

The Trump Administration’s “Public Charge” Attack on Immigrant Families

INFORMATION ABOUT AN UPCOMING PROPOSED RULE

Last updated APRIL 12, 2018

The Trump administration is opening a new front in its assault on family-based immigration by making it harder for immigrants who might use essential public services to come to the United States and settle here permanently. The U.S. Department of Homeland Security [has informed](#) the Office of Management and Budget (OMB) that it plans to propose regulations that discard longstanding policy about the meaning and application of the “public charge” provisions of immigration law.¹

[Reuters](#) reported on a leaked draft of the proposed regulations, and [Vox](#) published the [draft](#) on February 8, 2018.² On March 28, *The Washington Post* [reported on an updated draft](#) of the proposed public charge regulation, which included a preamble to the proposed rule.³ Under the current definition, a public charge is a person who is primarily dependent on the government for subsistence. A person deemed likely to become a public charge can be denied admission to the U.S. or the ability to become a lawful permanent resident (LPR). In very rare circumstances, a person who has become a public charge can be deported.

Based on the draft leaked to the media, the Notice of Proposed Rulemaking (NPRM) would greatly expand the benefits that could be considered in determining whether a person is likely to become a public charge. Immigrants’ use of programs related to their health and wellbeing — or that of their family members, including U.S. citizen children — could be weighed in deciding whether to grant lawful permanent residence (a green card). The proposed rule would apply similar criteria to discretionary decisions for people seeking to extend or change their temporary nonimmigrant status in the U.S.

Immigrant families already worry that using government programs will harm their immigration status or their future opportunities. Any policy forcing millions of families to choose between the denial of status and food or health care would exacerbate serious problems such as hunger, unmet health needs, child poverty, and homelessness, with lasting consequences for families’ wellbeing and long-term success and community prosperity.

¹ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1615-AA22>.

² <https://www.reuters.com/article/us-usa-immigration-services-exclusive/exclusive-trump-administration-may-target-immigrants-who-use-food-aid-other-benefits-idUSKBN1FS2ZK>; <https://www.vox.com/2018/2/8/16993172/trump-regulation-immigrants-benefits-public-charge>; https://cdn.vox-cdn.com/uploads/chorus_asset/file/10188201/DRAFT_NPRM_public_charge.0.pdf.

³ https://www.washingtonpost.com/world/national-security/trump-proposal-would-penalize-immigrants-who-use-tax-credits-and-other-benefits/2018/03/28/4c6392e0-2924-11e8-bc72-077aa4dab9ef_story.html.

How soon could the regulation be issued?

Federal agencies are generally [required](#) to inform the OMB of any significant regulations they plan to release and to submit drafts of those proposed regulations for its review.⁴ The OMB reviews the drafts for multiple factors, including their consistency with applicable law. Once the OMB review is complete, the agency shares the proposed regulation with the public by publishing an NPRM in the [Federal Register](#), and the public is provided an opportunity to comment on the proposed rule.⁵

The U.S. Department of Homeland Security notice to OMB indicates that the NPRM will be published in July 2018. However, the NPRM could be published in the Federal Register much sooner than the originally planned release date. The draft rule was sent to OMB on March 29, 2018, and is still under review at the time this is being written. We anticipate that the NPRM could be posted in the Federal Register for comment in the very near future.

What's at risk?

Federal law allows immigration and consular authorities to deny admission to the United States or adjustment to LPR status to a person they deem likely to become a public charge. The law requires officials to look at multiple issues, including the intending immigrant's age, health, education, income, assets, skills, employment, and family status, and allows consideration of other relevant factors. [Current policy](#) allows officials to consider only two types of public benefits in a public charge determination: cash assistance for income maintenance and institutionalization for long-term care at government expense.⁶

This policy has advanced the public interest in ensuring that everyone can receive essential services, such as health and nutrition benefits, without being considered a public charge on that basis. The proposed changes may cause immigrant families to forego needed health care or go hungry in an effort to keep their families together.

What would the proposed rule do?

Adoption of the draft proposed regulations would mark an unprecedented departure from the current, longstanding interpretation of the public charge rules. If the draft proposal were adopted, immigration officials could consider whether individuals or any of their dependent family members, including U.S. citizen children, had received or simply sought virtually any public service. Benefits that could be considered in a public charge determination would include virtually any public service, such as nonemergency Medicaid, CHIP, SNAP, WIC, Section 8 housing vouchers, the Low-Income Home Energy Assistance Program, the earned income tax credit, and financial assistance provided through the health insurance marketplaces established under the Affordable Care Act.

The draft NPRM also lays out negative and positive factors to be "heavily weighted" in a public charge determination. Heavily weighted negative factors include the current receipt of benefits or the use of benefits within the past 36 months before seeking admission, an extension or change in nonimmigrant status, or LPR status. Heavily weighted positive factors include having assets, resources and support of at least 250 percent of the federal poverty line.

⁴ https://www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf.

⁵ <https://www.federalregister.gov/>.

⁶ <https://www.uscis.gov/news/fact-sheets/public-charge-fact-sheet>.

Certain benefits would be exempt from consideration in the public charge determination, including "earned" benefits connected to work or military service, loans, and emergency and disaster assistance. In addition, the draft specifically excludes in-state tuition, government student loans and certain emergency services — including emergency Medicaid.

The draft NPRM states that **noncash benefits previously excluded from the public charge determination will be considered only if those benefits are received 60 days after the final rule is published** in the Federal Register. In addition, the draft provides an option for certain individuals to post a bond or cash deposit against being considered a public charge, but this option is not available to anyone receiving a public benefit and it is not clear how it would work in practice.

Who would be affected?

The public charge policy primarily affects noncitizens who are applying for LPR status through family-based visa petitions. It is important to note that some immigrants are not subject to the public charge rules. These include refugees, asylees, survivors of trafficking and other serious crimes, self-petitioners under the Violence Against Women Act, special immigrant juveniles, certain people who have been paroled into the U.S., and several other categories of noncitizens. Public charge is not a factor in naturalization applications — LPRs applying for U.S. citizenship do not undergo a public charge test. These exceptions are encoded in law and cannot be changed by executive or administrative action.

How should we talk about this?

Investing in nutrition, health care, and other essential needs keeps children learning, parents working, and families strong, and allows all of us to contribute fully to our communities. Policies such as those outlined in the draft proposed rule are intended to discourage hard-working people from immigrating and to deter immigrant families, most of which include U.S. citizen children, from seeking help when they need it.

Already, low-income children with foreign-born parents are less likely to receive SNAP or Medicaid than are children with U.S.-born parents. And one million Latino children, 95 percent of whom are U.S. citizens, are eligible for Medicaid or CHIP but not enrolled.

Immigrants have higher rates of employment than U.S.-born citizens but often work in jobs that pay them less than their U.S.-born counterparts. Billions in taxes paid by immigrant families help support all government programs. For all people working low-wage jobs, health and nutrition assistance helps them and their families stay healthy, thrive, and contribute to society.

What can we do to resist?

We suggest that you do what you can to educate policymakers, your state and local legislators, and local community leaders about the contributions immigrant families make to your state's economy and culture — about the critical role access to nutrition and health care play in promoting community health and strengthening local economies. They need to hear about the sweeping negative consequences of any effort to expand the grounds for determining that a noncitizen is or is likely to become a public charge.

The Protecting Immigrant Families Campaign, led by the National Immigration Law Center and the Center for Law and Social Policy — and comprised of advocates for immigrant rights, health justice, children's rights, and anti-poverty, as well as health and human service providers and legal services attorneys — has organized to support immigrant communities and to fight against these proposed changes.

If and when an NPRM is released, we will immediately share action steps and talking points for advocates. To sign up for updates, visit <http://bit.ly/PIFCampaign>. In the meantime, you are welcome to reach out to us directly if you have any questions. You can contact Jenny Rejeske at the National Immigration Law Center (rejeske@nilc.org) or Madison Hardee at the Center for Law and Social Policy (mhardee@clasp.org).

How can you learn more?

The Protecting Immigrant Families Campaign webpage has several resources available at <http://bit.ly/PIFresources>. NILC's website also has additional resources, including an [overview of public charge](#) and [advice on talking about these issues](#) with immigrant families.⁷

⁷ www.nilc.org/wp-content/uploads/2015/12/public-charge-overview-2013-10-01.pdf; www.nilc.org/exec-orders-and-access-to-public-programs/.