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Public charge regulation in the U.S., explained

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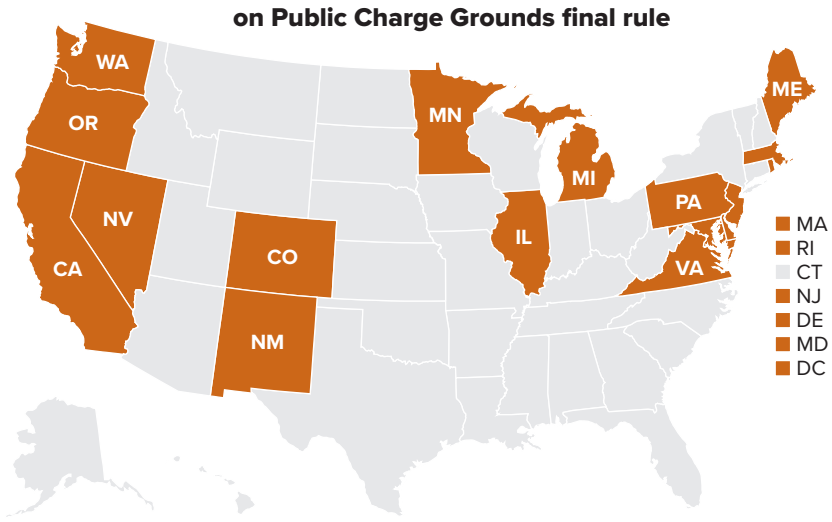
Several states and jurisdictions have filed lawsuits against the Trump administration to challenge the Inadmissibility on Public Charge Grounds final rule — set to go into effect on Oct. 15 — that revises immigrant eligibility for permanent residency in the U.S.

Current immigration law defines an immigrant as being a "public charge" if they are or are likely to become primarily dependent on federal government services — but not all immigrants or situations are deemed likely to rely on public programs. Personal and situational factors are evaluated as a whole; past or current receipt of some government benefits may be considered but does not deem a person to be a public charge. Past, present or future receipt of non-cash benefits or special-purpose cash assistance are not considered to "test" public charge potential.

The new rule expands evaluation criteria to include a person's use of, or approval to use, one or more of a longer list of federal assistance programs and specifies situations that weigh heavily in favor or against a person's chances of public charge determination.

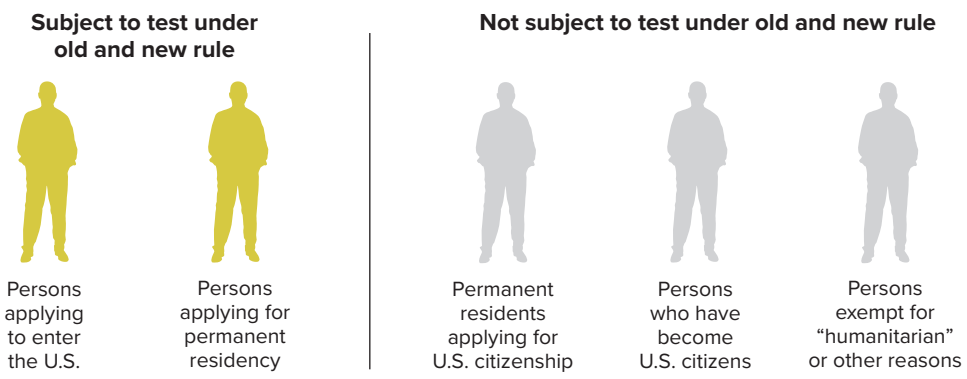
States/jurisdictions challenging the Inadmissibility on Public Charge Grounds final rule



THE PUBLIC CHARGE TEST

Under current immigration guidance, persons applying to enter the U.S. and those seeking permanent residency green cards are subject to an evaluative "test" that considers the likelihood of immigrants becoming dependent on government services.

In addition, the new rule requires that immigrants applying for permanent residency submit a new federal form called a "Declaration of Self-Sufficiency" demonstrating that they will not be a U.S. public charge.

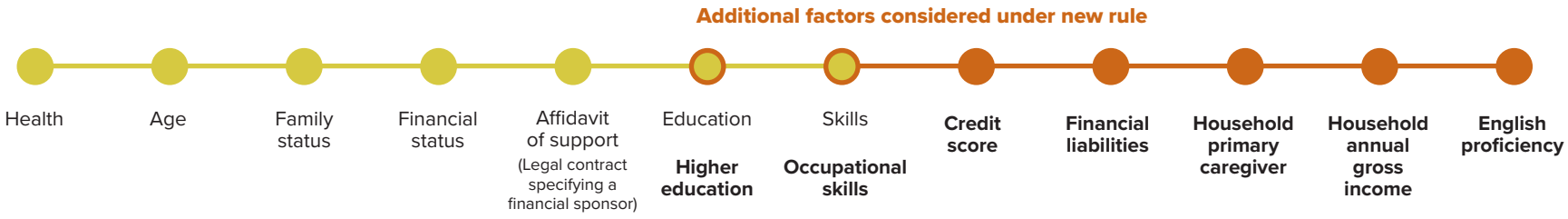


FACTORS CONSIDERED

Under current immigration guidance, immigration officers review several factors as a "totality of circumstances" to "test" if an immigrant is or will likely become a public charge.

Under the new rule, more factors are reviewed as a "totality of circumstances." Immigrant income less than 125 percent of the federal poverty level is considered to be a negative factor when determining public charge potential. For example, an immigrant's income in 2019 to support a family of three would need to be at least $26,663 to not be considered a negative factor.

Additional factors considered under new rule



BENEFITS CONSIDERED

Under current immigration guidance, past or current receipt of some government benefits, cash assistance programs or long-term institutional care are considered but do not automatically lead to a public charge determination.

Under the new rule, more public benefits an immigrant used or is eligible to receive are reviewed as a "totality of circumstances."

Previously excluded from public charge test, to be considered under new rule

WEIGHTED FACTORS/SITUATIONS

The new rule outlines specific factors and situations that are weighted positively or negatively in defining a person as a public charge.

Heavily weighted ▲ POSITIVELY

- Immigrant is authorized to work and employed, legally earning an annual income.
- Household income, assets, resources are at least 250 percent of Federal Poverty Guidelines for household size. *For example: $53,325 for a family of three in 2019.*
- Immigrant has private health insurance.

▼ Heavily weighted NEGATIVELY

- Immigrant is not a full-time student, is authorized to work but not employed.
- **3 years** Immigrant is receiving or approved to receive public benefits for more than 12 months in three years.
- Immigrant is diagnosed with a medical condition likely to require extensive medical treatment or institutionalization.
- Immigrant is younger than 18 years of age or older than 61 years of age.
- Immigrant does not have health insurance.

Note: Humanitarian immigrant categories include refugees, persons seeking or who have applied for asylum from persecution in countries of origin, persons applying for green cards under the Violence Against Women Act, have or are applying for visas set aside for victims of human trafficking and certain crimes, children seeking Special Immigrant Juvenile status as victims of abuse, abandonment or neglect. Amerasian immigrants protected under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988 are also exempt from the public charge test.

Sources: National Immigration Law Center, Migration Policy Institute, 1999 Department of Justice Immigration and Naturalization Service Interim Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, Federal Register publication of final rule "Inadmissibility on Public Charge Grounds," "Complaint for Declaratory and Injunctive Relief" filed by the Attorney General of Washington, U.S. Department of Homeland Security, HealthCare.gov, Boundless Immigration co-founder Doug Rand, POLITICO staff reports

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