provided the opportunity to post a public charge bond.

*a. Form I-944, Declaration of Self-Sufficiency*

In this proposed rule, DHS is proposing to create a new form for collecting information from those applying for immigration benefits with USCIS, such as adjustment of status or extension of stay or change in status, to demonstrate that the applicant is not likely to become a public charge under section 212(a)(4) of the INA. Form I-944 would collect information based on factors such as age, health, family status, assets, resources, and financial status, education and skills, and any additional financial support through an affidavit of support so that USCIS could determine whether an applicant would be inadmissible to the United States based on public charge grounds. For the analysis of this proposed rule, DHS assumes that all individuals who apply for

adjustment of status using Form I-485 are required to submit Form I-944, unless he or she is in a class of applicants that is exempt from review for determination of inadmissibility based on public charge at the time of adjustment of status according to statute or regulation.

The following costs are new costs that would be imposed on the population applying to adjust status using Form I-485 or on the population that would be seeking extension of stay or change of status using Forms I-129 or I-539. Table 28 shows the estimated annual costs that the proposed rule would impose on individuals seeking to adjust status who would be required to file Form I-944. However, individuals seeking extension of stay or change of status would only be required to submit Form I-944 at the discretion of adjudication officers.

<b>Table 28. New Costs of the Proposed Rule.</b>		
<b>Form</b>	<b>Estimated Annual Population Required to Submit Form I-944<sup>a</sup></b>	<b>Total Annual Cost</b>
<b>Form I-944, Declaration of Self-Sufficiency</b>	382,264	
Opportunity Cost of Time (OCT)		\$18,218,702
Credit Report/Credit Score Costs		\$7,626,167
<b>Total New Costs of the Proposed Rule</b>		<b>\$25,844,869</b>
Source: USCIS analysis.		
<sup>a</sup> This population is the same as the total estimated population of individuals applying for adjustment of status (Form I-485) who are not in a class of admission that is exempt from review for determination of inadmissibility based on public charge grounds.		

There is currently no filing fee associated with Form I-944. However, DHS estimates the time burden associated with filing Form I-944 is 4 hours and 30 minutes (4.5 hours) per applicant, including the time for reviewing instructions, gathering the required documentation and information, completing the declaration, preparing



statements, attaching necessary documentation, and submitting the declaration.

Therefore, using the total rate of compensation of minimum wage of \$10.59 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-944 would be \$47.66 per applicant.<sup>370</sup> Using the total population estimate of 382,264 annual filings for Form I-485, DHS estimates the total opportunity cost of time associated with completing and submitting Form I-944 is approximately \$18,218,702 annually.<sup>371</sup>

In addition to the opportunity cost of time associated with completing and filing Form I-944, applicants must bear the cost of obtaining a credit report and credit score from any one of the three major credit bureaus to be submitted with the application.<sup>372</sup> Consumers may obtain a free credit report once a year from each of the three major consumer reporting agencies (i.e., credit bureaus) under the Fair Credit Reporting Act (FCRA).<sup>373</sup> However, consumers are not necessarily entitled to a free credit score, for which consumer reporting agencies may charge a fair and reasonable fee.<sup>374</sup> DHS does not assume that all applicants are able to obtain a free credit report under FCRA specifically for fulfilling the requirements of filing Form I-944 and acknowledges that obtaining a credit score would be an additional cost. Therefore, DHS assumes that each

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<sup>370</sup> Calculation for declaration of self-sufficiency opportunity cost of time: (\$10.59 per hour \* 4.5 hours) = \$47.655 = \$47.66 (rounded) per applicant.

<sup>371</sup> Calculation: (Estimated opportunity cost of time for Form I-944) \* (Estimated annual population filing Form I-485) = \$47.66 \* 382,264 = \$18,218,702.24 = \$18,218,702 (rounded) annual opportunity cost of time for filing Form I-944.

<sup>372</sup> The three major credit bureaus are Equifax, Experian, and TransUnion. Each of these bureaus are publicly-traded, for-profit companies that are not owned by the Federal Government. DHS notes that there may be differences in the information contained in the credit reports from each of the three major credit bureaus since one credit bureau may have unique information on a consumer that is not captured by the other credit bureaus.

<sup>373</sup> See FCRA, Section 612, *Charges for Certain Disclosures*. 15 U.S.C. § 1681j. Available at <https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf> (accessed Jan. 26, 2018).

<sup>374</sup> See FCRA, Section 609(f), *Disclosures to Consumers, Disclosure of Credit Scores*. 15 U.S.C. § 1681g. Available at <https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf> (accessed Jan. 26, 2018).

applicant would bear the cost of obtaining a credit report and credit score from at least one of the three major credit bureaus. DHS estimates the cost of obtaining a credit report and credit score would be \$19.95 per applicant as this is the amount that two of the three major credit bureaus charge.<sup>375</sup> DHS notes that it would be required that all applicants who apply for adjustment of status using Form I-485 must also submit Form I-944 and comply with its requirements. Therefore, DHS estimates that based on the estimated average annual population of 382,264 the total annual cost associated with obtaining a credit report and credit score as part of the requirements for filing Form I-944 would be \$7,626,167.<sup>376</sup>

In sum, DHS estimates that the total cost to complete and file Form I-944 would be \$25,844,869. The total estimated annual costs include the opportunity cost of time to complete the form and the cost to obtain a credit report and credit score as required for the total population estimate of 382,264 annual filings for Form I-485.<sup>377</sup>

*b. Extension of Stay/Change of Status Using Form I-129, Petition for a Nonimmigrant Worker, or Form I-539, Application to Extend/Change Nonimmigrant Status*

While individuals seeking adjustment of status would be reviewed to determine inadmissibility based on public charge grounds under the provisions of this proposed

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<sup>375</sup> Each of the three major credit charge the following prices for a credit report, including a credit score: Experian - \$19.95, available at <https://www.experian.com/consumer-products/compare-credit-report-and-score-products.html> (accessed Jan. 26, 2018); Equifax - \$19.95, available at <https://www.equifax.com/personal/products/credit/report-and-score> (accessed Jan. 26, 2018); and TransUnion - \$11.50, available at <https://disclosure.transunion.com/dc/disclosure/disclosure.jsp> (accessed Jan. 26, 2018).

<sup>376</sup> Calculation: (Estimated cost for credit score and credit report) \* (Estimated annual population filing Form I-485) = \$19.95 \* 382,264 = \$7,626,166.80 = \$7,626,167 (rounded) annual estimated costs for obtaining a credit report and credit score as part of the requirements for filing Form I-944.

<sup>377</sup> Calculation: \$18,218,702 (Opportunity cost of time to complete Form I-944) + \$7,626,167 (Cost of credit report and credit score) = \$25,844,869 total estimated cost to complete Form I-944.

rule, DHS proposes to conduct reviews of nonimmigrants who apply for extension of stay or change of status to determine inadmissibility based on public charge grounds on a discretionary basis. Therefore, not all nonimmigrants who apply for extension of stay or change of status would be required to file Form I-944 to detail their financial, health, and education status. Instead, USCIS adjudication officers would be able to exercise discretion regarding whether it would be necessary to issue a RFE whereby an applicant may then have to submit Form I-944.

As previously noted, there is currently no fee associated with filing Form I-944, but DHS estimates the costs for filing Form I-944 would include the opportunity cost of time (4.5 hours) and the cost to obtain credit report and credit score cost. In addition, DHS estimated that the average annual population that would request EOS/COS by filing Form I-129 is 336,335 and that the annual population that would request EOS/COS by filing Form I-539 is 174,866.

For Form I-129 petitioners who receive a RFE for a beneficiary to complete and submit Form I-944, DHS estimates the opportunity cost of time for completing Form I-129 would be \$156.78 per beneficiary using the average total rate of compensation of \$34.84 per hour.<sup>378</sup> DHS assumes that while a petitioner would receive the RFE to file Form I-944, the beneficiary would be the individual to complete the form and provide all required information. Therefore, based on the total population estimate of 336,335

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<sup>378</sup> Calculation for petition for opportunity cost of time for Form I-944: ( $\$34.84 \text{ per hour} * 4.5 \text{ hours}$ ) = \$156.78.

annual filings for Form I-129, DHS estimates the total annual opportunity cost of time associated with completing Form I-944 would be approximately \$52,730,601 annually.<sup>379</sup>

Similarly, for filers of form I-539 who are required to complete and submit Form I-944, DHS estimates the opportunity cost of time for completing Form I-539 would also be \$156.78 per filer using the average total rate of compensation of \$34.84 per hour. DHS estimates the total opportunity cost of time associated with completing Form I-944 would be approximately \$27,415,491 annually based on the total population estimate of 174,866 annual filings for Form I-539.<sup>380</sup>

DHS is unable to estimate the actual number of RFEs that adjudication officer may issue to I-129 petitioners and I-539 filers to submit Form I-944 since such RFE would be issued on a discretionary basis. However, we are able to present a range of RFE that could be issued based on total population estimates and the estimated annual cost associated with such RFE. Table 29 presents a range of potential annual costs related to submission of Form I-944 based on the percentage of the maximum number of Form I-129 beneficiaries and Form I-539 applicants who could be issued a RFE. DHS estimates the annual cost if all beneficiaries were issued a RFE for 100 percent of the total population estimate of 336,335 annual filings for Form I-129 would be about \$52.7 million. Moreover, DHS estimates the annual cost if all applicants were issued a RFE for 100 percent of the total population estimate of 336,335 annual filings for Form I-539 would be about \$27.4 million.

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<sup>379</sup> Calculation: (Form I-944 estimated opportunity cost of time) \* (Estimated annual population filing Form I-129) = \$156.78 \* 336,335 = \$52,730,601.30 = \$52,730,601 (rounded) annual opportunity cost of time for filing Form I-944.

<sup>380</sup> Calculation: (Form I-944 estimated opportunity cost of time) \* (Estimated annual population filing Form I-539) = \$156.78 \* 174,866 = \$27,415,491.48 = \$27,415,491 (rounded) annual opportunity cost of time for filing Form I-944.

**Table 29. Estimated Annual Costs for Requests for Evidence (RFE) Issued to Submit Form I-944 with Form I-129 and Form I-539.**

	Percentage of Applicants Issued Request for Evidence (RFE) to Submit Form I-944	Estimated Annual Population	Estimated Annual Cost
<b>Form I-129</b>	100%	336,335	\$52,730,601
	90%	302,702	\$47,457,541
	75%	252,251	\$35,593,156
	50%	168,168	\$17,796,578
	25%	84,084	\$4,449,144
	10%	33,634	\$444,914
<b>Form I-539</b>	100%	174,866	\$27,415,491
	90%	157,379	\$24,673,942
	75%	131,149	\$18,505,456
	50%	87,433	\$9,252,728
	25%	43,716	\$2,313,182
	10%	17,487	\$231,318

Source: USCIS analysis.  
Notes: The analysis assumes the average total rate of compensation of \$34.84 per hour for filers of Forms I-129 and I-539.

*c. Public Charge Bond*

DHS does not currently have a specific process or procedure in place to accept public charge bonds, though it has the authority to do so. DHS is proposing to amend its regulations and establish a bond process for immigrant visa applicants and those seeking adjustment of status to that of a permanent resident who have been deemed likely to become a public charge. A public charge bond may generally be secured by cashier's checks or money orders in the full amount of the bond, or may be underwritten by a surety company certified by the Department of Treasury under 31 U.S.C. 9304-9308.<sup>381</sup>

<sup>381</sup> See generally 8 CFR 103.6.

DHS approval of the public charge bond and DHS review of whether the bond should be breached would be based on the alien's receipt of public benefits or canceled under appropriate circumstances.

As discussed in the preamble, DHS has the broad authority to prescribe forms of bonds as is deemed necessary for carrying out the Secretary's authority under the provisions of the INA.<sup>382</sup> Additionally, an individual whom DHS has determined to be inadmissible based on public charge grounds may, if otherwise admissible, be admitted at the discretion of the Secretary upon giving a suitable and proper bond.<sup>383</sup> The purpose of issuing a public charge bond is to ensure that the alien will not become a public charge in the future. If an individual becomes a public charge after submitting a public charge bond and being admitted into the United States, the government would have a claim against the bond obligors for the amount of public benefits received by the alien.

DHS is proposing that public charge bonds would be issued at the Secretary's discretion when an individual has been found to be inadmissible based on public charge grounds. DHS may require an alien to submit a surety bond or a cashier's check or money order to secure a bond. DHS would notify the alien if he or she is permitted to post a public charge bond and of the type of bond that may be submitted. If DHS accepts a surety bond as a public charge bond, DHS would accept only a bond underwritten by surety companies certified by the Department of the Treasury, as outlined in proposed 8 CFR 103.6(b).<sup>384</sup> DHS proposes that the amount of a public charge bond cannot be less than \$10,000 annually adjusted for inflation and rounded up to the nearest dollar, but the

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<sup>382</sup> See INA section 103(a)(3), 8 U.S.C. 1103(a)(3).

<sup>383</sup> See INA section 213, 8 U.S.C. 1183.

<sup>384</sup> See 31 U.S.C. 9304-9308. See also Bureau of the Fiscal Service, U.S. Department of Treasury, available at [https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/surety\\_home.htm](https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/surety_home.htm)

amount of the bond required would otherwise be determined at the discretion of the adjudication officer. After reviewing an individual's circumstances and finding of inadmissibility based on public charge grounds, an adjudication officer would notify the individual through the issuance of a RFE or a Notice of Intent to Deny (NOID) that a surety bond may be submitted to USCIS.

An individual would submit a public charge bond using the new Public Charge Bond form (Form I-945), and related forms. DHS envisions that it will use Form I-356, Request for Cancellation of Public Charge Bond, for the cancellation of an immigration surety bond.

A public charge bond would be considered breached if the alien uses or receives any public benefit, as defined in proposed 8 CFR 212.21 after DHS accepts a public charge bond submitted on that alien's behalf. Upon learning of a breach of public charge bond, DHS would notify the obligor that the bond has been declared breached and inform the obligor of the possibility to appeal the determination to the USCIS Administrative Appeals Office (AAO).<sup>385</sup> Form I-290B is used to file an appeal or motion to reopen or reconsider certain decisions.

Finally, a public charge bond must be canceled when an individual with a bond dies, departs the United States permanently, or is naturalized, provided the individual did not become a public charge prior to death, departure, or naturalization and a request for cancellation has been filed.<sup>386</sup> Additionally, a public charge bond may be cancelled to allow substitution of another bond, as outlined in proposed 8 CFR 213.1. To have the

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<sup>385</sup> See proposed 8 CFR 213.1(e).

<sup>386</sup> See INA section 213, 8 U.S.C. 1183; see 8 CFR 103.6(c).

public charge bond cancelled, an individual would request the cancellation of the public charge bond with USCIS using Form I-356.

When posting a surety bond, an individual generally pays between 1 percent to 15 percent of the bond amount for a surety company to post a bond.<sup>387</sup> The percentage that an individual must pay may be dependent on the individual's credit score where those with higher credit scores would be required to pay a lower percentage of the bond to be posted. DHS notes that an individual as another possible option for securing a public charge bond may be allowed to submit a cash deposit and agreement.

There is currently no filing fee associated with submitting a public charge surety bond using Form I-945. However, DHS estimates the time burden associated with filing Form I-945 is 30 minutes (0.5 hours) per obligor, including the time for reviewing instructions, gathering the required documentation and information, completing the form, preparing statements, attaching necessary documentation, and submitting the form.<sup>388</sup> Therefore, using the total rate of compensation of minimum wage of \$10.59 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-945 would be \$5.30 per applicant.<sup>389</sup>

In addition to the opportunity cost of time associated with completing Form I-945, aliens who may be permitted to have a public charge bond posted on their behalf, must secure a surety bond through a surety bond company that is certified by the Department

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<sup>387</sup> For example, see <https://suretybondauthority.com/frequently-asked-questions/> and <https://suretybondauthority.com/learn-more/>. DHS notes that the company cited is for informational purposes only.

<sup>388</sup> Source for immigration bond time burden estimate: Supporting Statement, Immigration Bond, ICE Form I-352, (OMB control number 1653-0022). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201705-1653-001](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201705-1653-001).

<sup>389</sup> Calculation for public charge surety bond opportunity cost of time: (\$10.59 per hour \* 0.5 hours) = \$5.295 = \$5.30 (rounded) per applicant.



of Treasury, Bureau of Fiscal Service. DHS notes that the public charge bond amount required would be determined at the discretion of an adjudication officer, so long as it is over the minimum amount. DHS is unable to estimate the number aliens who would be eligible for a public charge bond. Additionally, the proposed public charge bond process would be new and historical data are not available to predict future estimates. Therefore, DHS also is not able to estimate the total annual cost of the proposed public charge bond process. However, DHS estimates the cost per obligor would include \$5.30 per obligor for the opportunity cost of time for completing Form I-945. In addition, each alien posting a public charge bond through a surety company would be required to pay any fees required by the surety company to secure a public charge bond.

As noted previously, an obligor would file Form I-356 to request cancellation of a public charge bond. There is currently no filing fee associated with filing Form I-356. However, DHS estimates the time burden associated with filing Form I-356 is 15 minutes (0.25 hours) per obligor requesting cancellation of a public charge bond, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the required information. Therefore, using the total rate of compensation of minimum wage of \$10.59 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I-356 would be \$2.65 per filer.

The filing fee for Form I-290B is \$675 per obligor wishing to appeal the breach determination. However, the fee for Form I-290B may be waived using Form I-912 if the party appealing the adverse decision can provide evidence of an inability to pay.<sup>390</sup> In

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<sup>390</sup> See 8 CFR 103.7(c).

addition, DHS estimates the time burden associated with filing Form I-290B is 1 hour and 30 minutes (1.5 hours) per obligor, including the time for reviewing instructions, gathering the required documentation and information, completing the form, preparing statements, attaching necessary documentation, and submitting the form.<sup>391</sup> Therefore, using the total rate of compensation of minimum wage of \$10.59 per hour, DHS estimates the opportunity cost of time for completing Form I-290B would be \$15.89 per obligor.<sup>392</sup>

In addition to the filing fee and the opportunity cost of time associated with completing Form I-290B, applicants must bear the cost of postage for sending the Form I-290B package to USCIS. DHS estimates that each applicant will incur an estimated average cost of \$3.75 in postage to submit the completed package to USCIS.<sup>393</sup>

Additionally, the proposed public charge bond process would be new and historical data are not available to predict future estimates. Therefore, DHS also is not able to estimate the total annual cost of the proposed public charge bond process. However, DHS estimates the total cost per applicant would be \$694.64 for completing and filing Form I-290B, excluding the cost of obtaining a bond.<sup>394</sup>

*(iii) Discounted Costs*

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<sup>391</sup> Source for notice for appeal or motion time burden estimate: Supporting Statement for Notice of Appeal or Motion (Form I-290B) (OMB control number 1615-0095). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201609-1615-002](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201609-1615-002).

<sup>392</sup> Calculation for appeal or motion opportunity cost of time: (\$10.59 per hour \* 1.5 hours) = \$15.885 = \$15.89 (rounded) per applicant.

<sup>393</sup> Source for notice for appeal or motion time burden estimate: Supporting Statement for Notice of Appeal or Motion (Form I-290B) (OMB control number 1615-0095). The PRA Supporting Statement can be found at Question 13 on Reginfo.gov at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201609-1615-002](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201609-1615-002).

<sup>394</sup> Calculation: \$674 filing fee + \$15.89 opportunity cost of time + \$3.75 postage cost = \$694.64 per applicant

To compare costs over time, DHS applied a 3 percent and a 7 percent discount rate to the total estimated costs associated with filing Form I-944. DHS presents the total estimated costs for filing Form I-944 to estimate future costs based on the present value. Table 30 presents the combined total estimated costs associated with filing Form I-944 as part of the review for determination of inadmissibility based on public charge when applying for adjustment of status. The total estimated costs are presented non-discounted, at a 3 percent discount rate, and at a 7 percent discount rate.

<b>Table 30. Total Estimated Costs of Filing Form I-944, Declaration of Self-Sufficiency, as Required for Determination of Inadmissibility Based on Public Charge Grounds When Applying for Adjustment of Status.</b>		
	<b>Total Annual Cost</b>	<b>Total Cost Over 10-year Period</b>
<b>Undiscounted Estimated Cost</b>	\$25,844,869	\$258,448,690
<b>3% Discount Rate</b>		\$220,461,975
<b>7% Discount Rate</b>		\$181,523,545
Source: USCIS analysis.		

Over the first 10 years of implementation, DHS estimates the total quantified costs of the proposed rule would be as much as \$258,448,690 (undiscounted). In addition, DHS estimates that the 10-year discounted cost of this proposed rule to individuals applying to adjust status who would be required to undergo review for determination of inadmissibility based on public charge would be \$220,461,975 at a 3 percent discount rate and \$181,523,545 at a 7 percent discount rate.

While this economic analysis presents the quantified costs of this proposed rule based on the estimated population applying to adjust status subject to review for public

charge determination, DHS reiterates we are unable to estimate the actual number of Form I-129 petitioners and Form I-539 filers that adjudication officers would require through a RFE to submit Form I-944 since such RFE would be issued on a discretionary basis as outlined in the proposed rule. However, previously in this economic analysis, DHS presented a range of RFEs that could be issued based on total population estimates and the estimated annual cost associated with such RFEs. DHS welcomes any public comments on the discounted costs presented in this proposed rule.

*(iv) Costs to the Federal Government*

The INA provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including administrative costs and services provided without charge to certain applicants and petitioners. *See* INA section 286(m), 8 U.S.C. 1356(m). DHS notes that USCIS establishes its fees by assigning costs to an adjudication based on its relative adjudication burden and use of USCIS resources. Fees are established at an amount that is necessary to recover these assigned costs such as clerical, officers, and managerial salaries and benefits, plus an amount to recover unassigned overhead (e.g., facility rent, IT equipment and systems among other expenses) and immigration benefits provided without a fee charge. Consequently, since USCIS immigration fees are based on resource expenditures related to the benefit in question, USCIS uses the fee associated with an information collection as a reasonable measure of the collection's costs to USCIS. Therefore, DHS has established the fee for the adjudication of Form I-485, Application to Register Permanent Residence or Adjust Status; Form I-129, Petition for a Nonimmigrant Worker; and Form I-539, Application to Extend/Change Nonimmigrant Status in accordance with

this requirement. Other forms affected by this proposed rule do not currently charge a filing fee, including Form I-693, Medical Examination and Vaccination Record; Affidavit of Support forms (Form I-864, Form I-864A, Form I-864EZ, and I-864W); and Form I-912, Request for Fee Waiver. DHS notes that the time necessary for USCIS to review the information submitted with each of these forms includes the time to adjudicate the underlying benefit request. While each of these forms does not charge a fee, the cost to USCIS is captured in the fee for the underlying benefit request form. DHS welcomes public comments on costs to the government from this proposed rule.

*(v) Benefits of Proposed Regulatory Changes*

The primary benefit of the proposed rule would be to ensure that aliens who are admitted to the United States or apply for adjustment of status are self-sufficient and would not use or receive one or more public benefits. As a result, DHS is establishing a more formal review process and improving the current review process to standardize the determination of inadmissibility based on public charge grounds. The proposed process would also help clarify to applicants the specific criteria that would be considered as inadmissible under public charge determinations.

DHS anticipates that the proposed rule would produce some benefits from the elimination of Form I-864W for use in filing an affidavit of support. The information previously requested on the Form I-864W would now be captured using Form I-485 and does not increase the estimated time burden for completing Form I-485. Applicants, therefore, would not be required to file a form separate from the Form I-485. As noted previously, there is no filing fee associated with filing Form I-864W, but DHS estimates

the time burden associated with filing this form is 60 minutes (1 hour) per petitioner.<sup>395</sup>

Therefore, using the average total rate of compensation of \$34.84 per hour, DHS estimates the amount of benefits that would accrue from eliminating Form I-864W would be \$34.84 per petitioner, which equals the opportunity cost of time for completing Form I-864W.<sup>396</sup> However, DHS notes that we are unable to determine the annual number of filings of Form I-864W since we do not currently have information of how many of these filings are based on public charge determinations.

In addition, a benefit of establishing and modifying the public charge bond process, despite the costs associated with this process, would potentially allow an immigrant the opportunity to be admitted although he or she was deemed to likely to become a public charge. DHS welcomes any public comments on the benefits of this proposed rule.

#### **B. Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121 (March 29, 1996), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated

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<sup>395</sup> Source for I-864W time burden estimate: Paperwork Reduction Act (PRA) Affidavit of Support Under Section 213A of the Act (Forms I-864, I-864A, I-864EZ, I-864W) (OMB control number 1615-0075). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201705-1615-004](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201705-1615-004).

<sup>396</sup> Calculation opportunity cost of time for completing and submitting Form I-864W: (\$34.84 per hour \* 1.0 hours) = \$34.84.

and are not dominant in their fields, or governmental jurisdictions with populations of less than 50,000.<sup>397</sup>

DHS has reviewed this regulation in accordance with the RFA and certifies that this rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would require an individual applying for a visa, seeking admission at the port of entry, or adjusting status to establish that he or she is not likely at any time to become a public charge. Most of this rule's proposed changes do not fall under the RFA because they directly regulate individuals who are not, for purposes of the RFA, within the definition of small entities established by 5 U.S.C. 601(6). Moreover, the RFA does not consider an "individual" as a small entity and, for RFA purposes, it does not consider a rule's estimated costs to individuals. In addition, the courts have held that the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates small entities.<sup>398</sup> Consequently, any indirect impacts from a rule to a small entity are not considered costs for RFA purposes.

However, for individuals who choose to establish that they are not likely to become a public charge, the proposed rule includes a range of total annual costs for the beneficiaries of Form I-129, Petition for Nonimmigrant Worker, applications from \$444,914 to \$52,730,601 (non-discounted) in time-related opportunity costs. DHS estimated a range of the population for this provision in the proposed rule where as many as 336,335 individuals would be impacted by this proposed rule annually if 100 percent

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<sup>397</sup> A small business is defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act, 15 U.S.C. 632.

<sup>398</sup> U.S. Small Business Agency. A Guide for government agencies: How to comply with the Regulatory Flexibility Act, Aug. 2012, pp. 22-23. Available at <https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf>.

of the population were to receive a RFE requiring submission of Form I-944 to 33,634 if just 10 percent of the population were to receive a RFE. Since the beneficiaries, or individuals, would be impacted, and not the petitioners of Form I-129, DHS does not believe there will be any impact to small entities. DHS welcomes public comment on whether any small entities may be impacted by this rule and any likely compliance costs for those entities.

Based on the evidence presented in this RFA section and throughout this preamble, DHS certifies that this rule would not have a significant economic impact on a substantial number of small entities.

**C. Small Business Regulatory Enforcement Fairness Act of 1996**

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996, Public Law 104-121, 804, 110 Stat. 847, 872 (1996), 5 U.S.C. 804(2). This rule has not been found to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or export markets.

**D. Unfunded Mandates Reform Act**

The Unfunded Mandate Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a \$100 million or more expenditure (adjusted annually for inflation) in



any one year by State, local, and tribal governments, in the aggregate, or by the private sector. The inflation-adjusted value of \$100 million in 1995 is approximately \$161 million in 2017 based on the Consumer Price Index for All Urban Consumers.<sup>399</sup>

This proposed rule does not exceed the \$100 million (adjusted for inflation) expenditure threshold in any one year of implementation, nor does it contain such a mandate. The requirements of Title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

#### **E. Executive Order 13132 (Federalism)**

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. DHS does not expect this proposed rule would impose substantial direct compliance costs on State and local governments, or would preempt State law. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### **F. Executive Order 12988 (Civil Justice Reform)**

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

#### **G. Executive Order 13175 Consultation and Coordination With Indian Tribal Governments**

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would

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<sup>399</sup> BLS, Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items. Accessed Jan. 31, 2018. Available at: <https://www.bls.gov/cpi/tables/historical-cpi-u-201712.pdf>.

not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### **H. Family Assessment**

DHS has reviewed this proposed rule in line with the requirements of section 654 of the Treasury General Appropriations Act, 1999, Public Law 105-277, Div. with respect to the criteria specified in section 654(c)(1), DHS has determined that while it cannot quantify the impacts of this regulatory action on families, the action has the potential to erode family stability and decrease disposable income of families and children because the action provides a strong disincentive for the receipt or use of public benefits by aliens, as well as their household members, including U.S. children. Further, the proposed action would expand the list of public benefits that DHS may consider for purposes of inadmissibility under section 212(a)(4) of the Act. Finally, the proposed regulatory action, if finalized, may increase the number of aliens found inadmissible under section 212(a)(4) of the Act. As described under the Supplementary Information section of this rule, DHS has compelling legal and policy reasons for the proposed regulatory action, including, but not limited to, maximizing the admission and immigration of self-sufficient aliens to the United States, and minimizing the financial burden of aliens and their families on the U.S. social safety net.

#### **I. National Environmental Policy Act (NEPA)**

DHS Directive (Dir) 023–01 Rev. 01 establishes the procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500–1508.

The CEQ regulations allow Federal agencies to establish, with CEQ review and concurrence, categories of actions (“categorical exclusions”) which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). 40 CFR 1507.3(b)(1)(iii), 1508.4. Dir. 023–01 Rev. 01 establishes Categorical Exclusions that DHS has found to have no such effect. Dir. 023–01 Rev. 01 Appendix A Table 1. For an action to be categorically excluded, Dir. 023–01 Rev. 01 requires the action to satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the Categorical Exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Dir. 023–01 Rev. 01 section V.B (1)–(3).

DHS analyzed this action and does not consider it to significantly affect the quality of the human environment. This rule revises DHS regulations to interpret statutory criteria in INA section 212(a)(4) for determining when an alien is likely to become a public charge, and therefore inadmissible. The proposed rule proposes a new definition of public charge, as well as evidentiary criteria for the consideration of mandatory statutory factors (age, health, family status, assets, resources, financial status, education, and skills) in the totality of the circumstances. The rule also proposes to change and expand the definition of public benefit (from previously considering only cash benefits, to now including certain noncash and supplemental benefits) which may be considered in determining whether the person relies on public benefits and is therefore likely to become a public charge, and therefore excludable. DHS anticipates that, if

finalized, the rule would impose new costs on the population applying to adjust status using Form I-485 that are subject to the public charge grounds on inadmissibility who would now be required to file the new Form I-944 as part of the public charge inadmissibility determination. The rule would potentially impose new costs on the population seeking extension of stay or change of status using Form I-129 or Form I-539. For either of these forms, USCIS officers would be able to exercise discretion regarding whether it would be necessary to issue a request for evidence (RFE) requesting an applicant to submit Form I-944. These populations immediately affected by this rule are already in the United States at the time of application or petition. For these reasons, DHS has determined that this rule does not individually or cumulatively have a significant effect on the human environment and it thus would fit within one categorical exclusion under Environmental Planning Program, DHS Instruction 023-01 Rev. 01, Appendix A, Table 1. Specifically, the rule fits within Categorical Exclusion number A3(d) for rules that interpret or amend an existing regulation without changing its environmental effect. Finally, this rule is not a part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental effects. No further NEPA analysis is required.

#### **J. Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995, Public Law 104-13, agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule.

#### **USCIS Form I-944**

DHS invites comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the Federal Register to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-NEW in the body of the letter and the agency name. To avoid duplicate submissions, please use only one of the methods under the **ADDRESSES** and **I. Public Participation** section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of information collection:

- (1) Type of Information Collection: New Collection.
- (2) Title of the Form/Collection: Declaration of Self-Sufficiency.

(3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: I-944; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. USCIS will require an individual applying to adjust status to lawful permanent residence (Form I-485) and who is subject to the public charge ground of inadmissibility to file this form. On a case by case basis, USCIS may request that a nonimmigrant seeking to extend stay or change status (Form I-539 or I-129) file this form. The data collected on this form will be used by USCIS to determine the likelihood of a declarant becoming a public charge based on the factors regarding health; family status; assets, resource, and financial status; and education and skills. The form serves the purpose of standardizing public charge evaluation metrics and ensures that declarants provide all essential information required for USCIS to assess self-sufficiency and adjudicate the declaration. If USCIS determines that a declarant is likely to become a public charge, the declarant may need to provide additional resources or evidence to overcome this determination.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection I-944 is 382,264 and the estimated hour burden per response is 4.5 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 1,720,188 hours.

(7) An estimate of the total public burden (in cost) associated with the collection:

The estimated total annual cost burden associated with this collection of information is \$59,931,350.

### **USCIS Form I-485**

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule.

DHS invites comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the Federal Register to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0023 in the body of the letter and the agency name. To avoid duplicate submissions, please use only one of the methods under the **ADDRESSES** and **I. Public Participation** section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of information collection:

(1) Type of Information Collection: Revision of a Currently Approved Collection.

(2) Title of the Form/Collection: Application to Register Permanent Residence or Adjust Status.

(3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: Form I-485 and Supplements A and J; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. The information collected is used to determine eligibility to adjust status under section 245 of the Immigration and Nationality Act.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection Form I-485 is 382,264 and the estimated hour burden per response is 6 hours and 15 minutes; Supplement A is 36,000 respondents and the estimated hour burden per response is 1 hour and 15 minutes; Supplement J is 28,309 respondents and the estimated hour burden per response is 1 hour; biometrics processing is 305,811 respondents and estimated burden is 1 hour and 10 minutes.



(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 2,820,257 hours.

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this collection of information is \$131,116,650.

**USCIS Forms I-864; I-864A; I-864EZ**

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule.

DHS invites comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the Federal Register to obtain comments regarding the proposed discontinuation of the USCIS Form I-864W information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0075 in the body of the letter and the agency name. To avoid duplicate submissions, please use only one of the methods under the **ADDRESSES** and **I. Public Participation** section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- (2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of information collection:

- (1) Type of Information Collection: Revision of a Currently Approved Collection.
- (2) Title of the Form/Collection: Affidavit of Support Under Section 213A of the Act; Contract Between Sponsor and Household Member; Affidavit of Support under Section 213 of the Act.
- (3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: I-864; I-864A; I-864EZ; USCIS.
- (4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. **Form I-864**: USCIS uses the data collected on Form I-864 to determine whether the sponsor has the ability to support the sponsored alien under section 213A of the Immigration and Nationality Act. This form standardizes evaluation of a sponsor's ability to support the sponsored alien and ensures that basic information required to assess eligibility is provided by petitioners.  
**Form I-864A**: Form I-864A is a contract between the sponsor and the sponsor's household members. It is only required if the sponsor used income of his or her

household members to reach the required 125 percent of the Federal Poverty Guidelines. The contract holds these household members jointly and severally liable for the support of the sponsored immigrant. The information collection required on Form I-864A is necessary for public benefit agencies to enforce the Affidavit of Support in the event the sponsor used income of his or her household members to reach the required income level and the public benefit agencies are requesting reimbursement from the sponsor.

**Form I-864EZ:** USCIS uses Form I-864EZ in exactly the same way as Form I-864; however, USCIS collects less information from the sponsors as less information is needed from those who qualify in order to make a thorough adjudication.<sup>(5)</sup> An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection I-864 is 453,345 and the estimated hour burden per response is 6 hours; the estimated total number of respondents for the information collection I-864A is 215,800 and the estimated hour burden per response is 1.75 hours; the estimated total number of respondents for the information collection I-864EZ is 100,000 and the estimated hour burden per response is 2.5 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 3,347,720 hours.

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this collection of information is \$135,569,525.

## **USCIS Form I-912**

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. Although this rule does not impose any new reporting or recordkeeping requirements under the PRA, this rule will require non-substantive edits to USCIS Form I-912, (title). These edits include: (enter brief description of edits and add additional forms as necessary). Accordingly, USCIS has submitted a Paperwork Reduction Act Change Worksheet, Form OMB 83-C, and amended information collection instruments to OMB for review and approval in accordance with the PRA.

### **ICE Form I-945**

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule.

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the Federal Register to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-NEW in the body of the letter and the agency name. To avoid duplicate submissions, please use only one of the methods under the **ADDRESSES** and **I. Public Participation** section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

- (1) Evaluate whether the collection of information is necessary for the proper

performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of information collection:

(1) Type of Information Collection: New Collection; Revision of a Currently Approved Collection.

(2) Title of the Form/Collection: Immigration Public Charge Bond.

(3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: I-945; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit. In certain instances, a bond can be posted as security for performance and fulfillment of the bonded alien's obligations to the government. An acceptable surety company or an entity or individual who deposits United States bonds, notes, or cash may execute the bond as surety.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of

respondents for the information collection (Enter form number) is 960 and the estimated hour burden per response is 1 hour.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 960 hours. (Multiply the burden for each submission by the number of respondents.)

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this collection of information is \$0 as the company performing the bond service receives a fee.

### **ICE Form I-356**

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule.

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the Federal Register to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-NEW in the body of the letter and the agency name. To avoid duplicate submissions, please use only one of the methods under the **ADDRESSES** and **I. Public Participation** section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of information collection:

(1) Type of Information Collection: New Collection.

(2) Title of the Form/Collection: Cancellation of Public Bond.

(3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: I-356; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. [Enter Abstract].

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection (Enter form number) is 25 and the estimated hour burden per response is .75 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 18.75 hours.

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this collection of information is \$6,250.

## **VI. List of Subjects and Regulatory Amendments**

### **List of Subjects**

#### **8 CFR 103**

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Immigration, Privacy, Reporting and recordkeeping requirements, Surety bonds.

#### **8 CFR 212**

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

#### **8 CFR 213**

Immigration, Surety bonds.

#### **8 CFR 214**

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.



## **8 CFR 237**

Aliens, Immigration, Deportability

## **8 CFR 245**

Aliens, Immigration, Reporting and recordkeeping requirements

## **8 CFR 248**

Aliens, Reporting and recordkeeping requirements.

Accordingly, DHS proposes to amend chapter I of title 8 of the Code of Federal Regulations as follows:

### **PART 103 – IMMIGRATION BENEFITS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS**

1. The authority citation for part 103 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1365b; 31 U.S.C. 9701; Public Law 107-296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p.166; 8 CFR part 2; Pub. L. 112-54.1

2. Section 103.6 is amended by:

- a. Revising paragraphs (a)(1), (a)(2)(i), (b) and (c)(1);
- b. Adding new paragraph (d)(3); and
- c. Revising paragraph (e)

The revisions and additions read as follows:

#### **§ 103.6 Surety bonds.**

(a) *Posting of surety bonds.* (1) *Extension agreements; consent of surety; collateral security.* All surety bonds posted in immigration cases must be executed on the forms designated by DHS, a copy of which, and any rider attached thereto, must be furnished to the obligor. DHS is authorized to approve a bond, a formal agreement for the extension of liability of surety, a request for delivery of collateral security to a duly appointed and undischarged administrator or executor of the estate of a deceased depositor, and a power of attorney executed on the form designated by DHS, if any. All other matters relating to bonds, including a power of attorney not executed on the form designated by DHS and a request for delivery of collateral security to other than the depositor or his or her approved attorney in fact, will be forwarded to the appropriate office for approval.

(2) *Bond riders.* (i) *General.* A bond rider must be prepared on the form(s) designated by DHS, and submitted together with the bond. If a condition to be included in a bond is not on the original bond, a rider containing the condition must be executed.

\* \* \* \* \*

(b) *Acceptable Sureties.* Any company listed on the Department of the Treasury's Listing of Approved Sureties (Department Circular 570) in effect on the date the bond is requested, or a surety that deposits cashiers' checks or money orders for the full value of the bond, is an acceptable surety.

(c) *Cancellation.* (1) *Public charge bonds.* Special rules for the cancellation of public charge bonds are described in 8 CFR 213.1.

\* \* \* \* \*

(d) \* \* \*

(3) *Public charge bonds.* The threshold bond amount for public charge bonds is set in 8 CFR 213.1.

(e) *Breach of bond.* Breach of public charge bonds is governed by 8 CFR 213.1.

For other immigration bonds, a bond is breached when there has been a substantial violation of the stipulated conditions. A final determination that a bond has been breached creates a claim in favor of the United States which may not be released by DHS. DHS will determine whether a bond has been breached. If DHS determines that a bond has been breached, it will notify the obligor of the decision, the reasons therefor, and inform the obligor of the right to appeal the decision in accordance with the provisions of this part.

**PART 212 – DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS;  
WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE**

3. The authority citation for part 212 continues to read as follows:

**Authority:** 6 U.S.C. 111, 202, 236 and 271; 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1185, 1187, 1223, 1225, 1226, 1227, 1255, 1359; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108-458); 8 CFR part 2.

4. Sections 212.20 through 212.25 are newly added to read as follows:

**§ 212.20 Applicability of public charge inadmissibility.**

8 CFR 212.20 through 212.25 address the public charge ground of inadmissibility under section 212(a)(4) of the Act. Unless the alien requesting the immigration benefit or

classification has been exempted from section 212(a)(4) of the Act as listed in 8 CFR 212.25(a) , the provisions of §212.20 through §212.25 of this part apply to an applicant for admission or adjustment of status to lawful permanent resident.

**§ 212.21 Definitions for Public Charge.**

For the purposes of § 212.20 through § 212.25 of this chapter, the following definitions apply:

(a) *Public Charge.* A public charge means an alien who uses or receives one or more public benefits as defined in paragraph (d) of this section. An alien inadmissible based on the public charge ground means an alien who is likely at any time to use or receive one or more public benefits.

(b) *Dependent.* For purposes of public charge determination under section 212(a)(4) of the Act, a dependent means:

- (i) A person listed as a dependent on the alien's most recent tax return;
- (ii) Any other person whom the alien is legally required to support; or
- (iii) Any other person who lives with the alien, and who is being cared for or provided for by the alien, and benefits from but does not contribute to the alien's income or financial resources, to the extent such person is not claimed on the alien's tax return.

(c) *Government.* Government means any U.S. Federal, State, Territorial, tribal, or local government entity or entities.

(d) *Public benefit.* Public benefit means any government assistance in the form of cash, checks or other forms of money transfers, or instrument and non-cash government assistance in the form of aid, services, or other relief, that is means-tested as

defined in § 213a.1 of this Chapter, or intended to help the individual meet basic living requirements such as housing, food, utilities, or medical care. This definition includes, but is not limited to, benefits listed in 8 CFR 212.23, but excludes those benefits described in in 8 CFR 212.24.

(e) *Subsidized health insurance.* Subsidized health insurance is any health insurance for which the premiums are partially or fully paid, on a non-earned basis, by a government agency, including but not limited to, advanced premium tax credits, tax credits, or other forms of reimbursement.

#### **§ 212.22 Public Charge Determination**

This section relates to the public charge ground of inadmissibility under section 212(a)(4) of the Act.

(a) *Prospective determination.* The public charge determination assesses the likelihood that an alien will become a public charge at any time in the future.

(b) *Minimum factors to consider.* A public charge inadmissibility determination must entail consideration of the alien's age; health; family status; education and skills; and assets, resources, and financial status, as follows:

(1) *The alien's age.* (i) *Standard.* When considering an alien's age, DHS will consider whether the alien is between the minimum age for full time employment (*see, e.g.,* 29 U.S.C. 213(c)) and the minimum "early retirement age" for social security purposes (*see* 42 U.S.C. 416(l)(2)) (between 18 and 61 as of 2017), and whether the alien's age otherwise makes the alien more or less likely to become a public charge, such as by impacting alien's ability to work.

(ii) [Reserved]

(2) *The alien's health.* (i) *Standard.* When considering an alien's health, DHS will consider whether the alien has any medical condition, and whether such condition makes it more or less likely that the alien will become a public charge, including whether the alien's ability to work is affected by the medical condition, or has non-subsidized health insurance or the assets and resources to pay for medical costs.

(ii) *Evidence.* USCIS will consider, at a minimum:

- (A) A diagnosis of a medical condition by a civil surgeon or panel physician;
- (B) Evidence of non-subsidized health insurance; and
- (C) Evidence of assets and resources.

(3) *The alien's family status.* (i) *Standard.* When considering an alien's family status, DHS will consider whether the alien being a dependent or having dependent(s), as defined in 8 CFR 212.21, makes it more or less likely that the alien will become a public charge.

(ii) [Reserved]

(4) *The alien's education and skills.* (i) *Standard.* When considering an alien's education and skills, DHS will consider whether the alien has sufficient education and skills to obtain or maintain full-time employment, if authorized for employment.

(ii) *Evidence.* USCIS will consider, at a minimum, whether:

- (A) The alien has a history of employment;
- (B) The alien has a high school degree or higher education;
- (C) The alien has any occupational skills, certifications, or licenses;
- (D) The alien is proficient in English or another language as relevant to working full-time.

(5) *The alien's assets and resources.* (i) *Standard.* When considering an alien's assets and resources, DHS will consider whether the alien can support him or herself and any dependents as defined in 8 CFR 212.21, at the level of at least 125 percent of the most recent Federal Poverty Guidelines based on the household size.

(ii) *Evidence.* USCIS will consider, at a minimum, the following types of evidence:

(A) The alien's annual gross income;

(B) Any additional income or support to the alien from another person or source during the most recent full year (for example, income of a dependent or a spouse who is not a dependent);

(C) The alien's cash assets and resources, including as reflected in checking and savings account statements; and

(D) The alien's non-cash assets and resources that can be converted into cash within 12 months, such as net cash value of real estate holdings minus the sum of all loans secured by a mortgage, trust deed, or other lien on the home; annuities; securities; retirement and educational accounts; and any other assets that can be converted into cash easily.

(6) *The alien's financial status.* (i) *Standard.* When considering an alien's financial status, DHS will consider whether any aspect of the alien's financial status other than the alien's assets and resources, such as the alien's liabilities or past reliance on public benefits, makes the alien more or less likely to become a public charge.

(ii) *Evidence.* USCIS will consider, at a minimum:

(A) Whether the alien or any dependent has sought, received, or used, or any public benefit;

(B) Whether the alien has sought or has received a fee waiver for an immigration benefit

request on or after [effective date of this rule];

(C) The alien's credit history and credit score; and

(D) Whether the alien has received or is currently receiving any subsidized health insurance.

(7) An affidavit of support, when required under section 212(a)(4) of the Act, that meets the requirements of section 213A of the Act and 8 CFR 213a. A sufficient affidavit of support must meet the sponsorship and income requirements of section 213A of the Act and comply with 8 CFR 213a.

(8) Other factors, as warranted, in the discretion of DHS, in individual circumstances.

(c) *Heavily weighed factors.* Below are factors that DHS has determined will generally weigh heavily in a public charge determination. The mere presence of an enumerated circumstance does not, alone, create a presumption in favor of or against a public charge determination. Other factors not enumerated may also be weighed heavily in individual determinations, as circumstances warrant.

(1) *Heavily weighed negative factors.* The following factors will generally weigh heavily in favor of a finding that an alien is likely to become a public charge:

(i) The alien is not a full-time student and is authorized to work, but is unable to demonstrate current employment, and has no employment history or no reasonable prospect of future employment;

(ii) The alien is currently using or receiving one or more public benefits;

(iii) The alien has used or received one or more public benefits within the last 36 months;



(iv) The alien has a medical condition and is unable to show evidence of unsubsidized health insurance, the prospect of obtaining unsubsidized health insurance, or other non-governmental means of paying for treatment;

(v) The alien had previously been found inadmissible or deportable based on public charge; or

(vi) Other factors as warranted, in the discretion of DHS, in individual circumstances.

(2) *Heavily weighed positive factors.* The following factors will generally weigh heavily in favor of a finding that an alien is not likely to become a public charge:

(i) The alien has financial assets, resources, and support of at least 250 percent of the Federal Poverty Guidelines;

(ii) The alien is authorized to work and is currently employed with an annual income of at least 250 percent of the Federal Poverty Guidelines; or

(iii) Other factors as warranted, in the discretion of DHS, in individual circumstances.

(d) *Totality of the circumstances.* The determination must be based on the totality of the alien's circumstances, including in consideration of the alien's immigration status, by weighing all positive and negative factors, as outlined in this section.

(e) *Previously excluded benefits.* The determination does not entail consideration of an alien's use or receipt of public benefits that would not have resulted in an inadmissibility based on public charge under the public charge guidance published in the *Federal Register* at 64 FR 28689 (May 26, 1999), unless such benefits are used or

received on or after [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION OF THE FINAL RULE].

**§ 212.23 Public benefits considered for purposes of public charge inadmissibility.**

Consideration of public benefits includes, but is not limited to, the following:

- (a) Supplemental Security Income (SSI), 42 U.S.C. 1381 et seq.;
- (b) Temporary Assistance to Needy Families (TANF), 42 U.S.C. 601 et seq.;
- (c) State or local cash benefit programs for income maintenance (often called State "General Assistance," but which may exist under other names);
- (d) Any other Federal public benefits for purposes of maintaining the applicant's income, such as public cash assistance for income maintenance;
- (e) Nonemergency benefits under the Medicaid Program, 42 U.S.C. 1396 et seq.;
- (f) Subsidized health insurance as defined in section 212.21 of this part;
- (g) Supplemental Nutrition Assistance Program (SNAP, or formerly called "Food Stamps"), 7 U.S.C. 2011 to 2036c;
- (h) Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), 42 U.S.C. 1786;
- (i) State Children's Health Insurance Program (CHIP or SCHIP), 42 U.S.C. 1397aa et seq.;
- (j) Housing assistance under the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11301 et seq. or the Housing Choice Voucher Program (section 8), U.S. Housing Act of 1937, as amended, 42 U.S.C. 1437u, 24 CFR part 982;
- (k) Means-tested energy benefits such as the Low Income Home Energy Assistance Program (LIHEAP), 42 U.S.C. 8621 to 8630;

(l) Institutionalization for both long-term and short-term care at government expense;

(m) The earned income tax credit and similar refundable tax credits, when the credit exceeds the alien's tax liability; and

(n) Any other public benefit, as described in § 212.21 except for those public benefits described in 8 CFR 212.24.

**§ 212.24 Public benefits not considered for purposes of public charge inadmissibility.**

Consideration of public benefits excludes the following:

(a) Benefits paid for or earned by the person which may include, but are not limited to, the following:

- (1) Federal Old-Age, Survivors, and Disability Insurance benefits;
- (2) Veteran's benefits;
- (3) Government pension benefits;
- (4) Government employee health insurance;
- (5) Government employee transportation benefits;
- (6) Unemployment benefits;
- (7) Worker's compensation;
- (8) Medicare benefits, unless the premiums are partially or fully paid by a government agency;
- (9) State disability insurance;
- (10) Loans provided by the government that require repayment; and
- (11) In-state college tuition, and any subsidized or unsubsidized government

student loans, including, but not limited to loan under the William D. Ford Federal Direct Loan Program, 34 CFR 685 and the Federal Perkins Loan Program, 34 CFR 674;

(b) Public benefits received where the total annual value in any 1 year does not exceed 3 percent of the total Federal Poverty Guidelines threshold based on the household size for that year.

(c) Elementary and secondary public education (Pre-K through 12<sup>th</sup> grade) as permitted under the law including benefits under the Head Start Act, as amended, 42 U.S.C. 9801 et seq.;

(d) Benefits under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 to 1482 and related services;

(e) Non-refundable tax credits, and refundable tax credits that are neither means-tested nor intended to help the individual beneficiary meet basic living requirements; and

(f) Any benefit as defined in 8 U.S.C. 1611(b), and 8 U.S.C. 1611(c)(2), including those benefits defined in 42 U.S.C. Chapter 68.

**§ 212.25 Exemptions and waivers for public charge ground of inadmissibility.**

(a) *Exemptions.* The public charge ground of inadmissibility does not apply to the following categories of aliens:

(1) Refugees at the time admission under section 207 of the Act and at the time of adjustment of status to lawful permanent resident under section 209 of the Act;

(2) Asylees at the time of grant under section 208 of the Act and at the time of adjustment of status to lawful permanent resident under section 209 of the Act;

(3) Amerasian immigrants at the time of application for admission as described in sections 584 of the Foreign Operations, Export Financing, and Related Programs

Appropriations Act of 1988, Public Law 100-202, 101 Stat. 1329-183, section 101(e) (Dec. 22, 1987), as amended, 8 U.S.C. 1101 note;

(4) Afghan and Iraqi Special immigrants serving as translators with United States armed forces as described in section 1059(a)(2) of the National Defense Authorization Act for Fiscal Year 2006 Public Law 109–163 (Jan. 6, 2006), as amended, and section 602(b) of the Afghan Allies Protection Act of 2009, Public Law 111–8, title VI (Mar. 11, 2009), as amended, 8 U.S.C. 1101 note;

(5) Cuban and Haitian entrants applying for adjustment of status under in section 202 of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603, 100 Stat. 3359 (Nov. 6, 1986), as amended, 8 U.S.C. 1255a note;

(6) Aliens applying for adjustment of status under the Cuban Adjustment Act, Public Law 89-732 (Nov. 2, 1966), as amended, 8 U.S.C. 1255 note;

(7) Nicaraguans and other Central Americans applying for adjustment of status under sections 202(a) and section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), Public Law 105-100, 111 Stat. 2193 (Nov. 19, 1997), as amended, 8 U.S.C. 1255 note;

(8) Haitians applying for adjustment of status under section 902 of the Haitian Refugee Immigration Fairness Act of 1998, Public Law 105-277, 112 Stat. 2681 (Oct. 21, 1998), as amended, 8 U.S.C. 1255 note;

(9) Lautenberg parolees as described in section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Public Law 101-167, 103 Stat. 1195, title V (Nov. 21, 1989), as amended, 8 U.S.C. 1255 note;

(10) Special immigrant juveniles as described in section 245(h) of the Act;

(11) Aliens who entered the United States prior to January 1, 1972 and who meet the other conditions for being granted lawful permanent residence under section 249 of the Act and 8 CFR part 249 (Registry);

(12) Aliens applying for or re-registering for Temporary Protected Status as described in section 244 of the Act under section 244(c)(2)(A)(ii) of the Act and 8 CFR 244.3(a);

(13) A nonimmigrant classified under section 101(a)(15)(T) of the Act, in accordance with section 212(d)(13)(A) of the Act;

(14) An applicant for, or individual who is granted, nonimmigrant status under section 101(a)(15)(U) of the Act in accordance with section 212(a)(4)(E)(ii) of the Act;

(15) Nonimmigrants classified under section 101(a)(15)(U) of the Act applying for adjustment of status under section 245(m) of the Act and 8 CFR 245.24;

(16) An alien who is a VAWA self-petitioner under section 212(a)(4)(E)(i) of the Act;

(17) A qualified alien described in section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. 1641(c), under section 212(a)(4)(E)(iii) of the Act;

(18) Applicants adjusting status who qualify for a benefit under section 1703 of the National Defense Authorization Act, Public Law 108-136, 117 Stat. 1392 (Nov. 24, 2003), 8 U.S.C. 1151 note (posthumous benefits to surviving spouses, children, and parents);

(19) American Indians Born in Canada as described in section 289 of the Act;

(20) Nationals of Vietnam, Cambodia, and Laos applying for adjustment of status

under section 586 of Public Law 106-429 under 8 CFR 245.21; and

(21) Polish and Hungarian Parolees who were paroled into the United States from November 1, 1989 to December 31, 1991 under section 646(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104-208, Div. C, Title VI, Subtitle D (Sept. 30, 1996), 8 U.S.C. 1255 note; and

(22) Any other categories of aliens exempt under any other law from the public charge ground of inadmissibility provisions under section 212(a)(4) of the Act.

(b) *Waiver.* A waiver for the public charge ground of inadmissibility may be authorized for the following categories of aliens:

(1) Nonimmigrants who were admitted under section 101(a)(15)(T) of the Act applying for adjustment of status under section 245(l)(2)(A) of the Act;

(2) Applicants for admission as nonimmigrants under 101(a)(15)(S) of the Act;

(3) Nonimmigrants admitted under section 101(a)(15)(S) of the Act applying for adjustment of status under section 245(j) of the Act (witnesses or informants); and

(4) Any other categories of aliens for whom a waiver of public charge inadmissibility is authorized under law or regulation.

#### **PART 213 – PUBLIC CHARGE BONDS**

5. The authority citation for part 213 is revised to read as follows:

**Authority:** 8 U.S.C. 1103; 1183; 8 CFR part 2.

6. Revise the part heading to read as shown above.

7. Section 213.1 and its section heading are revised to read as follows:

**§ 213.1 Admission or adjustment of status of aliens on giving of a public charge bond.**

(a) *Inadmissible aliens.* In accordance with section 213 of the Act, after an alien seeking adjustment of status or an immigrant visa has been found inadmissible as likely to become a public charge under section 212(a)(4) of the Act, DHS including upon request from a United States consular officer, may allow the alien to submit a public charge bond, if the alien is otherwise admissible, in accordance with the requirements of 8 CFR 103.6 and this section. The public charge bond issued on the alien's behalf must meet the conditions set forth in 8 CFR 103.6 and this section. A public charge bond is presumptively not warranted if an alien has one or more heavily weighed negative factors as defined in 8 CFR 212.22. DHS has discretion on whether to allow an alien to submit a public charge bond.

(b) *Public Charge Bonds.* (1) *Types.* DHS may require an alien to submit a surety bond, or a cashier's check or money order deposit and agreement to secure a bond. DHS will notify the alien of the type of bond that may be submitted. All bonds, and agreements covering cashier's check or money order deposits to secure a bond, must be executed on a form designated by DHS and in accordance with form instructions. Where a surety bond is accepted, the bond must comply with requirements applicable to surety bonds in 8 CFR 103.6 and this section. If a cashier's check or money order deposit is being provided to secure a bond, DHS must issue a receipt on a form designated by DHS.

(2) *Amount.* Any surety public charge bond, or agreements to secure a public charge bond on cashier's check or money order deposit, must be in an amount not less than \$10,000, annually adjusted for inflation based on the Consumer Price Index for All Urban Consumers (CPI-U), and rounded up to the nearest dollar. The bond amount may



not be appealed by the alien or the obligor.

(3) *Conditions.* A public charge bond must remain in effect until the alien naturalizes, permanently departs the United States, or dies. An alien on whose behalf a public charge bond has been accepted by DHS may not use or receive any public benefits as defined in 8 CFR 212.21 after the date of submission of such a bond and during its effective period. If DHS accepts a bond of limited duration, it is a condition of admission on bond that the bond be substituted with a new bond at least one year before the end of the bond's validity period.

(c) *Submission.* A public charge bond may be submitted on the alien's behalf only after DHS notifies the alien that a bond may be submitted. The bond must be submitted to DHS in accordance with form instructions designated by DHS for this purpose, and any procedures contained in the notice. DHS will specify the bond amount and duration as appropriate for the alien, and the immigration benefit being sought.

(d) *Cancellation.* A public charge bond posted on behalf of an alien must be cancelled after DHS receives a request for cancellation and determines that the conditions of the bond described in paragraph (b)(3) of this section have been met and the bond has not been breached. A public charge bond may be cancelled to allow for the substitution of another bond. The request to cancel a public charge bond must be submitted on a form designated by DHS, if any. If DHS cancels the bond, it will notify the obligor, and if the bond has been secured by a cash deposit, refund the cash deposit to the obligor. When the bond is cancelled, the obligor is released from liability. If DHS denies the request to cancel the bond, DHS will notify the obligor of the reasons why, and of the right to appeal in accordance with the requirements of 8 CFR part 103, subpart A.

(e) *Breach.* A final determination that a bond has been breached creates a claim in favor of the United States for the full amount of the bond. Such claim may not be released or discharged by DHS. If DHS determines that a bond has been breached, DHS will notify the obligor of the reasons-why, and of the right to appeal in accordance with the requirements of 8 CFR part 103, subpart A. Either of the following circumstances constitutes a breach of a public charge bond:

(1) Use or receipt of any public benefit, as defined in 8 CFR 212.21, by the alien after DHS accepts a public charge bond submitted on that alien's behalf, and

(2) A failure to timely substitute a new bond to replace a bond of limited duration, as described in paragraph (b)(3) of this section.

(f) *Exhaustion of administrative remedies.* Unless administrative appeal is precluded by regulation, a party has not exhausted the administrative remedies available with respect to a public charge bond under this section unless the party has obtained a final decision in an administrative appeal under 8 CFR part 103, subpart A.

#### **PART 214 – NONIMMIGRANT CLASSES**

8. The authority citation for part 214 continues to read as follows:

**Authority:** 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301-1305 and 1372; sec. 643, Pub. L. 104-208, 110 Stat. 3009-708; Public Law 106-386, 114 Stat. 1477-1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2.

9. Section 214.1 is amended by:

- a. Adding new paragraph (a)(3)(iv),
- b. Removing the term, “and” in paragraph (c)(4)(iii);
- c. Redesignating paragraph (c)(4)(iv) as paragraph (c)(4)(v); and
- d. Adding a new paragraph (c)(4)(iv).

The revisions and additions read as follows:

**§ 214.1 Requirements for admission, extension, and maintenance of status.**

(a) \* \* \*

(3) \* \* \*

(iv) Except where the nonimmigrant classification for which the alien applies, or seeks to extend, is exempt from section 212(a)(4) of the Act or that section has been waived, the alien must demonstrate that he or she is not using or receiving, nor is likely to use or receive, public benefits as defined in 8 CFR 212.21. For purposes of this determination, DHS may require the submission of a declaration of self-sufficiency on a form designated by DHS, in accordance with form instructions.

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(iv) Except where the alien’s nonimmigrant classification is exempted by law from section 212(a)(4) of the Act, the alien is not currently using or receiving, nor is likely to use or receive, one or more public benefits as defined in 8 CFR 212.21; and

\* \* \* \* \*

**PART 237 -- DEPORTABLE ALIENS [FOR DISCUSSION WITH DOJ].**

10. The authority citation for part 237 is newly added to read as follows:

**Authority:** xxxx.

11. Part 237 is amended by:

- a. Adding a new part heading to read as shown above;
- b. Adding a new subpart A and heading;
- c. Adding and reserving sections 237.1 through 237.4; and
- d. Adding a new section 237.5 and its section heading.

The additions read and follows:

**SUBPART A -- CLASSES OF DEPORTABLE ALIENS**

\* \* \* \* \*

**§ 237.5 Public Charge Deportability**

(a) *Definitions.* Terms used in this section have the following meanings:

- (1) Public charge has the same meaning as defined in 8 CFR 212.21(a);
- (2) Public benefit has the same meaning as defined in 8 CFR 212.21(c),

including benefits listed in 8 CFR 212.23, and excluding benefits listed in 212.24.

(b) Public charge deportability criteria. [TO BE INSERTED]

**PART 245 - ADJUSTMENT OF STATUS TO THAT OF A PERSON ADMITTED  
FOR PERMANENT RESIDENCE**

12. The authority for part 245 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1182, 1255; Pub. L. 105-100, section 202, 111 Stat. 2160, 2193; Pub. L. 105-277, section 902, 112 Stat. 2681; Pub. L. 110-229, tit. VII, 122 Stat. 754; 8 CFR part 2.

13. Section 245.4 is amended by designating the chapeau language as a new

paragraph (a) without change, and adding a new paragraph (b) to read as follows:

**§ 245.4 Documentary requirements.**

\* \* \* \* \*

(b) For purposes of public charge determinations under section 212(a)(4) of the Act and 8 CFR 212.22, an alien who is seeking adjustment of status under this part must submit a declaration of self-sufficiency on a form designated by DHS, in accordance with form instructions.

**PART 248 – CHANGE OF NONIMMIGRANT CLASSIFICATION**

14. The authority citation for part 248 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

15. Section 8 CFR 248.1 is amended by:

- a. Revising paragraph (a);
- b. Redesignating paragraphs (b) through (e) as paragraphs (c) through (f),

respectively; and

- c. Adding new paragraphs (b) and (c)(4).

The revisions and additions read as follows:

**§ 248.1 Eligibility.** (a) *General.* Except for those classes enumerated in §248.2 of this part, any alien lawfully admitted to the United States as a nonimmigrant, including an alien who acquired such status in accordance with section 247 of the Act, 8 U.S.C. 1257, who is continuing to maintain his or her nonimmigrant status, may apply to have his or her nonimmigrant classification changed to any nonimmigrant classification other than that of a spouse or fiancé(e), or the child of such alien, under section 101(a)(15)(K) of the Act, 8 U.S.C. 1101(a)(15)(K), or as an alien in transit under section 101(a)(15)(C) of the

Act, 8 U.S.C. 1101(a)(15)(C). Except where the nonimmigrant classification to which the alien seeks to change is explicitly exempted by law from section 212(a)(4) of the Act, the alien must establish that he or she is not currently using or receiving, nor is likely to use or receive, public benefits as defined in 8 CFR 212.21 as a condition for approval of a change of nonimmigrant status. An alien defined by section 101(a)(15)(V), or 101(a)(15)(U) of the Act, 8 U.S.C. 1101(a)(15)(V) or 8 U.S.C. 1101(a)(15)(U), may be accorded nonimmigrant status in the United States by following the procedures set forth in 8 CFR 214.15(f) and 214.14, respectively.

(b) *Decision in change of status proceedings.* Where an applicant or petitioner demonstrates eligibility for a requested change of status, it may be granted at the discretion of DHS. There is no appeal from the denial of an application for change of status.

(c) \*\*\*

(4) An alien seeking to change nonimmigrant classification must demonstrate that he or she is not using or receiving, nor is likely to use or receive, public benefits as defined in 8 CFR 212.21. For purposes of this determination, DHS may require the submission of a declaration of self-sufficiency on a form designated by DHS, in accordance with form instructions. This provision does not apply to classes of nonimmigrants who are explicitly exempt by law from section 212(a)(4) of the Act.

\* \* \* \* \*

**Kirstjen M. Nielsen,**  
Secretary.

DRAFT