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Trump Rule Would Threaten Low-Wage Legal Immigrants in the U.S. If Their Families Receive *Any* of Wide Array of Benefits, Including the Earned Income Tax Credit

By Robert Greenstein

Note: This analysis addresses a previously leaked draft version of the proposed “public charge” rule. It does not address the proposed rule that was made publicly available on Saturday, September 22, 2018.

The Trump Administration is planning¹ a radical change in policy that would jeopardize the immigration status of substantial numbers of *legal* immigrants who work at low-wage jobs and whose families receive any of a sweeping array of benefits or tax credits — even though, under federal law, these immigrants are fully eligible to receive them. The benefits and tax credits in question include the Earned Income Tax Credit (EITC), the low-income component of the Child Tax Credit,² Medicaid, the Children’s Health Insurance Program (CHIP), subsidies to help people afford health insurance, SNAP (formerly known as food stamps), and more. These changes are clearly aimed at immigrants here lawfully, since undocumented individuals are already ineligible for nearly all of the benefits and tax credits in question. The changes also would mean that some individuals seeking to come into the United States lawfully to join family could be kept out if anyone in their family has received, or if immigration officials consider them likely to receive, any of these benefits in the future.

Specifically, the Administration is planning to issue a proposed regulation — which was leaked to the media and is now at the Office of Management and Budget for clearance — that would put individuals lawfully in the United States at risk of not receiving a needed adjustment to their immigration status, and place *prospective* legal immigrants at risk of not being allowed into the country in the first place to join family, if they or anyone in their families — including those who are U.S.

¹ Nick Miroff, “Trump proposal would penalize immigrants who use tax credits and other benefits,” *Washington Post*, March 28, 2018, 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?noredirect=on&utm_term=.d94d8884f375.

² The rule would apply to the refundable parts of the EITC and the Additional Child Tax Credit (the low-income component of the CTC). The vast bulk of the EITC is provided as refunds, so the overwhelming share of legal immigrants receiving the EITC could be affected.

citizens — have received, or are considered likely to receive in the future, any of the benefits and tax credits listed above.

This extreme proposal would have two main effects:

- First, immigration authorities could use it to prevent some immigrants here lawfully who receive — or whose close family members receive — any of these benefits or tax credits from becoming permanent residents, and to prevent prospective immigrants who want to reunite with their families from entering the United States, if the authorities rule that they or any member of their families have received or would likely receive any of these benefits in the future. That could keep substantial numbers of people who would work hard at low-paid jobs out of the country.
- Second, the proposal almost certainly would convince large numbers of immigrants here lawfully and their children, many of them U.S. citizens, to forgo benefits or tax credits for which they're eligible. In fact, because the rules for determining whether someone is a “public charge” are technical and the circumstances under which a determination is made can be hard to understand, the number of low-income immigrant families that would choose not to receive benefits would likely exceed by a sizable amount the number that would ultimately be subject to a “public charge” determination.

Moreover, the leaked draft rule indicates that the Administration is considering whether to change the rules governing when federal authorities can deport legal immigrants in ways that might make their receipt of benefits a consideration — though we have no information about what, if any, changes the Administration may propose. If the Administration makes problematic changes in this area, that would heighten the risk that the rule would have a very large “chilling” effect on lawfully present immigrants receiving benefits for which they are eligible.

Of particular note, the list of programs in question includes the EITC, which is a tax credit designed to offset federal payroll and excise taxes that disproportionately burden low-wage workers, and which is often also cited as easing the hardship from policymakers' misguided decision to let the federal minimum wage erode substantially over the last half-century. Under the rule, immigrants working lawfully for low pay — sometimes at jobs that other workers consider undesirable due to their meager pay and tough working conditions — would still have to pay payroll and excise taxes. Yet if the family received the EITC for which it qualifies, the immigrant could risk negative immigration consequences.

In fact, for the first time in memory, the rule would establish federal tax policies that discriminate against immigrants who are here lawfully and are authorized to work in the United States. By putting them at serious risk if they receive work-based tax credits for which they are eligible, it would effectively tax those immigrants — and their families, including citizen spouses and children — more harshly than other workers and their families. Those affected would include those lawfully present individuals who work in such jobs as nursing home attendants, home health aides, hotel housekeeping staff, and the like.

Current Rules and Radical Changes

Under current law, federal authorities can reject the requests of those who want to enter the United States, or refuse to extend or change the immigration status of those already here (such as those seeking Lawful Permanent Residence status), if the authorities judge them to be — or likely to become — a “public charge.” Under longstanding federal policy, applied under Democratic and Republican administrations alike, in making a public charge determination, immigration authorities consider (among other factors) whether the individual is dependent for *over half of his or her income* on *cash assistance* (i.e., on aid under the Temporary Assistance for Needy Families program, the Supplemental Security Income program for the aged and disabled poor, or state or local General Assistance) or is receiving long-term care through Medicaid.

The draft rule, however, would scrap this longstanding policy and replace it with an approach that’s extreme. Immigrants could be termed a “public charge” if they or their family members receive, will likely receive, or have already received *any* of a sweeping array of benefits, putting them in jeopardy even if the benefit represents a small share of the family’s income and most of that income comes from employment. The authorities could consider any past receipt of benefits, and any receipt within the past three years would be a “heavily weighted” negative factor in the “public charge” determination. In addition, for the first time, officials making the “public charge” determination would consider benefits that any family members receive even if the immigrant himself or herself doesn’t get them — such as CHIP or Medicaid that an immigrant’s *U.S. citizen child* receives.

As noted, the rule squarely targets legal immigrants. Undocumented immigrants are ineligible for nearly all those programs. And the rule would mainly affect immigrants who are *not* primarily dependent on cash assistance or Medicaid long-term care (because, as noted, those who *are* primarily dependent on those benefits are already subject to a “public charge” determination under the current rules). Thus, the rule mainly targets people who are here lawfully and authorized to work but have low earnings. In many cases, these individuals work hard at low-paid jobs that others generally consider undesirable.

EITC’s Treatment Reflects the Rule’s Extremism

That the EITC is included in this rule is particularly noteworthy, as it highlights the rule’s severe anti-immigrant nature.

From its creation in 1975, the EITC was designed to help support and encourage work, in part by helping to offset the payroll tax, which is regressive, for people with low or modest earnings. It also helps offset the burdens of other regressive federal taxes, such as the gasoline tax. And the EITC eases the pain from the problematic effects of policymakers’ unfortunate decision to let the minimum wage erode markedly due to inflation. At \$7.25-an-hour, the federal minimum wage is now 28 percent below its level in 1968, after adjusting for inflation.

Under the new rule, immigrant workers who are lawfully present would remain fully subject to the payroll tax, other excise taxes, and an eroded minimum wage, even as their families may feel compelled to forgo the EITC in an effort to prevent its receipt from causing them immigration-related problems in the future. The proposal would take these steps in the name of promoting self-sufficiency, drawing a false image of immigrants who don’t work or contribute to the economy. Only those who work are eligible for the EITC in the first place. (Moreover, research has found that the EITC is among the most effective tools to draw more people into the labor market.) The rule

would do the same with respect to the low-income component of the Child Tax Credit and the American Opportunity Tax Credit (available to help households paying college tuition). Like the EITC, these credits are limited to working households.

What This Could Mean

Suppose a legal immigrant and a U.S. citizen marry, and the immigrant seeks a Lawful Permanent Resident (LPR) status (also known as a “Green Card”). If the U.S. citizen spouse works and receives the EITC — or the Department of Homeland Security rules that the couple will likely receive it (or another listed benefit) in the future — the immigrant could be deemed a “public charge” and denied the ability to move to LPR status. Similarly, if a lawfully present immigrant parent working for low pay claims the Child Tax Credit for citizen children, the parent could lose her ability to become a lawful permanent resident.

These examples show how the rule would likely have a profound “chilling effect” on program participation by individuals who are lawfully in the United States and their families, including citizen spouses and children. Moreover, because immigration rules are complicated and sometimes opaque, the rule likely would prompt a far larger number of families to forgo benefits or tax credits for which they qualify than the number of families that might be ruled a “public charge” under it. For example, while the rule would not apply to refugees or asylees, some low-income refugees or asylees may not understand that and drop out of assistance programs.

The assault on immigrant workers lawfully in the United States and their families doesn’t stop there. A worker whose employer didn’t offer health insurance or offered it at an exorbitant price — which occurs frequently in the low-wage labor market — may decide that securing coverage through Medicaid, CHIP, or federal premium subsidies is too risky, since doing so could jeopardize his or her status. This would apply even to women eligible for pregnancy-related services and health care and nutrition for newborns. And, as noted, it would extend to children in immigrant families who themselves are *U.S. citizens*; the receipt of these benefits by citizen children could jeopardize their parents’ status.

Finally, the rule would apply to benefits and tax credits that *low- and moderate-income* immigrant workers receive but *not* to tax subsidies that *affluent* immigrants may get. “Tax expenditures” — i.e., credits, deductions, and other tax preferences that individuals and corporations receive through the tax code, which are heavily skewed to affluent households overall — would not be subject to the rule, except for the refundable tax credits. So, while the rule would affect the EITC and the low-income component of the Child Tax Credit, which help immigrants who are here lawfully and working for low pay, it wouldn’t affect the tax-free treatment of employer-provided health care, the mortgage interest deduction, the low tax rate on capital gains, or a wide array of other tax preferences for which most of the benefits go to middle- and upper-income individuals.

Adverse Effects on Families, Children, and the Economy

While harming large numbers of legal immigrants and their families, the proposal likely would have adverse long-term consequences for children — including U.S. citizen children — and the economy.

An extensive body of research shows that tax credits like the EITC, SNAP, and other benefits have important positive effects on children — and on their ability to become productive workers as adults. For example, the research indicates that children receiving the EITC do better in school, graduate high school and attend college at higher rates, and likely work and earn more as adults. The research also finds improvements in maternal and child health. Other studies find broadly comparable results from programs like SNAP, which led to an 18 percentage-point increase in high school graduation rates.

As a result, inducing low-wage immigrant workers lawfully in the United States to avoid receiving the EITC, the Child Tax Credit, SNAP, and other such benefits will likely mean poorer health and less educational attainment among large numbers of children and ultimately a less productive workforce. The long-term impact on the economy would almost certainly be negative.

The rule would likely have other adverse effects as well — for example, on the financial health and viability of many hospitals, due to the significant increase it would produce in people who lack health insurance and come to emergency rooms for their medical care.