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## A Chilly Reception: Proposed Immigration Rule Creates Chilling Effect for New Immigrants and Current Citizens

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The United States has a long history of welcoming immigrants to this country, with a promise that America would be a “land of opportunity.” Generations of immigrants have come to this country with the hope of building a new life for their families. The Trump Administration announced on October 10 a proposal that would fundamentally change our country’s approach to immigration.<sup>1</sup> This proposal would change what is known as the “public charge” immigration rule,<sup>2</sup> which could make it very difficult for many immigrants to receive the Green Cards or visas that allow them to enter or stay in this country legally.

This proposed rule would make family income and the *potential future* use of health care, nutrition, or housing programs central considerations in whether or not to offer people the chance to make a life in the U.S. This proposed ruling could push people into an impossible choice: obtaining needed benefits for a family, or potentially risking the possibility of U.S. citizenship. Not only would this new rule make a long-standing, existing standard much more restrictive, it could have – and may already be having – a significant “chilling effect.” People not subject to the rule may also fear that they should drop or avoid receiving those benefits. This chilling effect could induce people to put their well-being at risk in the fear of affecting a family member’s potential immigration status.

**The proposed rule has not yet gone into effect and is available for public comment until December 10, 2018.<sup>3</sup>**

### The Chilling Effect

This proposed rule (see details below) is complicated and confusing. It states that applicants for admission to the U.S. must demonstrate that they are not likely at any time to become a “public charge,” and that people hoping to extend their stay or change their immigration status must demonstrate that “they have not received,

### *This change has not yet been enacted. But who’s affected?*

**Direct Effect:** If this rule were to be enacted as currently written, it would most directly affect people applying for a Green Card through specific immigration pathways, such as a family-based visa. About 37,000 people obtained Green Cards in Massachusetts in 2017, but not all would be in the category of immigrants affected.

**Chilling Effect:** This rule could cause as many as **500,000 people** in Massachusetts to withdraw from needed health, housing, or food benefits. They are at risk of being nervous or confused about the impact of this proposed rule change on their family. This is the estimate of people living in a family with at least one non-citizen immigrant where someone in the family has received one of the public benefits named in the proposed “public charge” rule.

are not currently receiving, nor are likely in the future to receive public benefits.”<sup>4</sup>

The specifics of the criteria for admissibility into the country involve complicated formulas, including estimating the value of various public benefits, computing timeframes for participation in benefits, and more.<sup>5</sup> Even people who already have Green Cards, or who are exempt from this proposed rule (such as refugees or asylees) may very well be confused about whether features of this rule might apply to them or their families.

For people with family members who are not yet legal permanent residents, there could be concerns that there might be consequences to applying for the food, health, or housing supports that they are fully eligible to receive. This is referred to as a “chilling effect.” People may very well decide – and in some cases have already decided – that it is risky to apply for or receive needed benefits, even when eligible.

Twenty-four million people in the United States could be affected by the chilling effect of this proposed rule from the Trump Administration.<sup>6</sup> As many as 500,000 people in Massachusetts, including 160,000 children, the majority of whom are themselves U.S. citizens and not directly affected by this proposed ruling, could forgo receiving needed benefits even if they are eligible. This estimate takes into account that there are approximately 920,000 people in Massachusetts who currently live in a family that includes someone who is not a citizen. The estimate of those who may experience a chilling effect are the people with non-citizen family members who also have a family member who has received any food, health, or housing supports listed among the programs considered in the proposed public charge ruling (see list below). Not all of these residents would be affected by this new rule. However, because the rule is so complex, they could likely become nervous about applying for or staying enrolled in any of these benefits that help put food on the table, keep a roof overhead, or make ends meet.

ESTIMATED CHILLED POPULATION					
	Under Age 18		Age 18+		Total
	U.S. Citizens	Non-Citizens	U.S. Citizens	Non-Citizens	
<b>Massachusetts</b>	130,000	30,000	100,000	250,000	500,000
<b>U.S.</b>	7.8 million	1.2 million	4.6 million	10.2 million	23.8 million

There is already evidence that the impacts of changes in these types of rules go far beyond just those directly affected, and can include entire households. For example, there have been reports of immigrants withdrawing from the Women, Infants, and Children Program (WIC), despite the fact that the program is not even included in the list of affected benefits, and the rule has not even yet been implemented.<sup>7</sup> There is also preliminary evidence from a five-city study that the immigrant mothers of young children are now participating in SNAP (“food stamps”) at a lower rate than in previous years.<sup>8</sup>

## The Proposed Rule Change

The consideration of “public charge” is part of determining whether a person is eligible for legal permanent residence in the United States. Legal permanent residence is also referred to having a “Green Card.”<sup>9</sup> Most of these are people applying for admission to the country through what is known as a family-based petition. This means these applicants are family members of people who are already

living and making their way in the United States as these family members are citizens or already have a Green Card.<sup>10</sup>

In addition to changing the standards for determining eligibility for a Green Card, the proposal would create similar new standards for people seeking to extend a non-immigrant visa or change their temporary non-immigrant status in the United States (such as someone applying to change from a student visa to an employment visa).<sup>11</sup>

Under current practice, the public charge determination only takes into account whether the applicant would rely **primarily** on government benefits for financial support, and therefore only considers **financial dependence** on a few specific programs such as cash assistance for very low-income families or Medicaid-funded nursing home care.<sup>12</sup>

The new proposed rule changes this practice in several dramatic ways. The proposed rule states that applicants for admission to the U.S. must demonstrate that they are not likely *at any time* to become a public charge, and those people hoping to extend their stay or change their immigration status must demonstrate that “they have not received, are not currently receiving, nor are likely in the future to receive public benefits.”<sup>13</sup>

The proposed rule would also significantly expand the list of publicly-funded benefits (see below) that would be considered when assessing whether a person might be deemed a “public charge.”

The proposed rule also clarifies that one single factor might not make someone inadmissible under this new public charge determination, and it would require the federal government to take into account the “totality of the circumstances” of the individual involved. Some factors would weigh more heavily than others.<sup>14</sup>

This new policy would, for the first time, set specific income levels as a heavily weighted factor for eligibility for a Green Card and “public charge” determination. Having an income of less than 125 percent of the Federal Poverty Level (\$15,000 for a single person or \$26,000 for a family of three) would be weighted negatively, and could lead to denial of eligibility.<sup>15</sup> On the other hand, having an income of twice that amount (\$30,000 for a single person, or \$52,000 for a family of three) would be heavily weighted as a *positive* factor.<sup>16</sup> Full-time work at the current Massachusetts minimum wage is \$22,000 a year.

In determining whether a person *might potentially* become a “public charge,” there are other factors that the federal government would consider in addition to an immigrant’s income and financial resources. The new rule proposes that being *under age 18 or over 61*,<sup>17</sup> or having notable physical or mental conditions,<sup>18</sup> a poor credit report,<sup>19</sup> limited ability to speak English,<sup>20</sup> or having less than a high school education<sup>21</sup> would all be characteristics that would negatively affect an immigrant’s ability to receive a Green Card or change visa status.

## Benefits Considered for Public Charge Determination

Immigration officials could use past, current, or *potential* receipt of specific benefits (see table) under the proposed rule from the Trump Administration to demonstrate that an individual could not enter the country, receive a Green Card, extend their legal status, or change immigration status.<sup>22</sup>

## BENEFITS CONSIDERED FOR PUBLIC CHARGE DETERMINATION

Current Benefits Subject to Public Charge Consideration <sup>23</sup>	Proposed Benefits Subject to Public Charge Consideration
<ul style="list-style-type: none"> <li>• Supplemental Security Income (SSI)</li> <li>• Temporary Assistance for Needy Families (TANF)</li> <li>• Other General Assistance (such as EAEDC)<sup>24</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Supplemental Security Income (SSI)</li> <li>• Temporary Assistance for Needy Families (TANF)</li> <li>• Other General Assistance (such as EAEDC)</li> <li>• Supplemental Nutrition Assistance Program (SNAP)</li> <li>• Public housing benefits, including the Section 8 program</li> <li>• Medicaid (MassHealth), except for emergency Medicaid<sup>25</sup></li> <li>• Medicare Part D Premium and Cost-Sharing Assistance<sup>26</sup></li> </ul>

Although not currently included in this list, the Trump Administration is also considering including the receipt of Children’s Health Insurance Program (CHIP) benefits, which in Massachusetts provides health care coverage to approximately 220,000 children in families with incomes up to three times the official poverty level.<sup>27</sup>

### Considering the Impact

The Trump Administration’s proposed public charge ruling represents a marked change from the country’s long-standing immigration practice. If approved and implemented as proposed, people already working in this country at low-wage jobs who may be putting their children through college but have not themselves received a college education, or who have not yet had time to become fluent in English, or who might at some point fall on hard times and look to publicly-provided benefits to help make ends meet, would not be “positively weighted” and would not be allowed to continue on a path to becoming a U.S. citizen.

Publicly-funded benefits that help keep food on the table, a roof over head, or that allow people to be able to afford going to the doctor are central to the commitment this Commonwealth makes to the people who live here. These publicly-funded supports are there for us when we need them. More than one-quarter of the state’s residents get their health care thanks to Medicaid.<sup>28</sup> More than one in 10 Massachusetts families count on SNAP (“food stamps”) to purchase healthy food. And almost three-quarters of those same households include at least one working person, meaning SNAP provides a bridge for families when work doesn’t pay enough to help make ends meet.<sup>29</sup> The people who use these public benefits, the adults and children – native-born, citizen, immigrant – are our neighbors and friends, and need not be labeled “public charges.” They are part of the fabric of our communities and our Commonwealth.

<sup>1</sup> ... “Give me your tired, your poor, / Your huddled masses yearning to breathe free, / The wretched refuse of your teeming shore. / Send these, the homeless, tempest-tost to me, / I lift my lamp beside the golden door!” --Emma Lazarus, 1883 (inscribed on the Statue of Liberty). Although not a statement of public policy, the inscription on the Statue of Liberty was long seen as an emblem of the country’s values.

<sup>2</sup> See *Federal Register*: <https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds>.

<sup>3</sup> From the *Federal Register*: Written comments and related material to this proposed rule, including the proposed information collections, must be received to the online docket via [www.regulations.gov](http://www.regulations.gov), or to the mail address listed in the ADDRESSES section below, on or before December 10, 2018. You may submit comments on this proposed rule, including the proposed information collection requirements, identified by DHS Docket No. USCIS-2010-0012, by any one of the following methods: Federal eRulemaking Portal (preferred): [www.regulations.gov](http://www.regulations.gov). Follow the website instructions for submitting comments.

Mail: Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW, Washington, DC 20529-2140. To ensure proper handling, please reference DHS Docket No. USCIS-2010-0012 in your correspondence. Mail must be postmarked by the comment submission deadline.

<sup>4</sup> <https://www.federalregister.gov/d/2018-21106/p-3>.

<sup>5</sup> See, for example, <https://www.federalregister.gov/d/2018-21106/p-724>.

<sup>6</sup> Unless otherwise noted, all figures in this paragraph are from an analysis conducted by the Fiscal Policy Institute, based on estimates provided by the Center on Budget and Policy Priorities, of the number of people living in families where at least one person is not a citizen and where someone in the family has received one of the public benefits named in the proposed rule. The state level estimates used pooled data from 2013-2015, and the national estimate is from 2015. See “Methodology” section here: <http://fiscalspolicy.org/wp-content/uploads/2018/10/US-Impact-of-Public-Charge.pdf>. There are other estimates of the number of individuals who might drop off benefit programs under this policy, including an earlier estimate from Manatt Health stating that approximately 455,000 people are non-citizens and household members under 250 percent of the Federal Poverty Level could be “potentially chilled” in Massachusetts; an estimate from the Migration Policy Institute calculating that 492,000 non-citizens and naturalized citizens live in families that receive SNAP, TANF, SSI and Medicaid/CHIP.

<sup>7</sup> Interviews of WIC providers in Washington, Kansas, New York, as reported by *Politico*, September 3, 2018,

<https://www.politico.com/story/2018/09/03/immigrants-nutrition-food-trump-crackdown-806292>.

<sup>8</sup> MedicalResearch.com interview with Allison Bovell-Ammon, Children’s HealthWatch, November 12, 2018,

<https://medicalresearch.com/pediatrics/lower-snap-participation-by-immigrant-mothers-with-young-children/45730/>.

<sup>9</sup> The proposed rule defining inadmissibility on public charge grounds excludes persons seeking status or legal permanent residency through refugee, asylee, as a survivor of domestic violence, or other protected group pathways.

<https://www.federalregister.gov/d/2018-21106/p-589>. Approximately 37,000 people in Massachusetts received Green Cards (lawful permanent residency) in 2017. Not all of these people would have been subject to this new public charge determination had it been in effect in 2017. Figures from “Table 4. Persons Obtaining Lawful Permanent Resident Status by State or Territory of Residence: Fiscal Years 2015 to 2017” in [2017 Yearbook of Immigration Statistics](#), U.S. Department of Homeland Security.

<sup>10</sup> See U.S. Citizenship and Immigration Services, Green Card Eligibility Categories,

<https://www.uscis.gov/greencard/eligibility-categories>.

<sup>11</sup> <https://www.federalregister.gov/d/2018-21106/p-246>.

<sup>12</sup> The programs currently considered for public charge determination are Supplemental Security Income, Temporary Assistance for Needy Families, state general cash assistance programs (such as EAEDC in Massachusetts – Emergency Aid to the Elderly, Disabled and Children), or Medicaid-funded long-term institutional care. From *Federal Register*: “INS defined public charge in its proposed rule and 1999 Interim Field Guidance to mean “the likelihood of a foreign national becoming primarily dependent [154] on the government for subsistence, as demonstrated by either: Receipt of public cash assistance for income maintenance; or Institutionalization for long-term care at government expense.”

<https://www.federalregister.gov/d/2018-21106/p-483>; <https://www.federalregister.gov/d/2018-21106/p-485>;

<https://www.federalregister.gov/d/2018-21106/p-486>.

<sup>13</sup> <https://www.federalregister.gov/d/2018-21106/p-250>.

<sup>14</sup> <https://www.federalregister.gov/d/2018-21106/p-969>.

<sup>15</sup> <https://www.federalregister.gov/d/2018-21106/p-1089>. 125% federal poverty guideline <https://aspe.hhs.gov/poverty-guidelines>.

<sup>16</sup> <https://www.federalregister.gov/d/2018-21106/p-1270>.

<sup>17</sup> <https://www.federalregister.gov/d/2018-21106/p-998>.

<sup>18</sup> <https://www.federalregister.gov/d/2018-21106/p-1014>.

<sup>19</sup> <https://www.federalregister.gov/d/2018-21106/p-1130>.

<sup>20</sup> <https://www.federalregister.gov/d/2018-21106/p-1165>.

<sup>21</sup> <https://www.federalregister.gov/d/2018-21106/p-1177>.

<sup>22</sup> Table 10 at <https://www.federalregister.gov/d/2018-21106/p-695>, <https://www.federalregister.gov/d/2018-21106/p-696>.

<sup>23</sup> <https://www.uscis.gov/news/fact-sheets/public-charge-fact-sheet>.

<sup>24</sup> EAEDC, or Emergency Aid to the Elderly, Disabled and Children, is a state-funded cash assistance program. See

<http://children.massbudget.org/emergency-aid-elderly-disabled-and-children>.

<sup>25</sup> In addition to emergency Medicaid, the proposed rule excludes Medicaid-funded services provided under the Individuals with Disabilities Education Act (IDEA) and benefits for foreign-born children of U.S. citizen children.

<https://www.federalregister.gov/d/2018-21106/p-680>.

<sup>26</sup> <https://www.federalregister.gov/d/2018-21106/p-695>.

<sup>27</sup> See [Caring for Kids: Majority of Massachusetts Children Have Benefitted from MassHealth Programs](#) (Mass. Budget and Policy Center, June 29, 2018).

<sup>28</sup> <https://www.mass.gov/doc/masshealth-caseload-snapshot-and-enrollment-summary-september-2018-0/download>.

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<sup>29</sup> See U.S. Census Bureau, American Community Survey, 1-year Estimates, Table B22007: Receipt of Food Stamps/SNAP in the Past 12 Months by Family Type by Number of Workers in the Family, 2017.