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Trump “Public Charge” Rule Would Prove Particularly Harsh for Pregnant Women and Children

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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.

In an accompanying paper¹, we explained that the Trump Administration is planning² a radical change in policy that would jeopardize the immigration status of substantial numbers of immigrants lawfully in the United States who work at low-wage jobs and whose families receive any of a sweeping array of benefits or tax credits — even though these immigrants are fully eligible to receive them. If implemented, the new policy would set new rules for who could stay in or come to the United States, and it would likely convince large numbers of immigrants in the country lawfully and their U.S. citizen family members to forgo benefits and tax credits for which they are eligible and that help their families make ends meet and access health care and nutrition assistance.

The new policy could affect a wide range of individuals of all ages, but its impact could be particularly harsh on pregnant and postpartum women and children. Their decision to forgo health care and nutrition assistance could have serious negative consequences for them in both the near and long term. In particular, the children may lose access to benefits that, in their later years, could mean better health, higher educational achievement, more work, and greater earnings.

Public Charge Rules Would Be Dramatically Changed

Under longstanding federal law, immigration authorities must determine whether an individual who is seeking lawful admission to the United States and whether an immigrant who is seeking to adjust to become a lawful permanent resident³ is or will likely become a “public charge.”

¹ Robert Greenstein, “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,” Center on Budget and Policy Priorities, May 1, 2018, <https://www.cbpp.org/research/poverty-and-inequality/trump-rule-would-threaten-low-wage-legal-immigrants-in-the-us-if>.

² “Trump proposal would penalize immigrants who use tax credits and other benefits,” Nick Miroff, *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=.51fc8ffc0cf6.

³ The term “lawful permanent resident” status is often referred to as having a “green card.”

For decades under administrations of both parties, immigration authorities considered (among other factors) whether the individual received (or was likely to receive) cash assistance benefits and the part of Medicaid that pays for nursing homes and other forms of long-term care. Someone could be considered a public charge if she or he was *primarily dependent* (for more than half of his or her income) on cash assistance benefits or Medicaid long-term care benefits. (Cash assistance benefits include assistance from the Temporary Assistance for Needy Families program, the Supplemental Security Income program and state cash aid programs, which are now uncommon.)

The draft rule, which was leaked to the media, would dramatically change the benefit-related criteria used to make a public charge determination. The draft proposal would put someone at risk of being deemed a “public charge” if that person — *or anyone in the person’s immediate family, including citizen children* — receive any of a far broader set of benefits. The criteria also would consider *any receipt*, not whether the individual was *primarily dependent*, so working families who receive benefits to supplement their low pay could receive an unfavorable public charge determination. The benefits and tax credits that would be considered include the Earned Income Tax Credit (EITC), the low-income component of the Child Tax Credit, Medicaid, the Children’s Health Insurance Program (CHIP), subsidies to help people afford health insurance in the Affordable Care Act’s marketplaces, SNAP (formerly known as food stamps), the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), and others.

Because undocumented immigrants are ineligible for nearly all of these forms of assistance — and because cash assistance is already considered in public charge determinations — the rule targets immigrants who are lawfully in the United States and working along with their citizen children and spouses.

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.

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. Because the rules for determining whether someone is a “public charge” are technical and the circumstances under which the authorities make a determination 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.

This has happened previously. In the late 1990s, widespread confusion and fear about how public charge rules could impact families’ ability to adjust their status among immigrants with children eligible for and in need of federal benefits such as SNAP and Medicaid resulted in many being deterred from applying for benefits. Partly as a result, the share of eligible individuals among these groups who were participating in benefits was low. For example, in 1999, just 40 percent of eligible citizen children living in households with immigrants participated in SNAP, compared to 70 percent

of all eligible children.⁴ Concerned that eligible individuals in immigrant households were unable to access federal benefits, the Clinton and George W. Bush Administrations took actions to clarify public charge rules and to ensure that benefit program applications and outreach were designed to address the fear and confusion. Participation rates subsequently improved significantly for eligible children in immigrant families.⁵

Finally, the 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.

Especially Acute Impact on Pregnant Women and Children

The proposed rule could convince immigrants to forgo health coverage or nutrition assistance for themselves or for their infants, preschoolers, and school-age children and families to forgo tax credits like the EITC for which they are eligible. The results could include pregnant women who decline to enroll in Medicaid and thus lose access to pregnancy-related services, families that choose not to enroll babies and young children in Medicaid or CHIP, pregnant and postpartum women and young children who choose not to enroll in WIC, and school-age children who go to school without the health coverage and food assistance they need to succeed. In these cases, the result could be higher rates of poor birth outcomes — including higher rates of infant and maternal mortality — as well as poorer health, education, and financial outcomes for children of all ages.

The harm would be particularly acute for pregnant women and young children — and the young children affected would typically be *citizen* children — who may lose access to benefits that would lead to better long-term outcomes, including better health, greater educational attainment, and brighter future earnings prospects. The impacts for these children can start before birth, when the lack of prenatal care and nutrition assistance for their mothers could affect their birth and early health outcomes, and extend decades into the future, diminishing their opportunity to thrive in tangible and entirely preventable ways.

More specifically, under this rule:

- Women who qualify for Medicaid that would cover prenatal care and labor and delivery may feel that they face the impossible choice of (1) risking a public charge determination by signing up for this coverage, (2) finding a way to pay thousands of dollars for labor and delivery, as well as prenatal and postpartum care, or (3) going without needed care.

⁴ “Trends in Food Stamp Program Participation Rates: 1999 to 2002,” Karen Cunyngnam, September 2004, Table 6.

⁵ Esa Eslami, “Trends in USDA Supplemental Nutrition Assistance Program Participation Rates: Fiscal Year 2010 to Fiscal Year 2015,” prepared for the Food and Nutrition Service, U.S. Department of Agriculture, June 2016, <https://www.fns.usda.gov/snap/trends-usda-supplemental-nutrition-assistance-program-participation-rates-fiscal-year-2010-fiscal>.

- A pregnant woman or mother of an infant (generally a citizen) might avoid enrolling herself and her child in WIC, which provides critical nutrition assistance to pregnant and breastfeeding women, infants, and preschoolers.⁶ That’s not a mere hypothetical possibility. In recent weeks, service providers reported that families said they were afraid to apply for WIC benefits. As *The New York Times* recently put it, “Immigrants hoping for permanent residence are dropping out of public nutrition programs even before prominent elements of the Trump administration’s proposed policy changes are enacted, fearful that participating could threaten their citizenship eligibility or put them at risk for deportation, according to program administrators.”⁷
- Eligible children (including citizens) could miss out on Medicaid, which produces near and long-term benefits for children.⁸ Children who are eligible for Medicaid do better in school, on average, and miss fewer school days due to illness or injury. They’re also likelier to finish high school, attend college, and graduate from college.⁹ And they earn more as adults and experience fewer emergency room visits and hospitalizations, research shows.
- Eligible children could miss out on SNAP, which also produces long-term benefits for children.¹⁰ Research on the early days of the SNAP program shows that children who received food stamps (as SNAP was previously known) had greater rates of high school completion and a lower incidence of heart disease, stunted growth, and obesity as adults.
- In addition, eligible legal immigrant families with one or more adults working hard at low pay may forgo the Earned Income Tax Credit or Child Tax Credit for which they are otherwise eligible. Children in immigrant families that forgo these credits — including citizen children — would face more poverty and hardship immediately and weaker prospects in the labor market in the future. Without these tax credits, they would be less likely to do well in school, finish high school, and go on to college, research indicates.

⁶ Steven Carlson and Zoë Neuberger, “WIC Works: Addressing the Nutrition and Health Needs of Low-Income Families for 40 Years,” Center on Budget and Policy Priorities, revised March 29, 2017, <https://www.cbpp.org/research/food-assistance/wic-works-addressing-the-nutrition-and-health-needs-of-low-income-families>.

⁷ “Spooked by Trump Proposals, Immigrants Abandon Public Nutrition Services,” Emily Baumgaertner, *New York Times*, March 6, 2018, <https://www.nytimes.com/2018/03/06/us/politics/trump-immigrants-public-nutrition-services.html>. See also: Wendy Cervantes, Rebecca Ullrich, and Hannah Matthews, “Our Children’s Fear: Immigration Policies Effects on Young Children,” Center on Law and Social Policy, March 2018, https://www.clasp.org/sites/default/files/publications/2018/03/2018_ourchildrensfears.pdf.

⁸ See for example: “Medicaid Provides Needed Access to Care for Children and Families,” Georgetown University Health Policy Institute, Center for Children and Families, March 2017, <https://ccf.georgetown.edu/wp-content/uploads/2017/03/Medicaid-provides-needed-access-to-care.pdf>; Michel Boudreaux, Ezra Golberstein, and Donna McAlpine, “The long-term impacts of Medicaid exposure in early childhood: Evidence from the program’s origin,” *Journal of Health Economics*, January 2016, <https://www.sciencedirect.com/science/article/abs/pii/S0167629615001216>.

⁹ Sarah Cohodes *et al.*, “The Effect of Child Health Insurance Access on Schooling: Evidence From Public Insurance Expansions,” NBER Working Paper No. 20178, May 2014, <http://www.nber.org/papers/w20178.pdf>.

¹⁰ Steven Carlson *et al.*, “SNAP Work for America’s Children,” Center on Budget and Policy Priorities, September 29, 2016, <https://www.cbpp.org/research/food-assistance/snap-works-for-americas-children>.

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.