



Public Charge: Additional Resources and Answers to Questions from June 2018 MPI Webinar

July 12, 2018

Migration Policy Institute experts participated in [a webinar](#) on June 12, 2018 to discuss findings from their report, *[Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use](#)*. During the webinar, more questions were asked by attendees than there was time to answer. As a result, the experts are responding here to questions raised during or after the webinar.

Some were about MPI's methodology to estimate and describe the characteristics of the populations that could fall under the public-charge definitions outlined in the March 2018 leaked draft of a proposed rule expected to be issued by the Trump administration. Others were about data described in the report or about specific aspects of the rule. Below, MPI experts respond to a number of those questions, based on the most recent [March 2018 draft](#), which could be significantly amended before final publication.

Click on the question below to view the reply:

1. [What benefits did you examine? Is there a concern over the expansion of public charge to programs other than those you studied?](#)
2. [Could you explain why you included naturalized citizens and the U.S. born in your analysis of people in benefits-receiving families? U.S. citizens, including the naturalized, do not appear to be covered by the draft proposed rule.](#)
3. [Are unauthorized immigrants included in your analysis? What about refugees?](#)
4. [Did you develop state-level profiles and what do they cover? Do you have estimates of U.S.-born children in immigrant benefit-receiving families by state?](#)
5. [What data analysis will MPI provide in the future related to the public-charge issue?](#)
6. [When will the Department of Homeland Security \(DHS\) begin applying the new rules? Will these rules be applied prospectively?](#)
7. [How will particular benefits \(e.g., Pell Grants, child care, school meals\) be treated for public-charge determinations?](#)
8. [Could past benefits use result in a public-charge determination?](#)
9. [What is the current standard for deportation?](#)
10. [Which groups will be exempt from the requirements?](#)

Questions about MPI Methodology and Data Analysis

1. What benefits did you examine? Is there a concern over the expansion of public charge to programs other than those you studied?

Using U.S. Census Bureau American Community Survey (ACS) data on use of public benefits in the 2014–16 period, the report estimates benefits-use rates for noncitizens, naturalized citizens, and the U.S. born for the four major means-tested public benefits available in ACS data: Temporary Assistance for Needy Families (TANF) and General Assistance (GA); Supplemental Security Income (SSI); the Supplemental Nutrition Assistance Program (SNAP, aka food stamps); and Medicaid and the Children's Health Insurance Program (CHIP). Additionally, although ACS data do not record who receives health insurance subsidies under the *Affordable Care Act* (ACA), MPI developed estimates of people *potentially eligible* for ACA subsidies. This group represents individuals who were covered by a private health insurance plan purchased directly by them or a family member, who resided in families with incomes less than 400 percent of the federal poverty level, and who were not in families receiving any of the four major means-tested benefit programs. (See Box 1, page 10 in the report for a brief description of these programs.)

MPI estimates that at least 47 percent of noncitizens were in families where at least one member received one or more of the four main means-tested benefits (i.e., “benefits-receiving families”), and thus could potentially be affected by the draft proposed rules. Additionally, 5 percent of noncitizens were potentially eligible for ACA subsidies. While the draft public-charge rule under consideration by the Trump administration covers a much wider range of programs (see Appendix A for included and excluded benefits listed in the March 2018 draft, pages 32-33 in the report), most participants in these other programs also receive assistance through at least one of the four major programs included in this analysis. (See also Box 2, page 17 in the report for additional information.)

2. Could you explain why you included naturalized citizens and the U.S. born in your analysis of people in benefits-receiving families? U.S. citizens, including the naturalized, do not appear to be covered by the draft proposed rule.

The main goal of the MPI work was to estimate the **potential universe** of people who might feel the impact of the public-charge rule. Since the draft proposed rule would now consider benefits use not only by individuals but also by their dependents, including U.S. citizens, the report focused on individuals in families as the main unit of analysis. The main assumption here is that the impact of the policy is likely to be felt at the family level. There are two kinds of impacts: 1) benefits access or willingness to apply for public benefits and tax credits; and 2) ability to sponsor relatives for immigration.

Benefits access. Although many naturalized citizens are married to other U.S. citizens (by birth or naturalization), some naturalized citizens live in families where spouses are noncitizens. Further, MPI estimated that more than 9.2 million U.S.-born children and



280,000 naturalized-citizen children resided in benefits-receiving families with at least one immigrant. If one member receives benefits, these families' noncitizen members will potentially have greater difficulties applying for permanent residence or extending their visa. It is reasonable to assume that such families will have to make a difficult choice in deciding whether to use benefits or tax credits when their receipt carries significant immigration penalties.

Applying for permanent immigrant status (aka getting a green card). Naturalized citizens may also feel the new policy's effects if they are dependents of prospective green-card applicants. Under the draft proposed rule, use of benefits by the green-card applicant's dependents would also be taken into account in public-charge determinations. If naturalized citizens are considered to be the applicant's dependents, then benefits use by naturalized citizens may put at risk the family member's green-card application.

Even if none of these situations apply to naturalized citizens, previous research shows that even protected populations (e.g., refugees whose benefits eligibility was not affected by 1996 welfare reform changes) disenrolled from benefits programs. While there is no expectation that 100 percent of current beneficiaries would drop out, it is likely that at least some additional naturalized-citizen immigrants would forgo benefits because of fear or confusion.

3. Are the unauthorized immigrants included in your analysis? What about refugees?

MPI's estimates of noncitizens in benefits-receiving families include lawful permanent immigrants (or green-card holders), refugees and asylees, certain legal nonimmigrants (including those on student, work, or other temporary visa), and persons residing in the country without authorization.

Unauthorized. The public-charge policy under consideration would overwhelmingly affect legally present immigrants because unauthorized immigrants are already ineligible for most federal means-tested public benefits. Still, some unauthorized immigrants have U.S.-citizen children or other family members eligible for public benefits.

Refugees and other migrants who received humanitarian protection. Some categories of individuals seeking admission or adjustment of status would be exempt from the rule. In the March 2018 leaked draft rule, these include refugees, asylees, Afghans and Iraqis with special immigrant visas, and certain other specified groups. Because MPI's main goal was to estimate the potential universe of people who might feel the chilling effects of the public-charge rule and because prior research provided evidence of withdrawal from public-benefit programs by refugees following passage the 1996 welfare law, *even though their eligibility was not changed by that law*, humanitarian migrants were included in the analysis of noncitizens who could be affected by the draft proposed changes to the public-charge rule.

4. Did you develop state-level profiles and what do they cover? Do you have estimates of U.S.-born children in immigrant benefit-receiving families by state?

Estimates of benefits use are provided for both, and for the two largest racial/ethnic groups among immigrants in the United States (Hispanics and Asian Americans/Pacific Islanders). These estimates are based on analysis of U.S. Census Bureau pooled 2014-16 ACS data. These profiles can be accessed [here](#).

MPI is also providing a table that shows U.S. and state-level estimates of children by their citizenship status residing in benefits-receiving families with at least one immigrant family member. This table can be accessed [here](#).

5. What data analysis will MPI provide in the future related to the public-charge issue?

Once the public-charge proposed rule is formally published by DHS and all criteria for public-charge determinations are outlined, MPI will analyze its ACS-based dataset with legal status assignments to examine the number and the characteristics of immigrants who received green cards in the past five years, exploring the shares that would have been excluded under differing scenarios using the new criteria, focusing specifically on affected countries of origin and states of residence.

Additionally, if the new public-charge rule makes legally present noncitizens' use of benefits a reason for deportation (a possibility raised in the March leaked draft), MPI would estimate the directly at-risk population, including all lawful permanent residents and temporary visa beneficiaries.

Questions about the Draft Proposed Rule

As noted earlier, the responses here are in relation to the draft leaked proposed rule from March 2018. The proposed rule, when published, may differ in significant ways, rendering the answers here outdated. The March leaked draft is available [here](#).

6. When will DHS begin applying the new rules? Will these rules be applied prospectively?

When DHS publishes its proposed rule, it will provide for a public comment period, which is likely to be 60 days. The agency must then consider the comments submitted during the comment period before issuing a final rule. The final rule likely would not be issued before 2019.



Note that in the March draft, it was envisioned that the rule would only affect use of benefits that occurred after the issuance of the final rule. It remains to be seen whether DHS will take the same approach when it publishes its proposed rule.

7. How will particular benefits (e.g., Pell Grants, child care, school meals) be treated for public-charge determinations?

In some cases, the leaked draft is explicit in saying a particular benefit will or will not count. In other cases, the draft does not expressly state how a benefit will be treated. Under the March leaked draft, there is in effect a three-step process for determining if a benefit will count in the public-charge determination.

First, the leaked draft defines public benefits as any government (federal, state, local, tribal, territorial) assistance in the form of cash, checks, or other forms of money transfers; or instrument and noncash government assistance in the form of aid, services, or other relief, that is:

- means-tested; or
- intended to help the individual meet basic living requirements such as housing, food, utilities, or medical care.

Thus, a benefit will not count if does not fall within this definition.

Then, the leaked draft specifies a set of benefits that do count. These are listed in Appendix A of the report. If the benefit is on the list, it will count under the leaked draft.

Finally, the leaked draft specifies a set of exclusions. These are also listed in Appendix A of the MPI report (see pages 32-33). If the benefit is expressly excluded, it does not count.

So, for any particular benefit, the best way to analyze whether it will count is to a) ask if it falls in the definition of public benefit; b) then look to see if it is either expressly included or excluded; and c) if it is not expressly included but falls within the definition of a public benefit, it will still count.

For example, several webinar participants asked about treatment of Pell Grants. These grants are means-tested, so they fall within the definition of a public benefit. They are not listed as expressly included, but neither are they excluded. Rather, the exclusion described for educational benefits is for in-state college tuition and any subsidized or unsubsidized government student loans (including but not limited to loans under the William D. Ford Federal Direct Loan Program and the Federal Perkins Loan Program). Accordingly, since Pell Grants fall within the public-benefits definition and are not expressly excluded, MPI would expect them to count in a public-charge determination under the leaked draft.

There was also a question about child care and Head Start. The latter is expressly excluded under the leaked draft, see Appendix A of the report. However, child care is not expressly

excluded, and so any child care that is means-tested would seem to fall within the definition of a public benefit.

MPI is less certain about how school meals would be treated. All children in a school may benefit from a school-meals program, even as some children qualify for free or reduced-price lunches. And, in some cases, school meal eligibility is determined at a community level. Accordingly, it does not seem entirely clear how the definition in the draft leaked rule would apply. It is likely wisest to examine the proposed rule when it is issued for clarity on the treatment of school meals.

Another questioner asked how pro-bono legal services would be treated. If the pro-bono services are being delivered by state, local, territorial, or tribal government, and were being provided on a means-tested basis, they would fall within the definition of a public benefit. There may be questions under the proposed rule about how to treat certain benefits or services that are paid for by government but delivered by private entities, in circumstances in which individuals might have no ready way of knowing that the benefit is paid for by government at the time of provision. However, this issue is not addressed in the leaked draft.

Another questioner asked about services under the *Workforce Innovation and Opportunity Act*. If those services are provided on a means-tested basis, they would fall within the definition of public charge. If they are not means-tested, they likely would not count, unless they are supportive services or needs-related payments intended to meet basic living requirements such as housing, food, utilities, or medical care.

8. *Could past benefits use result in a public-charge determination?*

Under the leaked draft, only benefits use after the effective date of the final rule would be considered. Note, however, that DHS could decide to take a different approach in either the proposed or final rule.

9. *What is the current standard for deportation?*

Under current guidance, dating back to 1999, immigrants who receive a cash benefit for income maintenance within five years of entering the country or who are institutionalized for long-term care funded by the government may face deportation if the assistance results in a debt to the government agency providing the benefit, the agency attempts to collect the debt from the individual or his/her sponsor, and the debt is not repaid.

As noted in the report and webinar, it is unclear whether the proposed rule will change the standard for how public charge is used for purposes of deportation. The leaked draft indicated that criteria were to be determined, and for discussion with the Department of Justice. Accordingly, it is possible that there will be no change in the standard, some change but not the same as the standard applicable to admission and adjustment of status, or a



modification that makes the deportation criteria similar or identical to those for admission and adjustment of status. Presumably, this will be addressed when the proposed rule is published.

10. Which groups will be exempt from the requirements?

A number of questions were received during and after the webinar about whether particular groups would be subject to or exempt from the requirements. The full list of exempted groups under the draft leaked rule is available at [pages 212-215](#).

Several questioners asked specifically about refugees and asylees, and under the leaked draft, the public-charge provisions would not apply to them for purposes of admission or adjustment of status. In total, though, there are 22 exempted groups under the leaked draft, and interested readers are encouraged to refer directly to the list.

While these provisions specify who would be exempt from the requirements for purposes of admission and adjustment of status, it is still not known how, if at all, the proposed rule will address the use of public-charge criteria for purposes of deportation. This will be a crucial question because if the rule extends to deportation, then it could have effects even when particular groups are exempt for purposes of admission and adjustment of status.

For more, see MPI's report:

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

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