



## Public Charge and Legal Immigration: Additional Resources

September 12, 2018

On August 23, 2018, the Migration Policy Institute (MPI) published a commentary, [\*Through the Back Door: Remaking the Immigration System via the Expected “Public-Charge” Rule\*](#), that described how changes to the public-charge test being considered by the Trump administration would give the U.S. government broad discretion to exclude individuals from admission to the United States based on their incomes. The commentary explored the impacts of new proposed income standards on family admissions and on migration flows by region, sending country, and race. As the commentary has elicited a number of questions, we respond to the most significant ones here:

**1. *Can you clarify the relationship between the 250 percent of poverty standard, public benefits, and the leaked public-charge test revision?***

Under the [March 2018 leaked draft](#) of the proposed rule, an individual would be inadmissible on the public-charge ground if he or she was likely at any time to use one or more public benefits. Officials would apply a “totality of circumstances” test to determine if the individual constitutes a public charge; certain factors would be heavily weighted negatives, others heavily weighted positives. Under the proposal, current use of one or more public benefits or receipt of public benefits in the past three years would be heavily weighted negative factors. Having financial assets, resources, and support, or annual income that meet or exceed 250 percent of the federal poverty line (FPL) would be heavily weighed positive factors.

**2. *Your commentary shows that 69 percent of African immigrants would fail to meet a 250 percent of FPL threshold. Under the March 2018 leaked draft, the new public-charge standard would not apply to refugees or other humanitarian entrants seeking admission or adjustment of status. If MPI removed refugees from the analysis, would the findings change? In particular, what would be the impact for Africans?***

Excluding refugees would not substantially change our analysis. In fact, just 22 percent of Africans who received green cards in fiscal year (FY) 2016 adjusted from refugee/asylee status. The majority—55 percent— of new green-card holders from Africa that year came under the family system, 18 percent entered with diversity visas, and 4 percent came on employment visas. In short, even in a year following relatively high refugee entries, at least

78 percent of African immigrants would have been subject to a public-charge determination.

More generally, U.S. refugee admissions have fallen substantially, from 85,000 in FY 2016 to roughly 20,000 in FY 2018. If refugees continue to be admitted at the 2018 level, they will represent a very small share of future admissions and will have an even smaller impact on the analysis.

Further, while it is accurate that refugees would not be subject to the public-charge determination, relatives of today's refugees seeking future admission based on family relationship would be subject to the public-charge test. A case in point is the [Vietnamese](#): While they initially came as refugees, more than 95 percent today receive green cards through family reunification.

**3. *Given that there is significant global demand for green cards (4.1 million people with approved immigration petitions are awaiting a green-card slot) is it possible that the policy will simply lead to a shift towards higher-income immigrants?***

This large pool of potential green-card holders could *theoretically* make it possible to replace lower-income immigrants with higher-income ones from the same regions, countries, and race. However, about 77 percent of the 4.1 million backlog<sup>1</sup> is composed of intending immigrants from ten sending countries (including Mexico, the Philippines, India, Vietnam, and China). Per-country caps on admission, which are a central feature of the U.S. immigration system, may indeed make it possible to replace immigrants from these high-pool countries who cannot clear a new income requirement with those who could. At the same time, per-country caps would limit the number of admissions from the ten countries noted above that make up such a large share of the backlog.

**4. *Would the new policy affect the source country, region, and racial characteristics of immigrants to the United States (i.e., fewer Hispanics, Africans, and Asians and more Europeans)?***

Yes, for many countries with smaller backlogs, with fewer sponsors in the United States, or smaller pools of applicants abroad, the 250 percent income ceiling would more directly affect overall flows in ways that would change the regional, sending country, and racial makeup of the migrant population. Most notably, European and Canadian flows would be largely unaffected, while those from many African, Central American, and Asian countries would likely decrease.

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<sup>1</sup> According to [State Department visa applicant data](#), approximately 4.1 million applicants were on the waiting list as of November 1, 2017. The overwhelming majority were family-sponsored applicants: 3.9 million, which includes the principal applicant and immediate family members. About 112,000 were employment-sponsored applicants and their families. There is an additional unknown number of family- and employment-based prospective immigrants who are waiting to adjust their status from within the United States. In other words, the total number of people waiting for a green card—within and outside of the United States—would be larger than the 4.1 million reported by the State Department. In addition, the size of the backlog fluctuates as some people abandon their applications, adjust through a different pathway, or die.

Further, it is clearly the case that the imposition of a 250 percent standard would lead to striking patterns of disadvantage to both sponsors and immigrants that would follow regional, sending-country, and racial lines. Our data on recent legal noncitizens show that it is likely that far higher shares of Mexican/Central Americans, Africans, and Asians in the current backlog would be excluded than would be the case for Europeans and Canadians.

**5. *Would the rule apply to those already waiting in line to get a green card but whose applications are in a backlog due to per-country and per-category visa caps? What share would be likely to have incomes below 250 percent of the federal poverty line?***

Our reading of the March leaked draft suggests that individuals waiting in the State Department backlog with approved petitions would be subject to the new public-charge test if they were still waiting for their green card at the time the rule became effective. While the rule would be a Department of Homeland Security (DHS) rule, we would anticipate that the State Department would promptly revise its standards to be consistent with the new DHS policy.

If the provisions outlined in the March leaked draft were to be adopted, one of the heavily positive factors in the public-charge determination would be having income or financial assets of at least 250 percent of FPL (\$62,000 for a family of four).

In an [August 2018 report](#), we demonstrated that immigrants from Mexico, Central America, the Caribbean, Africa, and Asia are much more likely to live in families with annual incomes below 250 percent of FPL. Applying the respective shares under 250 percent poverty to the family-based applicants on the waiting list by region (see table below), we estimate that more than 2.4 million of the current 3.9 million family-sponsored applicants might not be approved for green cards because they cannot pass a more stringent income test.

	Family-Based Preference Immigrant Waiting List*	Potential Impact of a Possible 250 Percent of FPL Requirement	
		Share of Recent Legal Noncitizens in Families with Incomes below 250 Percent of FPL**	Number of Applicants on the Family-Based Immigrant Waiting List Who Are Likely to Fail the 250 Percent of FPL Requirement
Mexico, Central America, and the Caribbean	1,835,000	72%	1,317,000
South America	188,000	52%	98,000
Europe and Oceania	146,000	37%	54,000
Asia	1,646,000	52%	861,000
Africa	133,000	69%	91,000
<b>Total</b>	<b>3,948,000</b>		<b>2,421,000</b>

\* The State Department's "Mexico, Central America, and the Caribbean" figure may include an unknown, but likely small, number of applicants from Canada.

Sources: Data on the number of applicants on the family-sponsored preference immigrant waiting list are from the State Department, "Annual Report of Immigrant Visa Applicants in the Family-Sponsored and Employment-Based Preferences Registered at the National Visa Center as of November 1, 2017," [https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingList/WaitingListItem\\_2017.pdf](https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingList/WaitingListItem_2017.pdf); data on the share of recently arrived, legally present noncitizens are from Jeanne Batalova, Michael Fix, and Mark Greenberg, "Through the Back Door: Remaking the Immigration System via the Expected 'Public-Charge' Rule" (MPI commentary, August 2018), [www.migrationpolicy.org/news/through-back-door-remaking-immigration-system-expected-public-charge-rule](http://www.migrationpolicy.org/news/through-back-door-remaking-immigration-system-expected-public-charge-rule).

**6. *There have been significant demographic changes in Europe, Canada, and Australia, including rising shares of non-Whites. Shouldn't we expect to see more non-White immigrants coming to the United States from these historically White places? To what extent does country of origin continue to serve as a proxy for race when it comes to migration to the United States?***

While sending European-origin countries themselves are becoming more diverse, 86 percent of recent legal noncitizens from Canada who resided in the United States during the 2014-16 period were White, as were 90 percent of recent European immigrants.

### **Additional MPI Resources**

The August 2018 “Chilling Effects” report:

[www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families](http://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families)

Data tables with MPI estimates of means-tested public benefits use by noncitizens, naturalized citizens, and the U.S. born at U.S. and state levels. Estimates are also provided for the two largest racial/ethnic groups among immigrants in the United States: Hispanics and Asian Americans/Pacific Islanders:

[www.migrationpolicy.org/sites/default/files/datahub/PublicCharge-StateEstimates.xlsx](http://www.migrationpolicy.org/sites/default/files/datahub/PublicCharge-StateEstimates.xlsx)

Tables with U.S. and state-level MPI estimates of children in benefits-receiving families, by U.S. citizenship status of the child:

[www.migrationpolicy.org/sites/default/files/datahub/PublicCharge-StateEstimates-Children.xlsx](http://www.migrationpolicy.org/sites/default/files/datahub/PublicCharge-StateEstimates-Children.xlsx)