



Introduction

On October 10, 2018, the Trump administration published a proposed rule that would, if finalized, dramatically redefine a century-old provision of immigration law. Since 1882, the United States has barred immigrants from entering the country or adjusting their status to become lawful permanent residents if they are found to be “likely to become a public charge.” The Trump administration’s proposed rule would redefine public charge, granting this administration—and future administrations—wide discretion in denying admission or green cards to lower and even middle-income immigrants.

Who is subject to the public charge test?

Most but not all prospective immigrants who are applying for admission or adjustment of status to become lawful permanent residents (i.e. green card holders) must prove that they are not “likely to become a public charge.” Refugees, asylees, victims of “severe trafficking,” and select other immigrant groups are not subject to the public charge test. The test also does not apply to lawful permanent residents applying for citizenship.

The public charge test today.

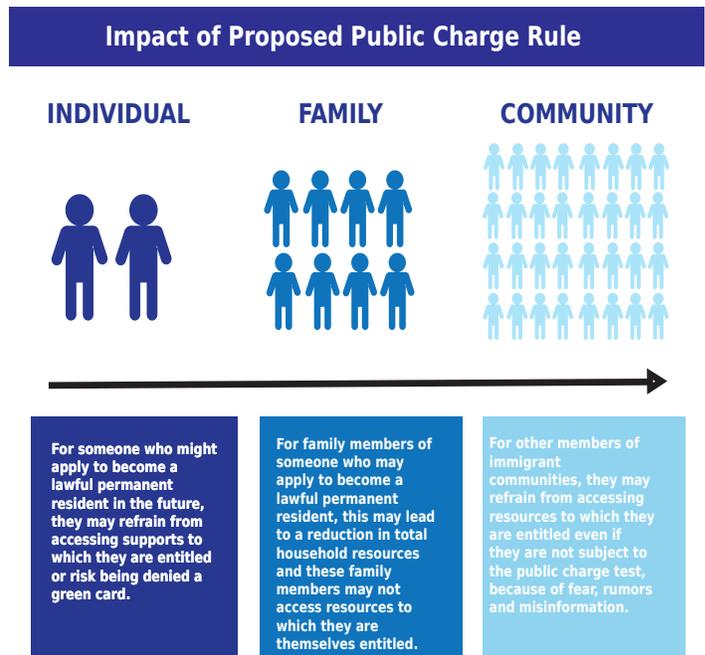
The United States recognizes that immigrants of all social and economic backgrounds have something to offer the country. Under current law and regulatory guidance, a public charge is defined as someone who is “primarily dependent” on government benefits. Only two types of benefits are currently considered in the public charge test: cash assistance and government-funded institutionalization for long-term care. Moreover, benefit receipt is only one of several factors considered when determining whether someone is likely to become a public charge. Other factors include: health; family status; assets, resources, and financial status; and education and skills.¹ In practice, in recent decades many lower income immigrants have passed the public charge test with a signed affidavit of support

from a family member who is already living in the United States.²

How would the proposed rule change the test?

The proposed rule expands the definition of public charge and makes it more likely that someone will be found to be likely to become a public charge.

Most notably, the proposed rule expands the list of benefits considered in the public charge test, adding Supplemental Nutrition Assistance Program (SNAP), non-emergency Medicaid, low-income subsidies under Medicare Part D, and housing assistance to cash assistance and government-funded long term care assistance.



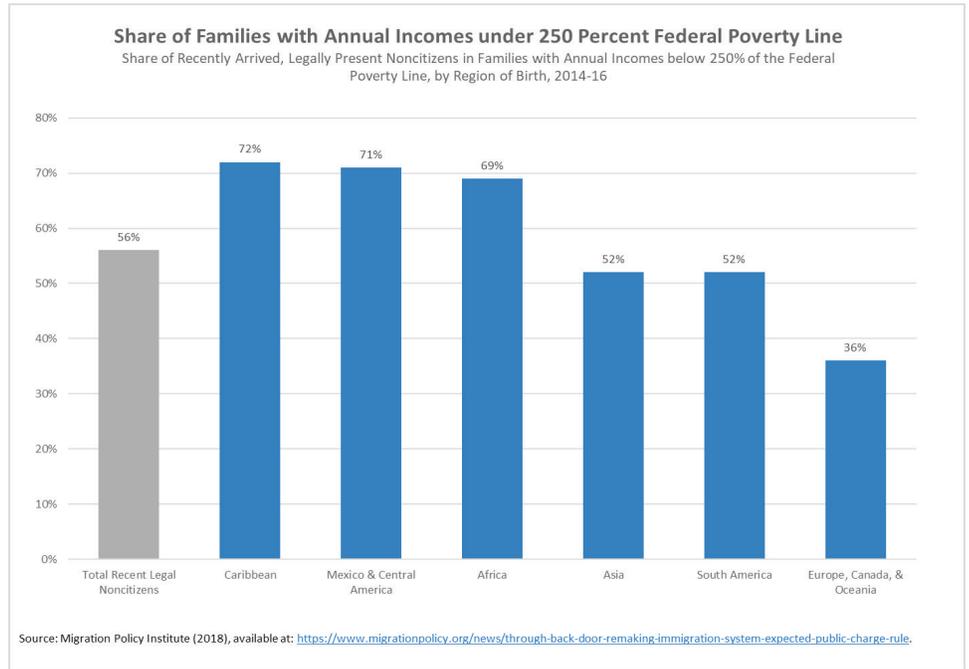
The proposed rule also weighs low income negatively, regardless of whether someone has received public benefits. According to its provisions, family income under 125 percent of the poverty line, or \$31,375 for a family of four, would be counted against a green card applicant.

In the complicated formula introduced by the proposed rule, the only “heavily weighed” positive factor in favor of passing the public charge test is having family income over 250 percent of the Federal Poverty Level. This is a very high bar. A family of four would have to have income or assets of over \$63,000, which is above the median income in the United States. And even with this high level of income, prospective immigrants are not guaranteed to pass the public charge test.

What are the potential consequences if the rule is finalized?

If finalized, the rule would threaten the well-being of children and families in immigrant communities across the United States. There is compelling evidence that many immigrants are already withdrawing from or not applying for public benefits to which they are legally entitled and which serve as the foundation for health and well-being because of the rumors in advance of this rulemaking.³ The proposed rule could lead many additional immigrant families to withdraw from critical supports, even if they are not subject to a public charge determination. After the passage of the 1996 welfare law, which restricted access to benefits for many immigrants, researchers found that immigrants withdrew from benefits even if their eligibility was unchanged by the law—spurred by confusion and fear about the potential consequences of receiving benefits. Unless steps are taken to inform immigrant communities and address their fears, the proposed rule is likely to have a similar chilling effect on immigrants’ access to medical care, nutritional assistance, and other crucial supports.⁴

Moreover, according to analysis by the Migration Policy Institute, the proposed rule could make it especially



difficult for people from Asia, Latin America, and Africa to immigrate, effectively limiting the immigration of people of color and helping the administration realize its racist immigration agenda. Among recently arrived, legally present noncitizens, immigrants from the Caribbean, Mexico and Central America, Africa, and to a lesser extent Asian and South America, are more likely to have incomes under 250 percent of the poverty level compared to immigrants from Europe, Canada, and Oceania.⁵

What can we do?

We have a voice in supporting families in this process. The rule will not be finalized until the administration has reviewed and responded to public comments. To submit a comment, go to <https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds>. The comment deadline is December 10, 2018.

CSSP is a member of the Protecting Immigrant Families Campaign, which is equipping and mobilizing communities and organizations across the country to understand the impact of the proposed changes and make their voices heard. For additional resources see ProtectImmigrantFamilies.org.

Sources

¹ Immigration and Naturalization Service (INS). “Field Guidance on Deportability and Inadmissibility on Public Charge Grounds [64 FR 28689] [FR 27-99].” May 26, 1999. Available at: <https://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-54070/0-0-0-54088/0-0-0-55744.html>. See also the accompanying proposed rule. INS. “Field Guidance on Field Guidance on Deportability and Inadmissibility on Public Charge Grounds.” 64 Fed. Reg. 101. May 26, 1999. Available at: <https://www.gpo.gov/fdsys/pkg/FR-1999-05-26/pdf/99-13202.pdf>.

² Wheeler, Charles. “Is Public Charge Relevant Anymore?” Catholic Legal Immigration Network, Inc., December 2011. Available at: <https://cliniclegal.org/December2011/PublicCharge>.

³ See, for example, Evich, Helena Bottemiller. “Immigrants, fearing Trump crackdown, drop out of nutrition programs.” Politico, September 3, 2018. Available at: <https://www.politico.com/story/2018/09/03/immigrants-nutrition-food-trump-crackdown-806292>.

⁴ Batalova, Jeanne et al. “Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families’ Public Benefits Use.” Migration Policy Institute, June 2018. Available at: <https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families>.

⁵ Batalova, Jeanne et al. “Through the Back Door: Remaking the Immigration System via the Expected ‘Public-Charge’ Rule.” Migration Policy Institute, August 2018. Available at: <https://www.migrationpolicy.org/news/through-back-door-remaking-immigration-system-expected-public-charge-rule>.