
Greenstein: Trump Administration’s Proposed Rule Will Result in Legal Immigrants of Modest Means Forgoing Needed Benefits

CBPP today released the following statement from Robert Greenstein, president, on the draft rule the Department of Homeland Security posted on September 22:

A new draft rule that President Trump’s Department of Homeland Security (DHS) posted over the weekend would institute a radical change in immigration rules that could make it much more difficult both for many immigrants lawfully in the United States to remain here and for many seeking legal entry to come. The rule would have numerous troubling effects. It would sow more fear in immigrant communities and almost certainly lead many immigrants who are in the United States legally to forgo health coverage, nutrition assistance, and housing assistance that their families are eligible for and need. It would harm children and likely lead to more family separation. It would hurt many workers in our communities who perform important but low-paid jobs, often under difficult conditions. And it would diminish many children’s long-term prospects and thereby weaken the future U.S. workforce, in service to a nativist agenda that’s antithetical to our nation’s professed values. The rule would essentially put a price tag on obtaining legal U.S. residency, turning our immigration system into one that heavily favors prospective immigrants with wealth over those who seek to follow the path of upward mobility that for centuries has brought millions of immigrants to our shores and enriched our country and economy in the process.

Specifically, the rule would drastically change longstanding federal policy and erect a harsh new standard for immigration officials to apply when deciding: 1) whether immigrants legally in the United States can become lawful permanent residents (often referred to as obtaining a “green card”) or can extend or change their temporary status; and 2) whether those seeking lawful entry to the United States can be admitted and rejoin family. Under the proposed rule, immigration officials could turn away legal immigrants seeking to remain here — or to come to the country in the first place — if they have received, or are judged *likely to receive* in the future, any of an array of benefits tied to need that are available only to immigrants lawfully in the United States. Another factor that immigration officials could consider when making a public charge determination under the proposed rule is whether an individual’s current family income is below 125 percent of the poverty line; immigrants who do not receive benefits but have incomes below this threshold also could be denied entry.

Under federal law that dates back to the late 1800s, both people seeking lawful entry to the United States and those applying to become lawful permanent residents can be turned down if immigration officials determine that they are likely to become a “public charge.” This longstanding federal policy

— applied under Democratic and Republican administrations alike — considers whether *more than half* of an individual’s income comes from *cash assistance* (i.e., 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 programs) or the individual’s basic living expenses are covered by Medicaid long-term care benefits (which pay for nursing home and other long-term care). Immigration authorities consider receipt of those benefits, along with other factors, when making a public charge determination.

The proposed regulation that DHS has released, however, would radically alter this policy and greatly broaden the scope of benefits considered. For the first time, the public charge determination process would consider whether an individual has received or is likely to receive in the future any of an array of non-cash benefits that provide food, health coverage, and housing assistance — including Medicaid, Medicare Part D subsidies that make prescription medications affordable for low-income beneficiaries, rental assistance, and the Supplemental Nutrition Assistance Program (SNAP, formerly known as the Food Stamp Program). And, instead of looking at whether *more than half* of an immigrant’s income comes (or would likely come in the future) from *cash assistance* tied to need, as they do now, immigration authorities would consider whether the individual received, or is likely to receive, modest amounts of any of this much broader array of benefits, even if the benefits reflect only a small share of an immigrant’s total income.

The Administration’s proposal would have two main effects. First, it’s certain to have a pronounced “chilling effect,” leading many immigrants lawfully in the United States and their family members, including U.S. citizen children, to forgo benefits they need and for which the federal government has made them eligible. Second, it would enable the Trump Administration to keep out of the country individuals who are working, or would work, in low-paid jobs because they would likely qualify for one or more of the targeted benefits in the future. This may reflect a deeply mistaken White House view that such immigrants do not contribute to the U.S. economy.

The rule would be certain to foster confusion and widespread fear in immigrant communities. And because immigration rules are complicated and sometimes opaque, it likely would lead many families that wouldn’t actually be subject to a public charge determination to forgo benefits for which they qualify, out of fear that their status could otherwise be in jeopardy. For example, while the rule wouldn’t apply to refugees or people granted asylum in the United States, some low-income refugees or asylees may not understand that and drop out of basic assistance programs that they or their children need. The chill effect is both understandable and predictable; the rule sends a very strong message that the federal government frowns upon immigrant families accessing benefits, even when necessary for their health, and that receiving benefits could harm an individual’s immigration status down the road. The chill effect could extend to programs that combat maternal and infant mortality, facilitate children’s ability to learn, and protect broader public health.

There is persuasive evidence this will occur. In the late 1990s, when immigration and welfare legislation modified immigration eligibility for public benefit programs, an atmosphere of confusion and fear emerged in many immigrant communities regarding whether the use of benefits like Medicaid and SNAP could place people at risk of negative immigration actions. This led many eligible people in need to refrain from applying for these benefits. Partly as a result, in 1999, only 40 percent of eligible citizen children living in households with immigrants participated in SNAP, compared to 70 percent of *all* eligible children. To allay this fear and confusion, the Clinton and

George W. Bush administrations clarified the public charge rules and undertook outreach in immigrant communities, and program participation rates subsequently rose back for eligible children in immigrant families. To say the least, comparable efforts by the current Administration seem very unlikely. And just the leak of earlier versions of this rule itself created significant apprehension in immigrant communities and appears already to have led many immigrants to withdraw from benefit programs.

The proposed rule's impacts would likely be severe. Pregnant women fearful of immigration repercussions could forgo health coverage, increasing the risk of maternal and child mortality and other adverse birth outcomes. Families could choose not to enroll in SNAP when their earnings fall and be left without sufficient food. Driven by fear, families could go without needed health care for their children — preventive care, emergency care, and care for acute and chronic conditions — potentially jeopardizing the children's health and their ability to learn. In some cases, such as if people forgo needed vaccinations or treatment for contagious illnesses like the flu or pneumonia, this also could put public health at risk.

Some of the proposal's harshest impacts would be on immigrants here lawfully who work for low pay. Undocumented immigrants already are ineligible for these assistance programs, and immigrants whose primary income source is cash assistance (rather than earnings) already can be designated a public charge. Thus, many of the immigrants who could be affected by the new rule — either directly or through the chill effect — are people who work hard at jobs that pay low wages, provide few if any benefits, and have difficult working conditions, such as nursing home or home health aides, office custodial staff, dishwashers, and the like. They rely on their earnings, but may qualify for assistance (now or in the future) that supplements their low pay and poor (or non-existent) benefits.

In addition to causing many immigrants already here to forgo benefits they need, the rule may mean that many families are split up — or are unable to reunify — because of a judgment by an immigration official that an individual is “likely” to receive benefits such as Medicaid or SNAP at some point in the future. Immigration authorities would have tremendous discretion in making judgments about who is likely to become a public charge and could decide that a broad swath of prospective immigrants of modest means meets the “likely to receive” public charge test. After all, a large share of *native-born U.S. citizens* need help from SNAP or Medicaid at *some point* over their lives when they fall on hard times. Given this and the broad discretion that immigration officials would have under the rule, there is serious risk that many hard-working immigrants (or prospective immigrants) who work in jobs the economy needs but earn modest pay would be denied the ability to stay here or denied entry into the country. There also is a serious risk that biases of immigration officials — or the ideology of the Administration in power — could significantly influence determinations of whether someone is “likely to receive” assistance in the future.

Under the rule, another factor that could count against an individual in a public charge determination is whether his or her family has income below 125 percent of the poverty line, or about \$31,375 for a family of four. Many low-wage workers have earnings below this level.

These proposed changes apparently seek to carry out part of the Trump Administration's agenda of sharply altering our nation's immigration policies, shifting away from family immigration and largely restricting immigration to people who are already relatively well-off or highly skilled when

they enter the country. This ignores our nation’s centuries-long experience — still true today — of immigrants coming to the United States and building a better life for themselves and for future generations while contributing to their communities and the broader society. Coming on top of other executive orders and actions that have placed various immigrants at risk, the draft rule is another severe and unjustified measure that would harm immigrant families and ill-serve our country. Threatening people who want to build better lives for themselves and their families, including both those here lawfully and those seeking lawful entry, is contrary to the national interest and our nation’s most cherished values.

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