



# GUIDE TO FILLING OUT THE NEW USCIS PUBLIC CHARGE FORM I-944

By Ariel Brown

The I-944 “Declaration of Self-Sufficiency” is a new USCIS form, required for adjustment of status cases where public charge applies. The new form is part of implementing the Department of Homeland Security’s public charge rule that took effect on February 24, 2020.<sup>1</sup> Among other changes that will make it harder for moderate- and low-income immigrants to pass a public charge test, the new public charge rule includes details for scrutinizing the statutory factors involved in evaluating public charge inadmissibility, set out at INA § 212(a)(4)(B): age, health, “family status” (household size), income, assets, education, employment history, and skills.

The I-944 is designed to collect extensive information pertaining to these factors as part of the new rule’s heightened scrutiny of a person’s life circumstances, meant to predict whether they appear likely to be a public charge in the future. While a sufficient I-864 Affidavit of Support must still be submitted as required by statute, and is considered as part of the public charge analysis, the new rule places less emphasis on the affidavit of support and instead encourages officers to rely on the other factors, covered more comprehensively in the new Form I-944. Thus, the I-944 is now a critical piece of evidence in deciding whether an applicant for adjustment of status is inadmissible based on the public charge ground.<sup>2</sup>

This practice advisory is the first of a two-part series on the new Form I-944. *Guide to Filling Out the New USCIS Public Charge Form I-944* covers who needs to submit the I-944 and tips and strategies for completing the application form. It also discusses how the information reported on the I-944 will be used by immigration officials to assess public charge, based on the new public charge rule and guidance. The companion practice advisory in this series, *Guide to Gathering Supporting Evidence for the New USCIS Public Charge Form I-944*,<sup>3</sup> covers what documentation to submit in support of the I-944. These two advisories should be read together for a complete overview of the information and evidence required by the I-944.

<sup>1</sup> See <https://www.ilrc.org/public-charge> for more information on changes to public charge and additional resources. As discussed in Part I of this advisory, the new rule does not apply to all applications for permanent residency, it only applies to adjustment applications postmarked on or after February 24, 2020.

<sup>2</sup> See INA § 212(a)(4).

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

## I. Who Needs to Submit the I-944

Only adjustment applicants who are submitting their I-485 adjustment application on or after February 24, 2020 and who are subject to public charge inadmissibility must submit the I-944 as part of their adjustment packet. We break down each of these pre-conditions in greater detail below.

### A. Only Adjustment Applicants...

The I-944 is only for use with applications for adjustment of status with USCIS; individuals who are consular processing and subject to public charge may be required to complete Form DS-5540, the State Department's version of the I-944, instead. This advisory does not discuss the DS-5540—a separate guide to the DS-5540 Public Charge Questionnaire is available on the ILRC's website.<sup>4</sup>

The I-944 is submitted concurrently with the I-485, along with related forms and other documents.<sup>5</sup> There is no filing fee associated with Form I-944, however it requires substantial supporting documentation. In addition to covering who is required to submit the I-944 in Part I, this advisory also provides tips and suggestions for how to complete the I-944 in Part II. A companion practice advisory, *Guide to Gathering Supporting Evidence for the New USCIS Public Charge Form I-944*, discusses the evidence that should be submitted in support of the I-944.<sup>6</sup>

### B. ...Who Are Submitting Their I-485 on or after February 24, 2020

Adjustment applications postmarked before February 24, 2020 are subject to prior guidance on public charge and consequently did not require submission of the new Form I-944. Thus, only those adjustment applications postmarked on or after February 24, 2020 must include the I-944.

An adjustment application originally postmarked before February 24, 2020 may have been returned after the filing cut-off date, leaving practitioners uncertain whether their client's case will be handled under prior or current guidance (and whether they must now re-submit the application with an I-944). Some applications may have been rejected as improperly filed and others may include an erroneous or mistaken request for the new public charge form, I-944, that is purportedly "missing," thus practitioners must understand the meaning of "properly filed" and be prepared to re-submit a rejected adjustment packet with arguments where necessary (see Practice Tip below). Adjustment applications postmarked and properly filed before February 24, 2020 did not have to submit the new public charge form I-944 and further should be adjudicated under 1999 public charge guidance, not the new DHS public charge rule, regardless when the adjustment interview occurs.

<sup>4</sup> ILRC, *Department of State and Public Charge: New DS-5540 and Changes to the Foreign Affairs Manual*, (Apr. 24, 2020), available at <https://www.ilrc.org/department-state-and-public-charge-new-dos-5540-and-changes-foreign-affairs-manual>.

<sup>5</sup> Although the I-944 has not yet been added to the I-485 "checklist" of required initial evidence (see <https://www.uscis.gov/i-485Checklist>), which USCIS has created for some forms "for informational purposes only," the new rule, guidance, and instructions indicate it is required at time of filing the I-485.

<sup>6</sup> Available at <https://www.ilrc.org/guide-gathering-supporting-evidence-new-uscis-public-charge-form-i-944>.

**Practice Tip: Arguing “properly filed” before February 24, 2020.** In order to overcome a rejected application, an advocate would have to successfully argue that the initial submission was properly filed. What constitutes “properly filed” has been the subject of much debate under the current administration.<sup>7</sup> According to DHS regulations, an application will be rejected if it is not signed, filed in compliance with regulations governing the application and form instructions, and accompanied by the proper fee.<sup>8</sup> USCIS maintains that all initial evidence requested in initial filing checklists must be included, but advocates may want to argue against this. Otherwise, if rejection is due to USCIS error (mistaken application for new rule, rejection based on failure to include fee or documents that were included, etc.), practitioners should re-submit to USCIS with proof that the application was mailed (courier receipt) or postmarked before February 24, 2020, and the required documents, signatures, and fees were included. If, however, the case was returned for some other deficiency, such as failure to include the proper fee or sign all forms, then it may not have been properly filed before February 24, 2020 and the applicant will now have to include the I-944 and their case will be handled under the new public charge policy.<sup>9</sup>

### C. ...And Who Are Subject to Public Charge Inadmissibility

Even for those adjustment applicants who are submitting their I-485 and adjustment packet on or after February 24, 2020, some do not have to include Form I-944 because they are exempt from the public charge ground of inadmissibility. This means that the public charge ground of inadmissibility does not apply to them at all. Individuals exempt from public charge inadmissibility include those who are adjusting as:

- VAWA self-petitioners;
- Special immigrant juveniles;
- Asylees;
- Refugees;
- U nonimmigrants, *regardless* whether adjusting under INA § 245(m), the special U adjustment provision, or another adjustment provision such as INA § 245(a), *so long as the individual remains in valid U nonimmigrant status* at time of adjustment adjudication;<sup>10</sup> or
- T nonimmigrants or *T applicants who are prima facie eligible*, *regardless* whether adjusting under INA § 245(l), the special T adjustment provision, or another adjustment provision such as INA § 245(a),

<sup>7</sup> See 8 CFR § 103.2; 8 CFR § 245.2; see also USCIS Policy Manual (USCIS-PM) Vol. 1, Part E, Ch. 4 on “Burdens and Standards of Proof,” which as of May 15, 2020 purportedly incorporates the July 13, 2018 USCIS Policy Memorandum “Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator’s Field Manual (AFM) Chapter 10.5(a), Chapter 10.5(b),” formerly available at [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/AFM\\_10\\_Standards\\_for\\_RFEs\\_and\\_NOIDs\\_FINAL2.pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/AFM_10_Standards_for_RFEs_and_NOIDs_FINAL2.pdf).

<sup>8</sup> 8 CFR § 103.2(a)(7)(ii).

<sup>9</sup> USCIS recently updated its Policy Manual on submission of applications and other benefits requests, see 1 USCIS-PM B.6, available at <https://www.uscis.gov/policy-manual/volume-1-part-b-chapter-6>.

<sup>10</sup> 8 USCIS-PM G.3(B)(3)-(4). Note that the INA and the new USCIS Policy Manual guidance and regulations seem to suggest that potentially even *applicants* for U nonimmigrant status, who have not yet been approved, may be exempt from public charge and not required to submit the I-944 when applying to adjust under INA § 245(a). See, e.g., 8 USCIS-PM G.3(B)(3) (“[Noncitizens] who are petitioning for U nonimmigrant status are exempt from the public charge ground of inadmissibility,” citing INA § 212(a)(4)(E)(ii) “special rule for qualified alien victims” to whom the public charge ground of inadmissibility does not apply, which includes U *applicants*, and 8 CFR § 212.23(a)(19)(i), “exemptions to the public charge ground of inadmissibility,” which also includes U *applicants*). Arguably, this wording refers to U applicants, in their application for U status. However, the statute describes U applicants as qualified alien victims, for which there is a statutory exemption to public charge.

*so long as the individual remains in valid T nonimmigrant status or continues to have a pending I-914 T nonimmigrant petition at time of adjustment adjudication.*<sup>11</sup>

**Example:** Rosalia has had U nonimmigrant status for the last year and a half. In another year and a half, she will be able to apply to adjust under the special U adjustment provision, once she has had three years in U status. However, she recently married a U.S. citizen, Paula, who wants to submit a petition for Rosalia. As long as Rosalia is still in valid U status when her adjustment case is decided (her status expires in two and a half more years), she will not be subject to public charge inadmissibility. She does *not* need to file Form I-944 with her I-485.

Those who are adjusting under the following laws are also exempt from public charge inadmissibility:

- Cuban Adjustment Act (CAA);
- Haitian Refugee Immigrant Fairness Act (HRIFA);
- Registry; and
- Nicaraguans and other Central Americans under NACARA.

Finally, a few other, less common categories are also exempt from public charge at time of adjustment.<sup>12</sup>

Keep in mind the I-944 and I-864 requirements are distinct; occasionally a person need only submit one but not the other—see Note, below, for more information.

**Note:** Whether an adjustment applicant is required to submit I-944 is different from whether they are subject to the affidavit of support requirement (I-864). Whether someone is subject to the INA § 212(a)(4) public charge ground of inadmissibility, and therefore required to submit Form I-944 under the new public charge rule, is distinct from whether a person is subject to the affidavit of support requirement under INA § 213A, meaning they must submit Form I-864 Affidavit of Support, unless they qualify for an exemption to the affidavit of support requirement.

**Example:** Daniel is 19 years old and applying to adjust status to become a lawful permanent resident. He can be credited with 40 qualifying quarters of work that his U.S. citizen father earned before Daniel turned 18 (the cut-off to be credited for a parent’s work quarters). This means that Daniel does not need to submit an I-864 affidavit of support (he will indicate he is exempt from the affidavit of support requirement on his I-485 application).<sup>13</sup> However, Daniel must submit the I-944 because he is still subject to public charge, so immigration officers will still be looking at his age, income, work history, and other factors to decide whether he seems likely to become a public charge in the future.

<sup>11</sup> 8 USCIS-PM G.3(B)(2) & (4).

<sup>12</sup> Those who are adjusting as a Lautenberg Parolee or Polish or Hungarian Parolee; under the Indochinese Parole Adjustment Act of 2000 or Amerasian Homecoming Act; as an American Indian born in Canada or the Texas Band of Kickapoo Indians of the Kickapoo Tribe of Oklahoma; or as a spouse, child, or parent of a deceased soldier under the National Defense Authorization Act.

<sup>13</sup> See INA § 213A for more on the affidavit of support requirements. Prior to implementation of the new public charge rule, someone who was exempt from the affidavit of support requirement would so indicate by completing Form I-864W Affidavit of Support Exemption. However this form is no longer used, and instead, as described in the example with “Daniel,” an affidavit of support exemption is now indicated on Form I-485, Application for Adjustment of Status.

**Example:** Dolores is the widow of a U.S. citizen. Shortly after filing an I-130 petition on her behalf, her U.S. citizen spouse passed away, at which time her I-130 automatically converted into a widow self-petition (I-360). As the widow of a U.S. citizen, Dolores is still subject to public charge but is exempt from the affidavit of support requirement. She must file the I-944 but *not* the I-864 with her I-485, along with associated forms and supporting documents in her adjustment application.

**Example:** Fatima is adjusting as a VAWA self-petitioner. As a VAWA self-petitioner, Fatima is exempt from the public charge ground of inadmissibility and also the affidavit of support requirement at INA § 213A. She does not need to submit either the I-944 or the I-864 with her I-485 application packet.

Refer to the I-485 Form Instructions for more details on who is required to submit the I-944, I-864, both, or neither; see also Appendix A to this practice advisory for a chart summarizing this information.

## II. Filling Out the I-944

As with other immigration applications, the I-944 should be typed or handwritten with black ink.<sup>14</sup> Keep copies of the completed application and make sure to check the USCIS forms website to confirm you are using an accepted version of the form and current instructions.<sup>15</sup> The guidance below refers to pages and item numbers that correspond with the October 15, 2019 version of this form and form instructions.

**Practice Tip: Fill out all fields on the application form.** USCIS has started rejecting certain applications (at the time of this advisory’s writing, Forms I-589, I-918, and I-914) for failure to fill out all fields that are not optional, even those where the answer is “none” or “not applicable.” This includes fields like other names used, marital status, or information about a spouse or child. Thus, we recommend that practitioners try to fill out *all* boxes and answer all questions on the I-944 to avoid rejection and delay for not having fully filled out the form. Where the requested information does not apply to the applicant, write “none” or “not applicable” as appropriate.

In the sections that follow we go through the information required for each part of the Form I-944, as well as identifying the public charge statutory factors each part of the form directly relates to. However, keep in mind that the statutory totality of the circumstances test, used to evaluate public charge inadmissibility, is a holistic test and most factors relate to each other. For instance, an applicant’s age (one of the statutory factors) relates to their health, education and skills, and financial situation (other statutory factors); similarly, an applicant’s “family status” or household size (one statutory factor), relates to their assets, resources, and overall financial situation (another statutory factor).

<sup>14</sup> Note that for the duration of the National Emergency related to the COVID-19 pandemic announced by the president on March 13, 2020, USCIS has stated they will also accept copies of original signatures on forms. For more information, see <https://www.uscis.gov/news/alerts/uscis-announces-flexibility-submitting-required-signatures-during-covid-19-national-emergency>. If you are submitting an application in reliance on this, with a copy of an original signature, make sure to check whether the National Emergency is still formally in effect.

<sup>15</sup> For the I-944, this webpage is: <https://www.uscis.gov/i-944>. Form expiration dates usually appear in the upper left corner of the first page of a form; form edition dates usually appear in the lower right corner of all pages of a given form. Edition dates are what control; check the forms webpage for which edition dates must be used as outdated versions will be rejected. By contrast, forms may be replaced with newer versions before the form’s stated expiration date, or may continue in use after the expiration date, so you should never rely on the form expiration date.

## A. Part 1, “Information About You”

### Public Charge Factors Addressed: Age

Part 1 of the I-944 asks for relatively straightforward biographic information about the adjustment applicant, such as name, date of birth, and place of birth. Unlike the I-864, which is filled out with the petitioner/sponsor’s financial (and other) information, the I-944 should be filled out with the visa *beneficiary*’s information, because they are the adjustment applicant who is undergoing the public charge inadmissibility test as part of their overall admissibility screening for adjustment eligibility.

Although Part 1 of the I-944 is similar to other immigration applications that collect the applicant’s basic identifying information, it also begins to pull out information related to the public charge assessment; age is a factor in the public charge assessment, and the applicant’s birthdate is reported in this part of the form. If an applicant is between age 18 and 61, that is considered a positive factor. Applicants over 61 will want to establish through evidence of recent employment history and/or financial support from household members that, notwithstanding their age, they will still be able to work or otherwise support themselves.<sup>16</sup> Applicants under 18 will similarly want to submit evidence that household members will be providing for them until they reach working age themselves.<sup>17</sup>

## B. Part 2, “Family Status (Your Household)”

### Public Charge Factors Addressed: Family Status

In Part 2, the adjustment applicant must provide detailed information about their household. This goes to the “family status” factor, which looks at size of the family, whether the applicant’s household income is at least 125% of the federal poverty guidelines,<sup>18</sup> and whether the applicant is responsible for supporting others or others are responsible for supporting *them*.<sup>19</sup> Individuals identified as household members in Part 2 can contribute their income and assets to the financial resources factor, addressed in Part 3 of the I-944.

**Determining who is in the applicant’s household.** Make sure to count each person only once. Who is part of the household for purposes of the I-944 varies depending if the applicant is an adult or a child, see below.

The following individuals are included in the “household” for adult applicants (at least 21 years old and/or married) and must be listed on the I-944 in Part 2:

- The adjustment **applicant**;
- Applicant’s **spouse**, *if physically residing with the applicant*;
- Applicant’s **children** under age 21 and unmarried, who are:
  - *Physically residing with the applicant*; or

<sup>16</sup> The USCIS Policy Manual states that officers “must not assume that a person will need long term care or institutionalization with increasing age.” 8 USCIS-PM G.9(A)(4).

<sup>17</sup> 8 USCIS-PM G.6.

<sup>18</sup> See <https://aspe.hhs.gov/poverty-guidelines>; see also 8 USCIS-PM G.8(A). Active duty members of the U.S. military are held to a slightly lower threshold, and must show that they can support everyone in their household at 100% of the FPG, rather than 125%.

For the definition of “active duty” that USCIS relies upon, from Title 38 of the U.S. Code, on veterans, see 38 U.S.C. § 1965(1).

<sup>19</sup> 8 USCIS-PM G.8.

- *Residing elsewhere but the applicant provides or is required<sup>20</sup> to provide at least 50% financial support for them.*
- **Others** if EITHER party (the applicant OR the other person):
  - Provides or is required<sup>21</sup> to provide at least 50% **financial support** for the other person; or
  - Lists the other person as a **dependent** on their tax return.

**Example:** Minh is applying for adjustment of status. Minh’s teenage daughter does not live with him, but he is obligated to pay 50% child support for her according to a divorce agreement with his ex-wife. Minh must list his daughter on his I-944 as part of his “household.” It does not matter whether he actually is making the child support payments, simply that he is obligated to do so according to the court order.

**Example:** June is preparing her I-944 as part of her adjustment application, and is trying to calculate her “household.” In addition to her spouse and two minor children who reside with her, she also lists her nephew as a dependent on her taxes. June’s household for I-944 purposes consists of her, her spouse, her two children, and her nephew.

The following individuals are included in the “household” for child applicants (under 21 years old and unmarried) and must be listed on the I-944 in Part 2:

- The adjustment **child applicant**;
- Child applicant’s own **children**, under age 21 and unmarried, who are:
  - *Physically residing with the child applicant; or*
  - *Residing elsewhere but the child applicant provides or is required<sup>22</sup> to provide at least 50% financial support for them.*
- **Anyone (likely a parent or guardian)** who:
  - Provides or is required<sup>23</sup> to provide at least 50% **financial support** for the child applicant;
    - Also list others for whom the parent or guardian provides or is required<sup>24</sup> to provide at least 50% financial support (for example, the parent or guardian’s other children).
  - Lists the child applicant as a **dependent** on their tax return;
    - Also list anyone else who the parent or guardian lists as a dependent on their tax return (for example, the parent or guardian’s other children).
- The **parent or guardian’s other children** who are *physically residing with the child applicant* (if not already counted above).

**Example:** Ana is applying for adjustment of status. She lives with her husband Jorge, who does not have any immigration status, and their 15-year-old U.S. citizen daughter Rubi. Ana also has an older daughter from a prior relationship, Lily, who is 25 years old, has DACA, and has her own apartment and job. Ana and Jorge only help out Lily financially when she has a large bill or expense, like when she recently bought a car, but otherwise do not help cover her basic

<sup>20</sup> According to an order or agreement, such as a child support order or custody agreement. 8 USCIS-PM G.8(A)(1).

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

<sup>22</sup> 8 USCIS-PM G.8(A)(2).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

expenses for food, rent, etc. Lily files her own taxes. Jorge was married once before and has a son, David, from his prior marriage who is 20 years old and lives with his mother. Jorge used to pay child support for David, but that ended when David turned 18. Jorge is helping pay some of David's college expenses, but Jorge and Ana do not list David as a dependent on their taxes because David's mother lists him. Lastly, Ana's cousin Roberto, who is 37, is living with Jorge and Ana right now, but he has a job and pays his own taxes. Who is part of Ana's household?

Ana's household includes herself, her husband Jorge, and their daughter Rubi. It does *not* include her other daughter Lily or her stepson David, because neither Lily nor David lives with them, Lily is over 21 and even though David is under 21, they do not list him as a dependent on their tax returns (which Ana and Jorge file jointly), and she also does not provide more than 50% financial support to either of them. Ana also does not include her cousin Roberto, even though he lives with them, because he is not her spouse or child, and she does not claim him as a dependent or provide more than 50% financial support for him. Thus, USCIS will be comparing Ana's household income and assets to the federal poverty level for a household of three.

In Part 2, the applicant must provide the following information for *each* household member, *including themselves*:

- Full legal name;
- Date of birth;
- Relationship to the applicant, e.g. "biological child" or "spouse" or "self"; and
- A-Number, if any.

**Note: Undocumented household members.** Some applicants might be concerned about listing undocumented household members, who have no A-Number (as well as listing other family members, disclosing their A-Numbers). The Form I-485 already requests specific information about family members. On the I-944, at least, it may be reassuring to clients that someone who is a native-born U.S. citizen and someone who is undocumented and has no A-Number will look the same in terms of the information provided on the I-944, because both will lack an A-Number and place of birth is not requested on the I-944. Further, some practitioners may choose not to collect and list A-Numbers for other household members, although it is important to keep in mind that USCIS has started rejecting forms where required fields are left blank, so best practice is to put something, whether "None" or "Unknown," instead of leaving it entirely blank (this applies to all household members). Arguably, the A-Number of family members does not go to the heart of eligibility for the benefit sought. Indeed, it is also potentially private information for other adult household members and the applicant might genuinely not know this information.

The applicant must also indicate, for each household member, whether that person 1) lives with the applicant and 2) is filing an adjustment application along with the applicant.<sup>25</sup> At the end of this section, the applicant

<sup>25</sup> Although the question in Part 2 on the I-944 is confusingly phrased, it appears that USCIS is really only asking whether the household member is also applying for adjustment: "*If the individual [the household member] is not filing an immigrant benefit application with you [the applicant], select 'No' when asked 'Is the individual filing an application for an immigration benefit with you or has this individual already filed an application?'*" Form I-944 Instructions at page 5 (emphasis added).



must add up all the household members, including themselves, and provide the “total number of household members.” See the example with “Ana,” above, for an illustration of how to add up household members for purposes of the I-944.

### C. Part 3, “Your and Your Household Members’ Assets, Resources, and Financial Status”

#### Public Charge Factors Addressed: Assets, Resources, and Financial Status

Part 3 of the I-944 spans more than eight pages and requests extensive information about the applicant and their household’s financial resources, including somewhat attenuated considerations like credit history and prior use of fee waivers. While assets, resources, and financial status cumulatively comprise another statutory factor in the totality of the circumstances test, the new rule’s broad investigation into the financial health of the household goes far beyond the traditional assessment previously included as part of the affidavit of support process. The new rule includes requirements around providing debt history, bankruptcies, credit history, and fee waiver use under the auspices that these are valid indicators of the likelihood that a person will become a public charge in the future.

In sum, under the new public charge rule USCIS officers at a minimum will be looking at the following with regards to assets, resources, and financial status:

- Household financial resources (income and assets);
- Applicant financial liabilities and debts, including as reflected in credit report and score;
- Applicant use of fee waivers on or after February 24, 2020 that were for an underlying application where public charge admissibility was required (very rare); and
- Applicant use of certain public benefits, with newly-added benefits only counting on or after February 24, 2020 (also rare, more on this below).

**Note: Household versus applicant.** Pay particular attention to which sections in Part 3 of the I-944 request information pertaining to the household, versus just the applicant. For instance, the I-944 asks about *household* income and assets, but only the *applicant’s* debts and liabilities, *applicant’s* use of fee waivers, *applicant’s* receipt of public benefits, etc.

Based on information reported in Part 3 of the I-944, USCIS officers are evaluating whether the applicant’s household financial resources are sufficient to:

- Support the entire household at a level of at least 125% FPG; and
- Cover reasonably anticipated medical costs.

**Practice Tip: I-693 medical exam results and public charge.** Projections about medical costs should be based on the I-693 medical exam results, which is also submitted as part of the adjustment of status application packet. There is no requirement on the I-944 to disclose health conditions, so applicants should not be affirmatively listing or providing evidence of health problems with the I-944; health information should be limited to the I-693. The Policy Manual instructs USCIS officers to “defer” to the I-693 and states that they “must not speculate as to the cost of an applicant’s medical condition.. [or] what medical conditions a person

may be diagnosed with in the future.”<sup>26</sup> Practitioners should make sure that officers do not go beyond the I-693 to theorize health problems and costs the officer imagines the applicant might have, that are not in the I-693 results.

Practitioners should always review the I-693 medical exam results prior to submitting them in an adjustment case, to know what is in it, especially if the report lists any Class A or Class B medical conditions that could raise health inadmissibility issues. The new public charge guidance adds another reason to make sure to review the medical exam results, to know in advance whether the applicant’s health situation may raise public charge problems for them, and to be ready to combat any negative facts with other, positive evidence.<sup>27</sup>

The updated USCIS policy guidance further states with regards to assets, resources, and financial status that “[a]ll else being equal, the more assets and resources” a person has, “the more self-sufficient the [noncitizen] is likely to be...”<sup>28</sup> Nonetheless, “[p]overty alone is insufficient to establish a person is likely at any time to become a public charge in the future.”<sup>29</sup> At the end of the day, all of these factors are to be considered together to make an assessment about whether a person is more likely than not to become a public charge in the future. In other words, given all the factors presented, *is it more likely than not that the applicant will need more than 12 months of public benefits, as defined in the new rule, during any 36-month period of time in the future.* Even given negative information about financial resources that may be disclosed on the I-944, advocates should remind the adjudicating officer that this is the ultimate question. There might be positive factors present in a person’s case to demonstrate that despite more limited financial resources, the applicant has demonstrated that they have never relied on public benefits and there is no reason to believe they will deviate from this established practice in the future.

**Household income.** In Part 3 of the I-944 the applicant must provide the *annual gross income* (the total amount of money a person earns in a year, before any adjustments due to taxes or other deductions) for the most recent tax year,<sup>30</sup> as well as the annual gross income for all household members listed in Part 2. In addition to annual gross income as listed on a person’s tax return, this section also asks about income from:

- Illegal activity such as illegal gambling or illegal drug sales – this cannot count towards income;
- Public benefits that count for public charge purposes (see more on this below) – this cannot count towards income; and
- Other types of income,<sup>31</sup> such as child support – this *can* count towards total household income, and is more positive if it will continue for an extended period (the I-944 asks for the anticipated end-date for receipt of additional income).

<sup>26</sup> 8 USCIS-PM G.9(A)(4). See also 8 USCIS-PM G.7.

<sup>27</sup> See ILRC, *Guide to Gathering Supporting Evidence for the New USCIS Public Charge Form I-944*, (May 2020), available at <https://www.ilrc.org/guide-gathering-supporting-evidence-new-uscis-public-charge-form-i-944>, for more information on collecting supporting evidence for the I-944.

<sup>28</sup> 8 USCIS-PM G.9.

<sup>29</sup> *Id.*

<sup>30</sup> This number can be found in Item 6 on IRS Form 1040, or Item 1 on a person’s W-2, “total wages, tips, and other compensation,” although note if using the W-2 number other income may need to be added to this amount if the person has other sources of income or multiple jobs.

<sup>31</sup> “Other income” does *not* include taxable income, such as income from alimony, royalties, or retirement pension. See 8 USCIS-PM G.9(A)(5).

**Note: Reporting income by individuals without employment authorization.** The updated USCIS policy guidance on public charge inadmissibility specifically states that “income from unauthorized employment should be included” but also includes a warning, in a footnote, that working without authorization may still have other consequences.<sup>32</sup> These other consequences include bar to adjustment under INA § 245(c), which applies to those adjusting in the family preference visa categories. If adjusting as an immediate relative,<sup>33</sup> VAWA self-petitioner, or under INA § 245(i),<sup>34</sup> however, this bar does not apply. In addition, while working without employment authorization is not a ground of inadmissibility, it may lead to questions about obtaining employment that could reveal a false claim to U.S. citizenship, which is a ground of inadmissibility—with no waiver—under INA § 212(a)(6)(C)(ii). Therefore, practitioners should be cautious about reporting income by individuals without employment authorization, especially the applicant, and screen for false claims and § 245(c) bar to 245(a) adjustment.

**Household assets.** On page 6 of the I-944 the applicant should list all household assets they have and must provide the following for each asset, in a chart provided on page 6:

- Column 1: Name of asset holder (the applicant or other household member);
- Column 2: Type of asset (note although the form parenthetically states “cash value” under “type of asset,” presumably this is where the applicant would indicate whether the asset is bank account, stocks, real estate, etc.);
  - To include a car, they must have more than one car and at least one car is not included as an asset.<sup>35</sup>
- Column 3: U.S. dollar amount of the monetary value for each asset listed, and total adding up all the rows in this column.
  - Real estate and other assets must have a recent, professional appraisal to establish the monetary value;<sup>36</sup>
  - To calculate the net value of a home, this is the appraised value minus all loans secured by a mortgage, trust deed, or other lien on the home.<sup>37</sup>
  - Although the form provides two separate boxes for totaling value of assets in Column 3 (“Current Cash Value” and “TOTAL”), no guidance is provided to distinguish these two sums. Based on the instructions to list current value for assets, we imagine that the amounts listed for these two boxes will almost always be the same. For some applicants with specialized funds, however, such as retirement accounts or annuities, advocates may wish to use the separate “TOTAL” box to indicate the higher, fully realized value of these assets (if they did not in fact have to convert the asset to cash within 12 months, even if able to do so).

<sup>32</sup> See 8 USCIS-PM G.9(A)(2).

<sup>33</sup> Immediate relatives are the spouses, children who are unmarried and under age 21, and parents of U.S. citizens (for parents of U.S. citizens, the U.S. citizen must be at least 21 years old). See INA § 201(b).

<sup>34</sup> For more information on INA § 245(i) adjustment, see ILRC, *245(i): Everything You Always Wanted to Know but Were Afraid to Ask* (June 28, 2018), available at <https://www.ilrc.org/245i-everything-you-always-wanted-know-were-afraid-ask>.

<sup>35</sup> 8 USCIS-PM G.9(A)(3).

<sup>36</sup> See ILRC, *Guide to Gathering Supporting Evidence for the New USCIS Public Charge Form I-944*, (May 2020), available at <https://www.ilrc.org/guide-gathering-supporting-evidence-new-uscis-public-charge-form-i-944>, for more information on collecting supporting evidence for the I-944.

<sup>37</sup> See 8 USCIS-PM G.9(A)(3).

Assets may include money in bank accounts, stocks and bonds, retirement accounts, and the recent appraisal value of real estate and other assets,<sup>38</sup> as long as they can be converted into cash within 12 months. Unlike the affidavit of support, where a person may opt to use assets if their income is not enough to reach the 125% federal poverty threshold, *all* applicants will want to list assets on the I-944 if they are able to. Failing to list assets on the I-944 is a lost opportunity to strengthen the applicant’s public charge case, especially as most other sections of the I-944 serve to collect negative information in the totality of the circumstances, so this is a rare section to provide positive information.

**Note: For income and assets, include household members.** These sections *include* household resources for income and assets, which is helpful and adds to positive facts in the applicant’s public charge outlook. In contrast, the section on debts and liabilities—negative facts as part of the public charge assessment—does NOT consider household members (see below).

All applicants who have assets should list them; as mentioned above, this is not an “either/or” proposition as with the I-864. If the applicant’s household annual gross income is less than 125% FPG, then at a minimum they can show that their household assets equal five times the difference between the household total income and 125% FPG, to make up what they are lacking to reach the baseline 125% level.<sup>3940</sup> Even those who already have household income of at least 125% FPG, however, will want to provide proof of assets to show more positive facts and potentially reach the higher, 250% level, which is a “heavily weighted” positive factor.<sup>41</sup> Although 250% can be a combination of income, assets, resources, and support,<sup>42</sup> there is no equivalent calculation for using assets to reach 250% FPG, as there is for 125% (i.e. five times the shortfall).

When looking at household income, assets, and resources, USCIS adjudicators are instructed to consider whether this amount is:

- Less than 125% FPG<sup>43</sup> – a negative factor and the lower, the more negative;
- At least 125% FPG<sup>44</sup> – this is the minimum to be considered a positive factor;
- At 250% FPG and above – the threshold to be considered a “heavily weighted” positive factor and while not dispositive, viewed as “indicative” that the noncitizen is unlikely to become a public charge in the future.<sup>45</sup>

<sup>38</sup> Although probably uncommon, the USCIS Policy Manual mentions art, collectibles, and jewelry can also be assets and contribute to positive factors in the totality of the circumstances. See 8 USCIS-PM G.9(A)(3).

<sup>39</sup> 8 USCIS-PM G.9. Spouses and children of U.S. citizens need only show assets equal to three times the difference; non-Hague adopted children who will acquire citizenship under INA § 320 must only show the difference in assets. 8 USCIS-PM G.9(A)(3).

<sup>40</sup> *Id.*

<sup>41</sup> See 8 USCIS-PM G.14(B)(1) (“DHS finds that having financial assets, resources, support, or annual household income of at least 250 percent of the FPG are indicative that the [noncitizen] is not likely to become a public charge at any time in the future... Therefore... this factor will weigh heavily in favor of a finding that the [noncitizen] is not likely to become a public charge.”).

<sup>42</sup> See 8 USCIS-PM G.14(B)(1).

<sup>43</sup> This minimum is 100% for active duty members of the U.S. military.

<sup>44</sup> 100% for active duty members of the U.S. military.

<sup>45</sup> 8 USCIS-PM G.14(B)(1).

**Liabilities & debts.** The applicant must also list the dollar amount of any mortgages, car loans, credit card debt, school loans, unpaid taxes, liens, personal loans, and other debts (the instructions indicate unpaid child or spousal support should also be listed here) in Part 3, page 6.

**Note: For liabilities and debts, ONLY list the applicant’s liabilities and debts.** In contrast to the income and assets section, which includes household members, the section on debts and liabilities does NOT consider other household members. Thus, in this section advocates should only disclose debts and liabilities of the applicant.

In general, these liabilities represent negative factors, although USCIS officers are directed to take into consideration “the amount and type” of debt or liability, such that significant amounts of unpaid taxes, credit card debt, etc. will be viewed more negatively whereas “[a] single mortgage and a single car payment may be weighted less negatively as these are long term investments, particularly if the applicant can demonstrate that he or she meets all his or her financial obligations and makes timely payments.”<sup>46</sup>

**Practice Tip: Be aware of double counting negative facts related to net value of assets.** Advocates should indicate, where applicable, that the value of the asset listed in the chart at item number 9 in Part 3 already took into account reduced value due to a mortgage, outstanding debt, lien, etc., because the debts and liabilities chart at item number 10 in Part 3 may lead to double counting negative factors (i.e. money still owed on an asset reduces the positive fact of the value of a given asset, and is also listed again under the debts and liabilities section as an additional negative fact).

**Credit report and score.** On pages 6-7, also in Part 3, the applicant must provide information about their credit history, if available, including:

- Whether they have a credit report;<sup>47</sup>
  - No credit history is not a negative factor, but a bad credit history involving delinquent accounts, foreclosures, repossession, etc. is negative, meanwhile good credit history is a positive factor.
- Whether they have a credit score and if so, what is it;
  - A score of 670 and above is positive, 580-669 is neutral, and below 580 is negative factor “assuming all other financial records are consistent.”<sup>48</sup>
- Explanation of negative credit history or low credit score.
  - Note the instructions identify this field as optional, however it will likely benefit the applicant to provide an explanation, if applicable, rather than skip this field if they have a negative credit history or low credit score, especially if when looking at the rest of the information on the I-944 they do not seem to have many other factors in their favor.

**Bankruptcy.** In Part 3, item number 14 on page 7, the applicant must indicate whether they have ever filed for bankruptcy and if so, provide the place (city & state or country) and date of filing, as well as the type of

<sup>46</sup> *Id.*

<sup>47</sup> See ILRC, *Guide to Gathering Supporting Evidence for the New USCIS Public Charge Form I-944*, (May 2020), available <https://www.ilrc.org/guide-gathering-supporting-evidence-new-uscis-public-charge-form-i-944>, for more information on collecting supporting evidence for the I-944, including a credit report.

<sup>48</sup> 8 USCIS-PM G.9(A)(6).

bankruptcy (Chapter 7, 11, or 13)<sup>49</sup> if filed in the U.S. The policy guidance states that a bankruptcy within the past two years is a negative factor.<sup>50</sup>

**Health insurance.** On pages 7-8 of the I-944 the applicant must indicate whether they have health insurance, and if so whether they received a tax credit under the Affordable Care Act for their health insurance, what their annual deductible or annual premium is, and when their health insurance terminates or must be renewed. Note that *any* health insurance, as long as not considered a public benefit under the new rule (see discussion below on public benefits), is a positive factor. How positively the health insurance is viewed will depend on whether the coverage is more limited, such as only vision or dental care or if it has high premiums, which will detract from the positive factor of having health insurance,<sup>51</sup> or if it involves a subsidy.<sup>52</sup> Having private health insurance (including through an employer) is a heavily weighted positive factor,<sup>53</sup> but even health insurance that is subsidized, for instance under the Affordable Care Act, is nonetheless viewed positively.<sup>54</sup>

If not enrolled in health insurance, the applicant must indicate whether they are planning to enroll “soon” (although “soon” is not defined, an applicant who responds “yes” to enrolling soon must submit evidence in support of this<sup>55</sup>). Practitioners will want to help applicants figure out whether obtaining health insurance is possible, and indicate, if obtaining coverage seems possible, that they “will soon enroll” at item number 15.D. in part 3, page 8 of the I-944, and be prepared to provide proof of upcoming enrollment.<sup>56</sup>

If the applicant does not have health insurance and also does not have any plans for future enrollment, there is an optional space to explain how they plan to pay for reasonably foreseeable medical costs. Health insurance is one of the main ways to show financial coverage for reasonably foreseeable medical costs, but USCIS will also consider income, assets, and other financial resources if the applicant does not have health insurance.<sup>57</sup> As with explaining negative credit history, it likely is in the applicant’s interest if they do not have health insurance (or any plans to get health insurance) to provide explanation and evidence to show that they will be able to pay for any medical costs, even though this requires more time and work to complete the form, as no health insurance and no explanation of how they will manage without health insurance—even if they are healthy, with no foreseeable medical costs—will be viewed negatively.<sup>58</sup> As discussed above, trying to get

<sup>49</sup> Very generally, Chapter 7 bankruptcy is the most common and does not require a repayment plan but the person filing for bankruptcy must liquidate or sell “non-exempt” assets to creditors they are required to pay back; Chapter 11 bankruptcy involves a reorganization plan and is most often used by businesses; and Chapter 13 bankruptcy eliminates debts through a repayment plan that allows the individual filing for bankruptcy to pay back within a three- or five-year period while staying most immediate collection actions such as wage garnishment or home foreclosure. The best way to confirm the applicant’s bankruptcy type is to refer to their documents from the bankruptcy filing (which also must be included as supporting evidence with the I-944, see ILRC, *Guide to Gathering Supporting Evidence for the New USCIS Public Charge Form I-944*, (May 2020), available at <https://www.ilrc.org/guide-gathering-supporting-evidence-new-uscis-public-charge-form-i-944>, for more information on collecting supporting evidence for the I-944).

<sup>50</sup> 8 USCIS-PM G.9(B).

<sup>51</sup> *Id.*

<sup>52</sup> See 8 USCIS-PM G.9(A)(4), G.9(B).

<sup>53</sup> *Id.*

<sup>54</sup> 8 USCIS-PM G.9(A)(4), *Medicaid, CHIP, ACA Subsidy*.

<sup>55</sup> See ILRC, *Guide to Gathering Supporting Evidence for the New USCIS Public Charge Form I-944*, (May 2020), available at <https://www.ilrc.org/guide-gathering-supporting-evidence-new-uscis-public-charge-form-i-944>, for more information on I-944 supporting evidence.

<sup>56</sup> See *id.*

<sup>57</sup> 8 USCIS-PM G.9(A)(4).

<sup>58</sup> 8 USCIS-PM G.9(A)(4) (“Lack of health insurance is a negative factor in the totality of the circumstances.”).

health insurance for those who do not have any is probably the strongest position to be in, but absent that the applicant will want to show that they are healthy<sup>59</sup> and have sufficient financial resources to cover reasonably foreseeable health costs.

**Public benefits.** On pages 8-11, the applicant must report public benefits use “regardless of amount or duration”<sup>60</sup>—but disclosure of public benefits is limited to only certain programs (more on this below). Recall that the new definition of public charge is use of one or more public benefits that count for more than twelve months in the aggregate over a 36-month period, where use of two benefits in one month counts as two months;<sup>61</sup> if in the past the applicant has already met this definition, this is a heavily-weighted negative factor in the totality of the circumstances,<sup>62</sup> making it more likely the applicant will be found likely to be a public charge in the future. Additionally, past or current receipt of public benefits that count, even if not amounting to 12 months of benefits over a 36-month period, is a negative factor. But, public benefits use alone does not absolutely mean the applicant is likely to be a public charge in the future, even if it represents a heavily-weighted negative factor.<sup>63</sup> In reviewing receipt of public benefits reported on the I-944, a USCIS officer should consider both how recently the applicant received the benefit(s) and also the length of time they received them. Longer use and/or more recent use will be more negative than brief use that occurred some time ago, especially where the applicant can show that their circumstances have changed in the interim.

**Note: Most applicants will have nothing to disclose on the public benefits section of the I-944.** It will be very rare to have an applicant for adjustment of status who has used a public benefit that counts under the public charge rule, because the types of benefits that count under the rule are usually restricted to those who already have immigration status. If you think you have a client whose receipt of benefits might count under the public charge rule and be disclosed on the I-944, investigate further or ask an expert! It is more likely, if they have received benefits that count under the new rule, that their use falls under an exception or exemption and therefore should not be considered for public charge, or they are using a state-funded program that need not be reported on the I-944, or the benefit is actually being received by a dependent family member and also need not be reported on the I-944.

Item number 16 on page 8, in the first four benefits checkboxes, asks whether the applicant—and *only the applicant*<sup>64</sup>—has ever received or is currently certified<sup>65</sup> to receive the following public benefits:

- Any federal, state, local, or tribal cash assistance for income maintenance;

<sup>59</sup> As indicated in the I-693 medical exam results, because officers should not be making suppositions of their own about an applicant’s health—they are supposed to defer to the I-693.

<sup>60</sup> See Form I-944 Instructions at page 8.

<sup>61</sup> 8 CFR § 212.21(b).

<sup>62</sup> 8 CFR § 212.22(c)(1)(ii).

<sup>63</sup> See 8 USCIS-PM G.9(A)(8) (“An officer must not find an applicant inadmissible based on the public charge ground solely based on the receipt of a public benefit in the United States.”).

<sup>64</sup> See advisory Note “Family member use of public benefits does NOT count and should NOT be listed on I-944.”

<sup>65</sup> “Certified to receive” means that the benefits-granting agency has approved them for future receipt of the relevant public benefit(s), usually as a continuation of current receipt. Although the new public charge rule distinguishes between “receiving” and being “approved” or “certified” to receive a public benefit, DHS views certification as “suggestive” of likely future receipt. See 8 CFR § 212.21(e); see also DHS, *Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. 41292, 41334 (Aug. 14, 2019) (a noncitizen “does not receive a benefit merely by virtue of having applied or been certified for such benefit...”).

- Examples:<sup>66</sup> California’s Cash Assistance Program for Immigrants (CAPI); New York’s Temporary Assistance (including Family Assistance/FA) and Safety Net Assistance (SNA); Florida’s Temporary Cash Assistance (TCA); Massachusetts’s Economic Assistance including Transitional Aid to Families with Dependent Children (TAFDC), Emergency Aid to the Elderly, Disabled, and Children (EAEDC), and the State Supplement Program (SSP); Illinois’s Aid to Aged, Blind and Disabled (AABD) and IL Cash Assistance; and Washington’s Aged, Blind or Disabled Cash Assistance Program, Food Assistance Program for Legal Immigrants, Consolidated Emergency Assistance Program, Pregnant Women Assistance, Diversion Cash Assistance, and State Supplemental Payment.
- Supplemental Security Income (SSI);
- Temporary Assistance for Needy Families (TANF); and
- General Assistance (GA).
  - Functionally, this is the same as the first benefit program type listed above, cash assistance for income maintenance, although these are listed separately on the I-944 at item number 16.

All the above-listed public benefits programs “counted” even under old public charge policy, and most immigrants who are applying for adjustment are ineligible for such programs, see Note above.

**Note: Examples of programs that are NOT cash assistance for income maintenance and should NOT be listed on the I-944.**<sup>67</sup> Many programs where the cash aid does not go directly into the applicant’s pocket or that are otherwise limited in scope, like disaster relief, do NOT count as cash assistance for income maintenance, such as: energy or transportation-related assistance programs paid directly to the creditor (the energy or transportation company); cash emergency disaster relief such as financial assistance provided to individuals and households under FEMA (Federal Emergency Management Agency) or comparable state, local, or tribal governments; cash benefits provided to individuals based on veteran status; and any tax-related cash benefits, including the Earned Income Tax Credit (EITC) and others.

The last five benefits checkboxes at item number 16 ask whether the applicant—and *only the applicant*<sup>68</sup>—has ever received or is currently certified<sup>69</sup> to receive the following newly-added public benefits programs:

- Supplemental Nutrition Assistance Program (SNAP, or “food stamps”);
- Section 8 Housing Assistance under the Housing Choice Voucher Program;
- Section 8 Project-Based Rental Assistance;<sup>70</sup>
- Public Housing under the federal Housing Act of 1937; and
- Federally-funded Medicaid (regardless whether an exception applies; see below).

<sup>66</sup> For more details and on these programs, provided as examples in the USCIS Policy Manual, see 8 USCIS-PM G.10(A)(2).

<sup>67</sup> *Id.*

<sup>68</sup> See advisory Note “Family member use of public benefits does NOT count and should NOT be listed on I-944.”

<sup>69</sup> “Certified to receive” means that the benefits-granting agency has approved them for future receipt of the relevant public benefit(s), usually as a continuation of current receipt. Although the new public charge rule distinguishes between “receiving” and being “approved” or “certified” to receive a public benefit, DHS views certification as “suggestive” of likely future receipt. See 8 CFR § 212.21(e).

<sup>70</sup> The Form I-944 Instructions state that this includes Moderate Rehabilitation, see page 8 of instructions.



- Applicants *do not* list receipt of exclusively state-funded Medicaid.<sup>71</sup>
- In item number 20 on page 10, the applicant should indicate whether the federally-funded Medicaid use falls under an exception,<sup>72</sup> such as for use during a pregnancy, while under age 21, or for an emergency. Still, the applicant is expected to report such use in item number 16, even though such use does not count for public charge purposes.

The above newly-added benefits programs *only count if received (or certified to receive<sup>73</sup>) on or after February 24, 2020*, the effective date of the new public charge rule. Note the form instructions reference October 15, 2019, the originally planned effective date that was delayed due to litigation challenging the new public charge rule, but a statement on the Form I-944 webpage clarifies that everywhere the form and instructions state “October 15, 2019” should be read as “February 24, 2020.”<sup>74</sup>

Many other programs that do not fall under the lists above or item number 16 on the I-944 need not be reported on the I-944 and do not count for public charge purposes. These include (but are not limited to):<sup>75</sup>

- Any earned benefits, such as Survivors and Disability Social Security (SSDI), standard Social Security, veteran’s benefits, pension benefits, unemployment benefits, worker’s compensation, Medicare, and federal and state disability insurance;
- Soup kitchens, crisis counseling, and short-term shelter provided by nonprofit organizations;
- Public health immunizations;
- Public schools;
- Free and reduced school meal programs;
- Special Supplemental Nutrition Program for Women, Infants, and Children (WIC);
- Children’s Health Insurance Program (CHIP) and State Children’s Health Insurance Program (SCHIP);
- Health insurance through the Affordable Care Act;
- Educational benefits such as Head Start;
- Student loans and home mortgage loan programs; and
- Foster care.

**Note: Determining which public benefits to list on the I-944.** Immigration legal practitioners now find themselves, with the new public charge rule and I-944, having to learn about eligibility and funding sources for public benefits programs in order to understand which must be reported to USCIS. Here are a few rules to guide practitioners:

- Only list public benefits *received by the applicant* (see other note, below);
- Only list *newly-added food, housing, and healthcare programs* received (or certified to receive) *on or after February 24, 2020*;

<sup>71</sup> See Form I-944 Instructions, page 9 (“To the extent that States give the same name to their Federal Medicaid program and the state-only funded health insurance program, [applicants] will not be required to report the receipt of the state-only funded health insurance.”) (emphasis added); see also 8 USCIS-PM G.10(A)(1).

<sup>72</sup> See 8 CFR § 212.21(b)(5); see also 8 USCIS-PM G.10(B)(2).

<sup>73</sup> Certified to receive means the benefits-granting agency has approved the person for future receipt of the benefit (often as a continuation for current receipt).

<sup>74</sup> See dropdown tab “Special Instructions” at <https://www.uscis.gov/i-944>.

<sup>75</sup> For more details and on these programs, provided as examples in the USCIS Policy Manual, see 8 USCIS-PM G.10(B)(1).

- Only list exclusively *federally-funded* food stamps, Section 8 and public housing, and Medicaid programs.

And remember, if you think the applicant has used one of the programs that “count,” check again! It is very rare for someone to be eligible for these federal programs and be subject to public charge. It is more likely the person has not used the benefits or is exempt from public charge altogether (and thus would not even be filing an I-944). Most likely, an adjustment applicant without any other lawful immigration status will not qualify to receive federally-funded public benefits programs, even though they may have benefitted from more generous, local programs<sup>76</sup>—these state or other locally funded programs should *not* be listed on the I-944.

**Example:** You are filling out the I-944 for your client, Sandra, who is undocumented. She tells you that she has received WIC and also Medi-Cal (California’s Medicaid) while she was pregnant with her son last year. WIC does not count for public charge purposes, so you do not have to list that on the I-944. You also would not list Medi-Cal, because Sandra only qualifies for health insurance coverage based on the State of California’s expanded coverage for undocumented immigrants, which exceeds the scope of federal Medicaid funding.

Additionally, if you have an adjustment applicant who is receiving or has received some type of public benefit while in a group that is exempt, such as because they had, but no longer have,<sup>77</sup> U or T nonimmigrant status, or fall within an exception under the new public charge rule, such as receipt of Medicaid while under age 21, while they must list any federally-funded programs they have used that fall within the list on item number 16 of the I-944, such use *will not count* for public charge.

**Note: Family member use of public benefits does NOT count and should NOT be listed on I-944.** The revised DHS regulations on public charge, USCIS Policy Manual guidance, and Form I-944 Instructions all make it clear that a family member’s receipt or certification for future receipt of public benefits does *not* count and should *not* be reported on the I-944.<sup>78</sup> The USCIS Policy Manual elaborates that the following instances do not count, and thus should not be reported on the I-944:

- An adjustment applicant fills out forms to apply for a public benefit on behalf of a U.S. citizen child (the child is the recipient of the benefit);
- An adjustment applicant is living in subsidized housing along with other family members, but is not the named beneficiary receiving the housing benefit;
- An adjustment applicant fills out forms for a public benefit on behalf of a parent for whom they are the legal guardian or have power of attorney; or
- An adjustment applicant being designated by the public benefits-granting agency to receive the public benefit on behalf of the qualifying beneficiary.<sup>79</sup>

<sup>76</sup> One example the USCIS Policy Manual provides is “some Medi-Cal services... provided to [noncitizens] under a state-only authority at no expense to the federal government.” 8 USCIS-PM G.10(A)(1). Such services should not be listed on the I-944 and do not count in the public charge assessment.

<sup>77</sup> If the adjustment applicant still had U or T nonimmigrant status, then they would not have to file the I-944 because they are exempt from public charge inadmissibility, see Part I.C, *supra*.

<sup>78</sup> See 8 CFR § 212.21; 8 USCIS-PM G.9(A)(8) (“USCIS only considers the alien to have received a public benefit if the alien is the named beneficiary of the benefit but *not* where an alien is applying, being certified to receive, or receiving a public benefit on behalf of another person.”) (emphasis added); Form I-944 Instructions at page 8 (“USCIS will only consider the amount received by or attributable to the alien.”).

<sup>79</sup> 8 USCIS-PM G.9(A)(8).

In item 18 on page 9, the applicant must provide details about all public benefits listed in item number 16. Applicants are told to list each instance of intermittent use separately in item number 18.<sup>80</sup> Further, applicants are expected to report public benefits that count under the rule even if received while in an exempt status or some other exception applies (but if you have a client who only received benefits while in an exempt category, make sure they are required to fill out this form! See the example with “Andrea,” below, for an example when someone might have received benefits while exempt but still need to submit the I-944—this will be relatively uncommon).

If the applicant’s previous receipt of public benefits listed on the I-944 at item number 16 should not be considered due to an exemption or exception (which also includes situations like receipt of federal Medicaid for an emergency or pregnancy, or while a member of a military family), the applicant indicates the exception or exemption at item numbers 19 and 20.<sup>81</sup> Note that even if none of the exceptions or exemptions listed in item numbers 19 and 20 apply to the applicant, they must still answer this question if they checked “yes” for item number 16, by selecting the box “None of the above apply to me.”

**Example:** Andrea had a U visa from 2014-2018, but never applied to adjust as a U visa holder because she divorced her husband, who was the principal U visa holder, and so did not think she could adjust anymore. Now she is adjusting through a petition filed by her new husband. Only while she had a U visa, she received cash assistance for income maintenance. Andrea would have to disclose this on the I-944 by checking the box at item number 16 for “Yes, I have received...” one of the public benefits listed on that page and then the box next to “Any Federal, State, local or tribal cash assistance for income maintenance”; at item number 18 she would list the details of her receipt of cash assistance; and then at item number 19, she would check the box for “At the time I received the public benefits, I was present in the United States in a status exempt from the public charge ground of inadmissibility and I received the public benefits during that time.” (She would also have to attach proof of her U nonimmigrant status grant.)

The I-944, at item numbers 22-23 on page 10, requests information about benefits requests that are currently pending or were denied. The form also requests information on disenrollment or withdrawal *after* certification (item number 17 on page 8) or withdrawal of a benefits application *before* being certified for receipt (item number 25 on page 11). USCIS views withdrawal, disenrollment, or request to disenroll from public benefits that count for public charge purposes as a positive factor in the totality of the circumstances, as it “may indicate that the person no longer needs the public benefit(s) and may not need the public benefit(s) in the future.”<sup>82</sup> Applicants should not withdraw or disenroll from benefits unless they are certain that it affects their public charge case; as discussed above, very few adjustment applicants will have received public benefits that they must disclose on the I-944 (and thereby be in the position of having to consider giving them up to improve their public charge outlook).

<sup>80</sup> See Form I-944 Instructions at page 8.

<sup>81</sup> For more information on exceptions and exemptions to public benefits use, see 8 CFR § 212.21(b)(5). Note such benefits use must still be reported on the I-944 in item number 16, but the applicant would also check item numbers 19 and/or 20 to indicate exceptions to Medicaid or other exceptions and exemptions to considering the use of benefits.

<sup>82</sup> 8 USCIS-PM G.9(A)(8).

**Fee waivers.** Item number 26 on page 11 of the I-944 asks about fee waivers. Fee waivers can only count against a person in the public charge test if received on or after February 24, 2020 and if they pertained to an underlying application where public charge admissibility was required.<sup>83</sup> This is very uncommon; fee waivers are generally unavailable if the underlying application requires overcoming the public charge ground of inadmissibility (this is why most adjustment applicants cannot request a fee waiver for Form I-485, unless they are a U or T nonimmigrant or other adjustment applicant who is not subject to public charge inadmissibility). Nonetheless, even though most fee waivers will not count against the applicant, the I-944 still asks for information about all fee waivers the applicant has ever sought, including the underlying application type (application form number) and receipt number for all fee waiver requests.<sup>84</sup> Optionally, the form instructions mention that an applicant can fill out “Part 9, Additional Information” with an explanation of the circumstances that lead to them seeking a fee waiver and whether those circumstances have changed. However, very few applicants will be in a position of having to fill out this section at all, as most adjustment applicants will not have been eligible to seek a fee waiver; two of the most common situations where a person may utilize a fee waiver, if they do not have any special status or classification like a U visa, T visa, TPS, VAWA, etc., are green card renewals (I-90s) and naturalization applications (N-400s), both of which are not applicable to an adjustment applicant who does not yet have permanent residency.<sup>85</sup>

## D. Part 4, “Your Education and Skills”

### Public Charge Factors Addressed: Education and Skills

Part 4 of the I-944, spanning pages 11 through 13, requests information about the applicant’s education as well as professional and language skills. This goes to the statutory factor concerning an applicant’s education and skills. USCIS views education and skills as relevant to “the applicant’s ability to obtain and maintain stable employment” and therefore reduce their risk of becoming a public charge.<sup>86</sup>

**Employment history.** No work experience is a negative factor in the totality of the circumstances,<sup>87</sup> unless due to the applicant being a “primary caregiver” for a child, elderly, sick, or disabled member of their household.<sup>88</sup> Employment history and/or job offers are positive factors, even if the applicant does not have employment authorization yet.<sup>89</sup>

<sup>83</sup> 8 CFR § 212.22(b)(4)(ii)(F).

<sup>84</sup> Note that the USCIS Policy Manual guidance on fee waivers and public charge impermissibly expands upon the negative connotations of having sought a fee waiver as set forth in the final rule, 84 Fed. Reg. 41292 (Aug. 14, 2019), thus practitioners should be aware that USCIS officers may erroneously consider fee waivers sought by those who are not subject to public charge, such as a fee waiver for an I-192 filed by a U visa applicant, as negative factors in the totality of the circumstances. See 8 USCIS-PM G.9(A)(7).

<sup>85</sup> A rare exception where this issue might arise is when an LPR applies to re-adjust status as a defense to removal. In such a case, the applicant could have filed a prior application for a fee waiver, such as with an I-90, and now be seeking adjustment.

<sup>86</sup> 8 USCIS-PM G.11(A).

<sup>87</sup> *Id.* Note an applicant’s work history is reported on the Form I-485, not the I-944, which only asks about formal education and occupational and language skills.

<sup>88</sup> See 8 CFR § 212.21(f) (definition of “primary caregiver”); 8 CFR § 212.22(b)(5)(ii)(E) (primary caregiver factored into public charge inadmissibility determination); 8 USCIS-PM G.11(A)(1).

<sup>89</sup> *Id.* Note, however, that preference beneficiaries will be barred from § 245(a) adjustment, under INA § 245(c), if they have worked without authorization, and also that questions about employment history without work permission may reveal other inadmissibility for a false claim to U.S. citizenship, a very severe ground of inadmissibility for which there is no waiver.

**Warning: Employment history that includes work in legal marijuana industry.** Because marijuana remains illegal under federal law, the USCIS Policy Manual states that employment history involving working in the marijuana industry, even if legal under state law, will not be viewed as a positive factor in the totality of the circumstances. 8 USCIS-PM G.11(A)(1). Moreover, any employment in the marijuana industry can trigger insurmountable inadmissibility issues under the crimes inadmissibility grounds. Anyone with work history in the marijuana industry should get legal advice from an expert in the intersection of criminal and immigration law. Disclosing work in the marijuana industry could give the government reason to believe the person is barred from admission under the drug trafficking provisions, even without a conviction.<sup>90</sup>

**Occupational skills.** Just as no work experience is a negative factor, unless the applicant is the primary caregiver for someone else, having no work-related skills is also a negative factor.<sup>91</sup> However, most applicants will be able to list skills developed from employment-related experience. This consideration includes on-the-job training, not just licenses and certifications. Some examples from the USCIS Policy Manual include skills related to experiences working as a mechanic, plumber, electrician, agricultural worker, hospitality worker, or welder.<sup>92</sup> Practitioners should think broadly about skills applicants may have developed over years working in various roles, which might also include skills developed from working as a cook or in food service, customer service and/or sales, construction and contracting, landscaping, professional house-painting, etc.<sup>93</sup>

**Education.** In its policy guidance, USCIS justifies focusing on degrees and educational history as part of the public charge assessment because they claim that higher education leads to more job opportunities and higher potential salaries.<sup>94</sup> USCIS officers will view current enrollment in higher education as a positive factor, unless it appears the applicant only enrolled in a course or two “solely for immigration purposes” (to improve their public charge outlook).<sup>95</sup> For an applicant who is under age 18 and thus has not completed high school yet, lack of a high school diploma will not be a negative factor and at the same time being enrolled in school is a positive factor.<sup>96</sup>

**English language skills.** This consideration was added to the education and skills factor by the new public charge rule; DHS asserts that English language skills correlate with a person’s self-sufficiency.<sup>97</sup> The USCIS Policy Manual instructs officers to look for “basic English skills” in order to count as a positive factor in the totality of the circumstances, which may include an assessment of the applicant’s understanding of English during the adjustment interview.<sup>98</sup>

If the officer does not believe the applicant has a basic understanding of English, then “the officer should review whether the lack of English or other language proficiency adversely affects the applicant’s ability to

<sup>90</sup> For more information, see <https://www.ilrc.org/warning-immigrants-about-medical-and-legalized-marijuana>.

<sup>91</sup> See 8 USCIS-PM G.11(A)(3).

<sup>92</sup> *Id.*

<sup>93</sup> The USCIS Policy Manual also mentions that vocational rehabilitation programs may also count, “to the extent that such participation makes the applicant less likely to receive one or more enumerated public benefits above the threshold.” 8 USCIS-PM G.11(A)(3).

<sup>94</sup> See 8 USCIS-PM G.11(A)(2).

<sup>95</sup> *Id.*

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

<sup>97</sup> See, e.g. DHS Final Rule *Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. 41292, at 41429 (Aug. 14, 2019).

<sup>98</sup> 8 USCIS-PM G.11(A)(4).

obtain or maintain employment...<sup>99</sup> Thus, English language skills should only matter if it appears to affect an applicant’s job prospects; advocates should be prepared to argue that if the applicant has a long history of gainful employment, even if they do not have strong English skills, limited English should not be a negative factor in the public charge assessment. The Policy Manual also notes that some jobs require fluency in a foreign language, in which case fluency in another language besides English may positively affect the applicant’s ability to obtain or maintain employment.<sup>100</sup> Note, however, that other language skills is listed as positive “in addition to English,”<sup>101</sup> suggesting that fluency only in a foreign language, without also having English language skills, may not be viewed as positively.

For education, the applicant must report the following on the I-944 at Part 4, item numbers 2 and 3:

- Whether they graduated high school or the equivalent.
  - If yes, details about their high school diploma and any other higher education degrees; or
  - If no, the highest grade completed (and the number of credit hours/hours of study completed, short of a diploma or degree).

For employment and skills, the applicant must report the following on the I-944, Part 4, at item numbers 4 and 5:

- Whether the applicant has any “occupational skills”;
  - Advocates should think creatively about how to fill out this section, even if at first it does not appear the applicant has something to list, and work with applicants to identify skills that they have and use in the workplace (it may be helpful to refer to resume-building tips for ideas on how to draw out your client’s attributes and skills and best present them as desirable workforce candidates). Many clients who have worked for lengthy periods of time will have various certificates or licenses, whether it is in cabinetry, woodworking, food preparation and safety, etc. or have participated in trainings (sometimes required by their employer) that it would be helpful to list here. Even if the applicant does not have any formal licenses or certifications, they can also list extensive, specialized work experience in this section.
  - For specific licenses and/or certifications, the applicant must provide details about when obtained; who issued it; license number, if any; and expiration or renewal date, if any. Expired licenses or certifications from several years ago will carry less weight.
- The applicant’s level of English language proficiency, in addition to any other languages;
  - Details about any language certifications and/or language courses they have taken.
  - At a minimum, the applicant will probably list two languages in this section:
    - They will want to list “English” as long as they have some proficiency, even if they have never formally studied English, and list “N/A” for courses or certifications, if none. The adjustment interview will be an opportunity to demonstrate English skills, even if they do not have any courses or certifications.

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<sup>99</sup> *Id.*

<sup>100</sup> *See id.*

<sup>101</sup> *Id.*

- They will also want to list a native foreign language, if any, again putting “N/A” for courses and certifications if they never formally studied the language.

Part 4 is also where the applicant indicates if they are not working due to retirement (item number 6) or because they are the primary caregiver for someone in their household who is a child or is elderly, ill, or disabled (item number 7). If an applicant is a primary caregiver, they must also provide a statement in Part 9, “Additional Information.”<sup>102</sup> The Form I-944 Instructions do not elaborate on what must be covered in the primary caregiver statement in Part 9, but presumably such a statement should address the following:

- That the person who the applicant is caring for is a member of their household and lives with them;<sup>103</sup>
- That no other members of the household share the primary caregiving role (USCIS says that a person can only have one primary caregiver per household);<sup>104</sup> and
- Details about the person’s condition necessitating the caregiving, i.e. the age of the person being cared for, if a child or elderly, or the medical condition and/or disabilities of the person being cared for.

### E. Parts 5, 6, and 7, Sections for Declarant, Interpreter, and Preparer Information

Parts 5, 6, and 7 are similar to other immigration forms, with sections for the applicant (“declarant”) to sign, as well as interpreter and preparer, as applicable. With their signature in Part 5, the applicant is affirming under penalty of perjury that all information is complete, true, and correct.

The applicant’s signature in Part 5 also authorizes USCIS to verify information with the Social Security Administration (SSA), Department of Health and Human Services (HHS), Department of Housing and Urban Development (HUD), and other government agencies, *as well as consumer reporting agencies*. This last part, allowing USCIS to run credit reports, is incredibly invasive and also unprecedented. In preparing the I-944, you will want to have a discussion with the client about any potential negative information in a credit report and alert them to the fact that their signature on the application form gives USCIS permission to independently request—and credit reporting agencies to release—their credit reports, scores, and related information.

### F. Part 8, “Signature at Interview,” and “Additional Information” (Overflow Section)

Part 8 provides a field for the applicant to sign the I-944 a second time, at their adjustment interview. When they sign again at the interview, in Part 8, they will be affirming any changes or corrections made to the I-944 during the interview. Part 8 should not be completed until the adjustment interview.

As with many other immigration forms, Part 9 provides additional space for overflow information.

Sections of the I-944 that specifically mention using Part 9 for additional information:

- Fee waiver section in Part 3, item number 26: explanation of the circumstances that lead to seeking a fee waiver and whether those circumstances have changed (optional); and

<sup>102</sup> Form I-944 Instructions, page 11.

<sup>103</sup> While it is possible that the primary caregiver does not live with the person they are caring for, USCIS will not consider this a positive factor in the totality of the circumstances. 8 USCIS-PM G.11(A)(1).

<sup>104</sup> 8 USCIS-PM G.11(A)(1).

- Skills section in Part 4, item number 7: primary caregiver statement (required if applicable).

For further information on the I-944, see the ILRC's companion advisory, *Guide to Gathering Supporting Evidence for the New USCIS Public Charge Form I-944*.<sup>105</sup> While this practice advisory focuses on how to fill out the form itself and how USCIS will evaluate information disclosed on the I-944 as part of the new public charge test, the second advisory provides tips and strategies for collecting the I-944 supporting evidence.

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<sup>105</sup> Available at <https://www.ilrc.org/guide-gathering-supporting-evidence-new-uscis-public-charge-form-i-944>.



## APPENDIX A: WHEN TO FILE I-944 AND/OR I-864

Type of adjustment application	I-944	I-864
Adjusting through I-130 family petition <sup>1</sup>	YES	YES
Widow(er) of USC	YES	NO
K-1 fiancé(e) of USC and K-2 children	YES	YES
VAWA <sup>2</sup>	NO	NO
Special immigrant juvenile	NO	NO
Asylee	NO	NO
Refugee	NO	NO
U nonimmigrant, as long as in valid U status at time of adjustment filing AND adjudication <sup>3</sup>	NO	NO
T nonimmigrant OR pending prima facie I-914, as long as in valid T or I-914 at time of adjustment filing AND adjudication <sup>4</sup>	NO	NO
Adjusting under I-140 employer petition, but see next scenario	YES	NO
Adjusting through I-140 employer petition, where relative filed I-140 and has $\geq$ 5% ownership interest in business	YES	YES
Diversity visa program	YES	NO
Others: S nonimmigrants, alien entrepreneurs, diplomats or high-ranking officials unable to return home, those adjusting under Amerasian Act, and certain Special Immigrants <sup>5</sup>	YES	NO
Still other, less common categories <sup>6</sup>	NO	NO

## End Notes

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<sup>1</sup> Unless they can be credited with 40 qualifying quarters or are immigrating as children of U.S. citizens and will automatically become a U.S. citizen pursuant to INA § 320 upon admission to the United States, in which case such individuals will still submit the I-944 *but not* the I-864.

<sup>2</sup> If, however, the VAWA self-petitioner is applying for adjustment based on an I-140 employer petition, filed by a relative who has 5% or more ownership interest in business, then they must submit an I-864, but no I-944.

<sup>3</sup> Same exception as mentioned above for VAWA self-petitioners, see *id.*

<sup>4</sup> Same exception as mentioned above for VAWA self-petitioners, *supra* note 2.

<sup>5</sup> Certain U.S. armed forces, Panama Canal Zone employees, certain broadcasters, G-4 or NATO-6 employees and their family members, international employees of U.S. government abroad, religious workers, certain physicians, and certain employees or former employees of U.S. government abroad.

<sup>6</sup> Certain Afghan or Iraqi national employed by or on behalf of U.S. government; adjusting under CAA or HRIFA; adjusting under Indochinese Parole Adjustment Act, Registry, Amerasian Homecoming Act, or as Lautenberg, Polish, or Hungarian parolee, or as American Indian born in Canada; born in the U.S. under diplomatic status; or the spouse, child, or parent of deceased U.S. active duty military member under Nat'l Defense Authorization Act.

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### About the Immigrant Legal Resource Center

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