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Immigrants may be denied green cards if they've received benefits

Ted Hesson, Nancy Cook, Helena Bottemiller Evich and Andrew Restuccia

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The Trump administration proposed expanding its pre-election crackdown on immigration by denying green cards to legal immigrants if they have received government assistance.

Under the new rule, which the Department of Homeland Security posted online Saturday following an inquiry from POLITICO, immigrants can be denied so-called "lawful permanent residency" if they've received certain government benefits — or if the government anticipates that they may do so in the future.

The measure represents the latest move by White House aide Stephen Miller to reduce drastically all immigration to the U.S., both legal and illegal, and reflects his strong conviction that doing so will improve congressional Republicans' chances in the midterm elections. The benefit programs targeted include the Supplemental Nutrition Assistance Program (food stamps), Temporary Assistance for Needy Families (welfare), Medicaid, Medicare Part D (prescription drug subsidies) and Section 8 (housing vouchers).

The regulation could force millions of low-income families to choose between government assistance and permanent settlement in the United States. Advocates fear it could ultimately restrict children's access to food and health care.

The move will mainly affect legal immigrants and their families, since undocumented immigrants are not eligible for most federal benefits.

In a departure from leaked drafts, the 447-page proposed rule won't target immigrants who've received subsidized health insurance under the Affordable Care Act or the Children's Health Insurance Program. The rule also bypasses the earned income tax credit, a refundable tax break for low- to moderate-income families.

DHS will allow a 60-day comment period once the proposed rule is published in the Federal Register. After that, the administration will incorporate feedback before it issues a final rule, a process that could take many months. Among the unresolved questions is whether to allow refusal of benefits based on participation in CHIP, which provides low-cost coverage to families that earn too much to qualify for Medicaid.

DHS Secretary Kirstjen Nielsen said in a related announcement Saturday that the proposed regulation would enforce a law intended to “promote immigrant self-sufficiency and protect finite resources by ensuring that they are not likely to become burdens on American taxpayers.”

Media reports earlier this year about the Trump administration's plans to issue the proposed rule fueled anxiety and misinformation in immigrant communities, local health providers say.

Even without a change in policy, immigrants are already turning down government subsidies to help them buy staple foods and infant formula for fear that it could bar them from receiving a green card. POLITICO reported earlier this month that local health care providers in at least 18 states saw drops of up to 20 percent in benefit enrollment — a sign that the mere threat of an immigration black mark can drive people away from government assistance.

The timing of the proposed regulation suggests that the Trump administration believes slapping severe new restrictions on immigration — even legal immigration — will help stir the GOP base into showing up at the midterm polls. Earlier this week, Secretary of State Mike Pompeo announced that the administration will admit no more than 30,000 refugees in the coming fiscal year — the lowest level in the history of the resettlement program.

Even at the height of the conservative backlash against separating migrant children from parents this spring — a decision the administration ultimately reversed — White House officials continued to view hard-line immigration tactics as a winning political message leading into November and the 2020 presidential campaign.

“The Democrats think there are no consequences for anyone entering this country illegally. They are dramatically overreaching, and all of their hysteria and hypocrisy will backfire on them spectacularly,” one White House official told POLITICO in June. “It is a giant mistake for Democrats to jettison their last possibility of a pivot to focus on pocketbook issues.”

The proposed regulation would provide a more robust enforcement mechanism for longstanding statutory boilerplate that bars immigrants "likely to become a public charge." Immigration law doesn't define the phrase explicitly but states that age, health, family status, financial resources, education and skills should be taken into account. Guidance issued in 1999, under President Bill Clinton, further outlined that immigrants could be considered a public charge if they were “primarily dependent“ on government benefits, but narrowly defined those benefits as cash assistance or long-term, institutionalized care. This proposed rule greatly expands that definition.

Roughly 1 million people become lawful permanent residents each year — a generous allotment, according to Hans von Spakovsky, a senior fellow with the conservative Heritage Foundation.

“We can be choosy about who we allow into the country,” he said. “One of the primary factors ought to be ensuring that the legal immigrants who come in are people who can financially support themselves.”

Approximately one-third of the federal budget goes to health insurance subsidies and social safety net programs, according to the nonpartisan Center on Budget and Policy Priorities — an expenditure the Trump administration and Republicans are seeking to reduce. Most government assistance flows not to low-income people but to the disabled or elderly. A May report from the libertarian Cato Institute found immigrants generally are less likely to use public benefits than native-born Americans.

Sonya Schwartz, a senior policy attorney with the Los Angeles-based National Immigration Law Center, said the regulation will depress the number of people approved for immigrant visas and discourage the use of public benefits.

“It’s a way to cut down on people enrolled in programs, particularly kids,” she said.

Washington Gov. Jay Inslee, a Democrat, sent a letter in April to White House budget director Mick Mulvaney that questioned whether the administration adequately considered the economic effects of the proposed regulation.

A draft version of the measure published by The Washington Post in March said it “would not have a significant economic impact” — an assertion that Inslee disputed.

“Given the broad-based fear and confusion this proposal will spur,” he wrote, “it is inconceivable that the impact on federal programs would not exceed the \$100 million threshold for an economically significant rule.”

The rule would apply to benefits received in the 36 months preceding an application, but only after the regulation takes effect.

Under the proposal, immigration authorities would employ three tests to determine whether a green-card applicant's receiving government benefits might classify that person as a public charge. In the case of easily monetized benefits, such as cash assistance or food stamps, an immigrant could be denied a green card if he or she received government benefits exceeding 15 percent of the federal poverty level — currently \$1,821 for an individual and \$3,765 for a family of four. The proposed regulation would offer a more generous cushion for immigrant families than an earlier draft that set the yearly threshold at just 3 percent of the poverty level.

In the case of harder-to-monetize benefits, such as Medicaid or public housing, the threshold would be the receipt of benefits for more than 12 months over the previous 36 months. In cases where an immigrant did not exceed the threshold of 15 percent for monetized assistance, but also used harder-to-monetize benefits, the threshold for the latter would be an aggregate nine months of use over the previous 36 months.

DHS estimates that roughly 382,000 people seeking to adjust their immigration status could be subjected to a public charge review each year.

The proposal would count food stamps toward a public charge determination, but not receipt of the Special Supplemental Nutrition Program for Women, Infants, and Children. An earlier leaked version of the proposal included WIC in its public charge determinations, which alarmed public health advocates because the program has been shown to improve infant and maternal health outcomes.

After POLITICO’s report found immigrants already dropping out of WIC out of fear that it would hurt their chances for permanent residency, Agriculture Secretary Sonny Perdue said USDA would investigate the matter.

“I would be concerned about that, obviously,” Perdue said during a C-SPAN interview earlier this month. “We’ll look into that further.”

Based on the leaked draft of the plan, the nonpartisan Migration Policy Institute estimated in June that the share of noncitizens who use benefits that could trigger a “public charge” designation would skyrocket from 3 percent to 47 percent. The actual proposed rule omitted several hard-line provisions in the draft version, which means the estimated reach likely will be lower.

"The whole rule is so short-sighted and mean-spirited because we know these nutrition programs are not only incredible sources of nutrition, they improve health and well-being" that "help children learn," said Alexandra Ashbrook, director of special projects at the Food Research and Action Center, an anti-hunger group. "They help people be productive workers."

The Kaiser Family Foundation, a San Francisco-based nonprofit organization, reviewed the draft proposal and found it "would likely increase confusion and fear among all legal immigrant families" when it came to using public programs.

More specifically, Kaiser warned of a potential decline in the number of immigrants covered by Medicaid and CHIP.

Such a drop would exacerbate disparities in health insurance rates between children with immigrant parents and those with native-born parents.

More than 8 million citizen children with an immigrant parent have Medicaid or CHIP benefits, with the highest concentrations living in California, Texas and New York, according to the Kaiser Family Foundation.

A range of activists spent months preparing for the rollout of the proposed regulation and plan to wage an opposition campaign. The public comment period is an opportunity for opponents to mount an assault on the plan.

A coalition led by the National Immigration Law Center and the D.C.-based anti-poverty Center for Law and Social Policy will push for a wide range of businesses, organizations and government officials to submit comments.

"They have to actually review every comment submitted, and they have to address it in the preamble [of the regulation]," said NILC's Schwartz. "This administration does things a bit differently, but usually it takes a few months, at a minimum."

The prospective regulation wouldn't apply to all immigrants. Refugees and asylees are exempt, as are certain victims of domestic violence and children who qualify for "special immigrant juvenile status," which is available to minors who were abused, neglected or abandoned by a parent.

Foreigners who apply for "temporary protected status" to remain in the U.S. after a natural disaster or armed conflict in their home countries will also be exempt, so long as they received a blanket waiver to absolve them of any public charge considerations.

Moreover, the Homeland Security Department will maintain discretion to waive the requirement for limited categories of visitors and immigrants to the United States.

Applicants for an immigrant visa would be invited to offer affirmative proof of financial stability if they've used public benefits, but the hurdle would be significant. Green-card applicants would be less likely to be penalized, for instance, if they could demonstrate financial resources or support totaling 250 percent or more of the federal poverty level — \$30,350 for an individual and \$62,750 for a family of four.

Under the new proposal, prospective immigrants likely to become a public charge could be required to post a bond for a minimum amount of \$10,000, which would be returned upon naturalization or when an immigrant departs the United States.

The proposed rule does not apply to deportability, which would continue to be governed by precedential Justice Department decisions.