



Protecting
Immigrant
Families
Michigan

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Proposed Rule for “Public Charge” Provisions Endangers Michigan Immigrant Families’ Well-Being

This fact sheet is an abridged version of the [National Immigration Law Center \(NILC\)](#)’s fact sheet on the federal Notice of Proposed Rulemaking on immigrant public charges. You can find the original fact sheet [here](#).

The Trump administration is pushing a proposed rule that could essentially force immigrant families, including children who are citizens, to choose between getting the help they need and reuniting with their loved ones. The Department of Homeland Security has informed the Office of Management and Budget (OMB) that it plans to alter the longstanding definition of and application of “public charge” provisions in immigration law. Based on the draft regulation leaked to the media, the Notice of Proposed Rulemaking (NPRM) would greatly expand the benefits that could be considered in determining whether a person is likely to become a public charge. **Immigrants’ use of programs related to their health, well-being, and education—or that of their family members, including U.S. citizen children—could be weighed in deciding whether to deny entry to the country or lawful permanent residence.**

WHAT’S AT RISK?

Federal law allows immigration and consular authorities to deny admissions to the United States or adjustment to Lawful Permanent Resident status to a person they deem likely to become a public charge. Under the current definition, a public charge is a person who is primarily dependent on the government for subsistence. Current policy allows officials to consider only two types of public benefits in a public charge determination: cash assistance for income maintenance and institutionalization for long-term care at government expense. Adoption of the draft proposed regulations would mark a departure from longstanding interpretation of the public charge rules. **If the draft proposal is adopted, benefits that could be considered in a public charge determination would include virtually any public service such as Medicaid (emergency Medicaid is excluded), Children’s Health Insurance Program (CHIP), Supplemental Nutrition Assistance Program (SNAP), Women, Infants and**

Children (WIC), Section 8 housing vouchers, the Low-Income Home Energy Assistance Program, financial assistance provided through the health insurance marketplaces established under the Affordable Care Act.

The draft NPRM also lays out negative and positive factors to be “heavily weighted” in a public charge determination. Heavily weighted negative factors include receiving public benefits currently or anytime in the past 36 months before seeking admission or Lawful Permanent Resident status. There are also “heavily weighted” positive factors that may keep an immigrant from being considered a “public charge.” For example, an individual who has assets, resources and support of at least 250 percent above the federal poverty line.

The draft NPRM states that noncash benefits previously excluded from the public charge determination will be considered only if those benefits are received after the effective date of the final rule.

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WHO WOULD BE AFFECTED?

The public charge policy primarily affects noncitizens who are applying for Lawful Permanent Resident status through family-based visa petitions. Some immigrants are **not** subject to the public charge rules. These include refugees; asylees; survivors of trafficking and other serious crimes; self-petitioners under the Violence Against Women Act; special immigrant juveniles; and certain people who have been paroled into the U.S. And, lawful permanent residents are not subject to a public charge test when they apply for citizenship. These exceptions are encoded in law and cannot be changed by executive or administrative action.

HOW SOON COULD THE REGULATION BE ISSUED?

Federal agencies are required to inform the OMB of any significant regulations they plan to release and to submit drafts of those proposed regulations for its review. On March 30, the draft NPRM was submitted to OMB for review. Once the OMB review is complete, the agency shares the proposed regulation with the public by publishing an NPRM in the Federal Register, and the public

is provided an opportunity to comment on the proposed rule. **The U.S. Department of Homeland Security notice to OMB indicates that the NPRM will be published in July 2018. However, the NPRM could be published in the Federal Register much sooner than the published release date.**

What can we do?

The Notice of Proposed rulemaking (NPRM) was sent to the Office of Management and Budget (OMB) for review on March 30, 2018. It could now be published for comment in the Federal Register any day. **The draft regulation indicates that there will be a 60-day comment period. It is during this period that the public can submit comment to oppose this change.**

The National Immigration Law Center's website has additional resources, including an [overview of public charge](#) and [advice on talking about these issues](#) with immigrant families.