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Businesses could be surprised by Trump plan to limit immigrant use of benefits

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A new Trump administration proposal that targets immigrants who receive government benefits could be a major headache for businesses — and many don't even know it yet.

Under the sweeping “public charge” proposed rule, an estimated 518,000 foreigners with temporary visas seeking to extend their stay each year would be required to demonstrate that they haven't received certain benefits, including Medicaid and food stamps, and weren't likely to receive them in the future.

If the Homeland Security Department wasn't satisfied with the answers, it could require that applicants submit a “declaration of self sufficiency” — yet another hurdle in an immigration system many employers already consider burdensome.

“I don't think the business community has any clue how much this impacts them,” said Doug Rand, a former Obama administration official and president of Boundless Immigration, a firm that uses online tools to assist with immigration paperwork. “This means paying lawyers a lot more money and having every application being a nail-biter.”

The proposal, published in the Federal Register on October 10, could block legal immigrants from obtaining a green card if they had previously received government benefits or might in the future. The department estimates that roughly 382,000 people seeking to become lawful permanent residents could be subject to a public charge review each year.

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Medical associations have ripped the proposed regulation. They argue it will lead to deleterious health outcomes and drive up costs as immigrants and their family members forgo public assistance. But the business lobby, including the U.S. Chamber of Commerce, has remained silent.

“They're worried, but they're not sure how worried they need to be in the scope of all of the things that are on their plate,” said David Bier, an immigration policy analyst at the libertarian Cato Institute. “They have been reaching out to me privately to assess, where do we stand on this?”

Bier said he doesn't have easy answers, since a rule isn't likely to be finalized until next year and could grant broad discretion to visa officers.

"It's a regulation that could be draconian in practice or could be mild in practice," he said.

In addition to Medicaid and food stamps, the benefit programs targeted in the proposal include Temporary Assistance for Needy Families, prescription drug subsidies and housing assistance. Foreigners in the U.S. on temporary "non-immigrant" visas who seek to extend or change their status would be required to answer questions on their application about receiving these benefits.

If immigration officers weren't satisfied, applicants would be required to complete a new self-sufficiency form called an I-944. A draft of the form shows that it would gather a wide range of information to assess a person's chances of becoming a public charge.

The factors — referred to as a "totality of circumstances" in the proposal — include health conditions that could impede the ability to work, financial liabilities, credit score, household size, and proficiency in English or additional languages ("with appropriate consideration given to market demand"), among other criteria.

"They want to start collecting massive amounts of information that they weren't collecting before," said Rand.

The temporary visa holders subject to new questions about benefit use include those using the H-1B program for skilled workers, the H-2A program for agricultural workers, and the H-2B program for seasonal, non-agricultural workers. In fiscal year 2017, the State Department issued roughly 179,000 H-1B visas, 162,000 H-2A visas and 84,000 H-2B visas.

The types of companies using those visas range from tech firms — where workers earn relatively high salaries — to businesses in landscaping, hospitality and farming, which typically seek lower-wage foreign labor.

Roughly 1.5 million people who receive public benefits could be directly affected by the proposed rule, according to a recent report by New American Economy, a pro-immigration group backed by former New York City Mayor Michael Bloomberg.

The group found the regulation could hit workers in construction, natural resources, mining, hospitality, recreation and food services, among other sectors.

"You're not going to know whether your current workers are going to be able to stay or whether your future workers are going to be able to come," said Jeremy Robbins, the organization's executive director.

Affected businesses, already grappling with a tight labor market, might find themselves boosting pay and benefits, according to Amanda Bergson-Shilcock, a policy director with the workforce-oriented National Skills Coalition.

"Employers respond to incentives just like the rest of us, and this would definitely change the playing field," she said, adding that "it's a little too early to tell."

Many people who use government assistance also work. More than half of people who participated in the Supplemental Nutrition Assistance Program, or food stamps, in a typical month in mid-2012 were employed, according to a study by the Center on Budget and Policy

Priorities. Similarly, [a report](#) from the Kaiser Family Foundation found that 60 percent of adults who received Medicaid in 2016, excluding the elderly or those on cash assistance, were employed either full or part time.

Non-citizens are typically ineligible to receive government benefits, but the ripple effects could nonetheless disrupt the lives of U.S. citizen workers, according to Bergson-Shilcock. “Even if an employer doesn’t have a lot of immigrants on their payroll, they may have workers who are part of immigrant families,” she said. A person with a foreign spouse, for instance, might need to take a different job to ensure the family maintains health care coverage.

“The universe of potential workers who would be affected by this is frankly much larger than some of the conservative estimates that have been put out by the federal agencies involved,” she said.

The proposed regulation states that temporary visa holders should have either financial means or employment to support themselves through the duration of their authorized stay — but visa officers would have discretion to flag suspect cases.

The only heavily-weighted positive factor to show a person wasn’t likely to become a public charge would be if the person’s household assets, support or income amounts to at least 250 percent of the federal poverty guidelines — \$30,350 for an individual and \$62,750 for a family of four.

Whether that criterion will be applied to non-immigrant visa applicants remains unclear. But the regulation states that people who earn that much are less likely to receive public benefits.

“If they come in with a job that pays 250 percent of the poverty line, probably they’re going to be OK, because that’s a heavily weighted positive factor,” said Liz Schott, a senior fellow with the left-leaning Center on Budget and Policy Priorities. “I’ve been referring to it as a somewhat safe harbor — not guaranteed, but a pretty safe place.”

For the most part, temporary immigrants aren’t eligible for the government assistance programs targeted in the regulation, but there are exceptions.

A 2009 federal law authorized states to expand the pool of pregnant women and children who could receive Medicaid to include legal immigrants who otherwise didn’t qualify. Nearly three dozen states [offer](#) some form of Medicaid coverage under the law.

Under the proposal, federal immigration officers would take into account a person’s visa type and length of stay in the United States when making a public charge determination.

The proposed regulation cites as an example a foreigner traveling to the U.S. on a tourist visa for a one-week vacation. “DHS would consider that this temporary visit is short in nature and that the individual likely would only need financial resources to cover the expenses associated with the vacation,” the text reads.

While that could be interpreted as a reassurance, the example also suggests immigration officers will make a public charge determination for each of the roughly 10 million non-immigrant visas issued each year.

A tourist, for example, wouldn’t be eligible for the public benefits cited in the proposed rule, but would still apparently face a review based on possible benefit receipt in the future.

Mark Greenberg, a senior fellow with the nonpartisan Migration Policy Institute, notes that the proposed rule does not estimate how many people could be deemed inadmissible as a public charge each year. “It gives no sense at all of what the magnitude will be,” he said.

Likewise, DHS does not estimate how many temporary visa holders would be subjected to further review and required to complete the self-sufficiency form.

Some opponents of the regulation argue it also could affect visa processing times, a key concern for businesses that seek foreign workers.

“They’re going to have this enormous amount of new material to go through and analyze,” said Stuart Anderson, executive director of the nonpartisan National Foundation for American Policy. “I think employers are going to find additional delays beyond what they have now.”

“I would describe it as just massive regulatory uncertainty,” said the Cato Institute’s David Bier. “It’s going to have an impact on every employment-based immigrant.”

Bier adds that businesses already need to deal with visa paperwork that slows down the hiring process. For instance, most employers who hire temporary foreign workers need to take steps to demonstrate the hire won’t adversely affect the wages of U.S. workers.

“This is just another thing to consider,” Bier said.

A report by the nonpartisan Fiscal Policy Institute examined the chilling effect of the proposed rule on food stamps and Medicaid. If 15 percent of people in those programs disenroll, the reports contends it could lead to the loss of 99,000 jobs in hospitals, doctor’s offices, grocery stores and other related businesses.

DHS argues in the proposed rule that it cannot estimate with certainty whether the number of immigrants and visitors admitted to the U.S. would shrink once it’s finalized. The department hypothesizes that there could be a “replacement effect” where more favorable applicants take the place of those who can’t clear the bar to enter or remain in the country.

Greg Siskind, a Memphis-based immigration lawyer, said employers haven’t fully absorbed the possible consequences of the regulation. The proposed rule will undergo a 60-day comment period that concludes on Dec. 10, which will provide businesses a chance to speak out.

“I would expect that there will be a big effort to get comments from a lot of different perspectives,” Siskind said. “This is a pretty massive change.”