

CHAPTER 1
INTRODUCTION

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§ 1.1 Purpose of This Manual

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

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

For over twenty years, the definition of the public charge inadmissibility ground was based on Field Guidance issued by legacy Immigration and Naturalization Service (INS) (“1999 Field Guidance”)¹ as an individual “who is likely to become 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.”² During his administration, President Trump sought to change public charge policy, to make this ground of inadmissibility stricter and harder for moderate- and low-income immigrants to prove they are not

¹ Jeanne Batalova, Michael Fix & Mark Greenberg, *Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrants Families’ Public Benefits Use* 8 (June 2018), <https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families>. The INS also proposed a rule to define public charge, but the regulation was never finalized. *Id.*; see also Cong. Rsch. Serv., R43220, *Public Charge Grounds of Inadmissibility and Deportability: Legal Overview* 6–7 (2017) (analyzing the 1999 proposed INS regulation on public charge).

² See Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28689 (May 26, 1999) [hereinafter “1999 Guidance”], included as Appendix B.

likely to be a public charge. The Trump administration's negative rhetoric targeting immigrants and their families, coupled with widespread media coverage of changes to public charge rules and policies, caused fear and uncertainty within immigrant communities. While the Trump changes are no longer in effect, unfortunately much of the chilling effect continues.³

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

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

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

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

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

§ 1.2 Contents of This Manual

This manual contains nine chapters and an appendix of referenced documents. In the next chapter, **Chapter 2**, we discuss the history of the public charge rule, including recent developments under

³ See Chapter 2 of this manual for a detailed description of the history of public charge as well as the current state of public charge policies and litigation challenging some of these changes.

the Trump and Biden administrations, and provide an update on the legal challenges to both administrations' attempts to change public charge. In **Chapters 3 through 9**, we provide detailed information on current public charge policies. However, because this is an active litigation and policy change space, make sure to check the status of litigation and implementation to determine which rules are in effect for a particular case. Injunctions may block the implementation of the current rules for a geographic region, or for certain cases based on the time they were filed. Additionally, new rules may be published related to the public charge ground of inadmissibility in consular processing cases or the public charge ground of deportability. Our aim is that this manual will be helpful to you, regardless of which public charge policies are in place, by providing guidance on both old and new public charge policies. To figure out whether an injunction is in place (meaning other policies apply) and other updates, visit ILRC, *Public Charge*, <https://www.ilrc.org/public-charge>.

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

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

CHAPTER 2, BRIEF HISTORY OF PUBLIC CHARGE, provides an overview of how public charge has been interpreted since its inception and its evolution in federal regulations and policy guidance.

CHAPTER 3, PUBLIC CHARGE AS A GROUND OF INADMISSIBILITY, provides an overview of who is subject to the grounds of inadmissibility, which include public charge, specifies who is subject to the public charge ground, and discusses the legal standard to assess public charge.

CHAPTER 4, ASSESSING PUBLIC CHARGE, explains the multifaceted “totality of the circumstances” test that immigration officials use to assess public charge, including the affidavit of support, which certain applicants are required to submit as part of proving that they are not likely to become a public charge.

CHAPTER 5, THE AFFIDAVIT OF SUPPORT, covers the affidavit of support requirements including who is subject to the affidavit of support, who is exempt, different types of sponsors, and various ways to meet the financial requirements. It also covers the serious legal responsibilities a person takes on when they sign an affidavit of support and how long these obligations last.

CHAPTER 6, AFFIDAVIT OF SUPPORT PROCESS, covers information on completing the application forms, collecting the supporting documents, and an explanation of the different affidavit of support forms (Form I-864, I-864W, I-864A, and I-864EZ) and when to use them.

CHAPTER 7, PUBLIC CHARGE AND CONSULAR PROCESSING, covers the State Department rule and Foreign Affairs Manual guidance on public charge inadmissibility in the consular processing context.

CHAPTER 8, PUBLIC CHARGE AS A GROUND OF DEPORTABILITY, provides an overview of the public charge deportability ground, including the elements the government must prove for a person to be found deportable as a public charge, and explains how historically this ground has rarely been used.

CHAPTER 9, CONSIDERATIONS FOR LAWFUL PERMANENT RESIDENTS AND NATURALIZATION APPLICANTS, examines when and how the public charge ground of inadmissibility might apply to lawful permanent residents, with a focus on analyzing these issues at the time a permanent resident applies to naturalize (applies for U.S. citizenship). While there is no public charge test to naturalize, permanent residents might have triggered a public charge concern in their past.

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

§ 1.3 Staying Informed and Getting Involved

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

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

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

To stay informed, you can visit ILRC, *Public Charge*, <https://www.ilrc.org/public-charge> for training information, fact sheets, and resources. We also suggest you consider joining the Protecting Immigrant Families (“PIF”) campaign, a diverse coalition of advocates for immigrants, children, education, health, anti-hunger, and anti-poverty groups that mobilized in opposition to the Trump administration’s harmful changes to public charge and continue to work with a vision of eliminating public charge as a ground of inadmissibility altogether, at Protecting Immigrant Families, <https://protectingimmigrantfamilies.org/>.