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The Public-Charge Rule: Broad Impacts, But Few Will Be Denied Green Cards Based on Actual Benefits Use

By [Randy Capps](#), [Julia Gelatt](#) and [Mark Greenberg](#)

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Tacoma Community House

Even before the Trump administration began to implement its [new public-charge rule](#) on February 24, there was evidence of sizeable disenrollment from public benefit programs by legal immigrants and their U.S.-born children arising from fears that such use could doom future applications for legal permanent residence.

These “chilling effects” are real, with many people confused about which benefit programs and populations are considered under the new public-charge determination and fearful that the rules could change at some point, making earlier use of

benefits disqualifying. Substantial disenrollment occurred during legislative welfare changes of the mid-1990s, even among populations that were explicitly excluded from its effects, such as refugees.

Moreover, the rule may have very large effects on who can get a green card, because officials will use a forward-looking test to make judgments about who will be considered likely to *ever* use public benefits in the future. (See “The Bigger Picture” section for discussion of how this has the potential to reshape legal immigration.)

Box 1. The Public-Charge Test

The new test, which revises federal public-charge standards set in 1999, applies to most green-card applicants, whether they apply from outside the United States or adjust from another immigration status within the country. The test considers:

- Whether the applicant has applied for, been certified to receive, or received any of the following benefits on or after February 24, 2020:
 - Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), or state- or locally funded cash assistance
 - Supplemental Nutrition Assistance Program (SNAP, or food stamps)
 - Nonemergency Medicaid, for adults who are not pregnant
 - Federal housing assistance, including public housing and Housing Choice Vouchers
- Whether the applicant has received any cash assistance *before* February 24, 2020
- Potential future use of these benefits based on age, education, English ability, health, income, assets, and other characteristics.

Some green-card applicants are exempt from the test: mostly humanitarian applicants such as refugees and asylees. The test does not apply to green-card holders, apart from those who leave the United States for six months or more and a few other very minor exceptions.

While the “chilling effects” may be vast, the number of immigrants who could be deemed ineligible for legal permanent residence (known as getting a green card) based on use of one of the benefits under the new rule’s expanded list is small. The Migration Policy Institute (MPI) estimates that no more than 167,000 people and possibly fewer—less than 1 percent of the 22.1 million noncitizens residing in the United States—could be determined ineligible for a green card based on their current use of a listed benefit.

Why are so few immigrants likely to be denied green cards based on their benefit use when MPI and other organizations have issued far larger estimates of the size and share of the noncitizen population that could be among those feeling “chilling effects” and disenrolling from benefit programs for which they are eligible?

In a word, because there are very few benefit programs open to noncitizens who do not already hold a green card. Those who are both eligible for benefits and subject to the public-charge test at the green-card application stage fall into a very limited set of mostly humanitarian immigration statuses. Almost none of the individuals who already have a green card and are receiving public benefits will face the public-charge test in the future. (Despite any rumors to the contrary, benefit use by green-card holders **will not be considered** when they apply for citizenship.)

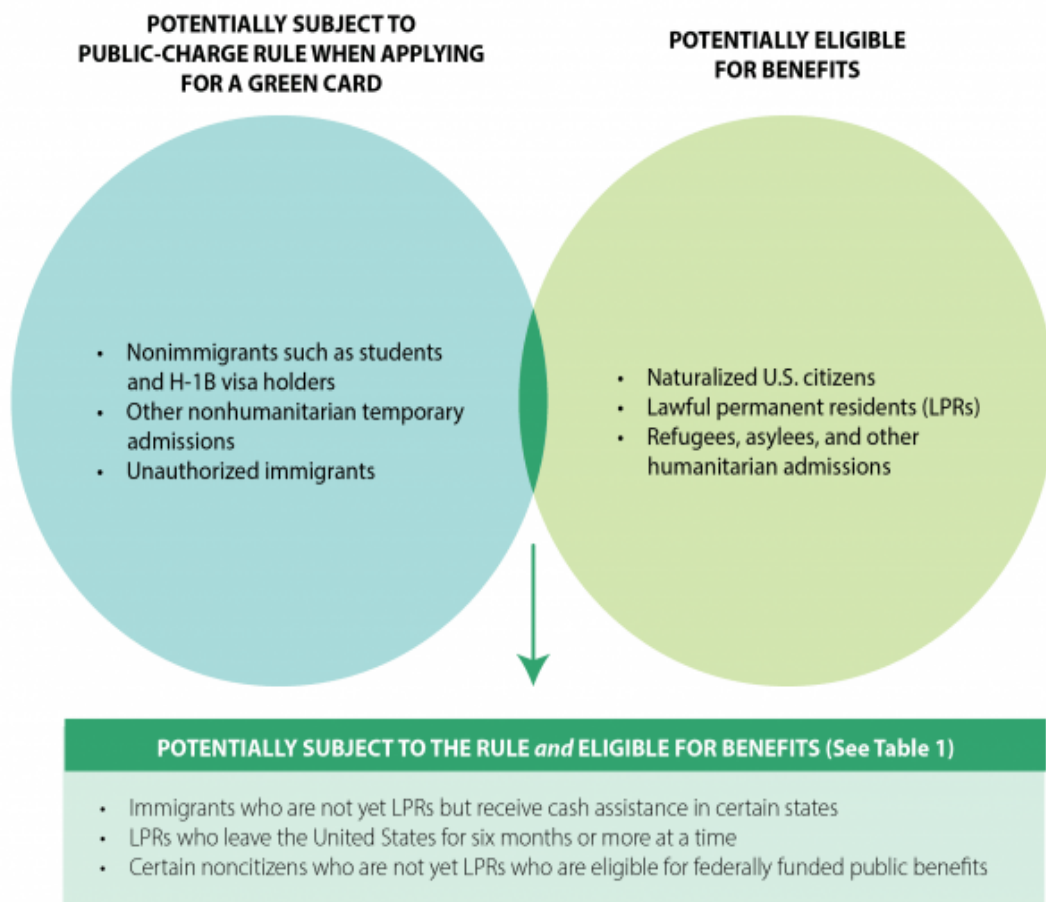
Limited Overlap

The public benefits listed in the rule are almost entirely reserved for U.S. citizens and green-card holders, the result of federal welfare legislation in the mid-1990s. Yet, the new rule U.S. Citizenship and Immigration Services (USCIS) will apply

considers benefit use by green-card *applicants*—i.e., people who do not yet have permanent resident status, with one principal exception: green-card holders who leave the country for six months or more.

There is almost no overlap between groups who are eligible for these benefits and those subject to the public-charge test when they apply for a green card. On the one hand, citizens and legal permanent residents (LPRs, or green-card holders) are not subject to the rule, and neither are those who apply for green cards through humanitarian channels such as refugees and asylees—the only large groups of noncitizens without a green card who are eligible for the listed benefits. On the other hand, unauthorized immigrants and temporary visitors who may one day apply for a green card are almost all barred from eligibility for benefits listed in the rule.

Figure 1. Immigrants Who Could Be Denied Green Cards Because of Current Benefit Use



* Those applying for green cards from outside the United States cannot use U.S. public benefits and are not shown in the chart.

Note: The two circles in this diagram are not to scale.

Source: Authors' rendering.

Who Will Be at Risk of Being Denied a Green Card Based on Benefits Use?

Three small groups of resident noncitizens, representing no more than 167,000 people per MPI's estimates, are both qualified to receive the benefits designated in the new public-charge rule and potentially subject to the rule if they apply for a green card. (See Table 1 for a fuller explanation of each population, as well as the MPI estimates of the numbers who could face a public-charge test).

Green-card holders who leave the United States for more than six months. These individuals must pass the USCIS public-charge test to be readmitted. They have the option of not leaving the country for an extended period, but this could cause hardship, when, for example, they need to care for an elderly or ill relative abroad. (The rule lists other very narrow circumstances where a green-card holder could be affected.) There are no data to estimate how many green-card holders have left the United States for more than six months or might do so in the future.

Noncitizens with uncommon statuses. These typically are temporary humanitarian statuses that do not directly lead to a green card, but that offer access to some federally funded public benefits. Some people in these statuses could be subject to the public-charge test in the future if they are able to apply for a green card through family or employer sponsorship. These statuses include:

- Haitian nationals who are paroled into the United States or who enter as asylum seekers
- Cuban nationals who enter the country as asylum seekers (those who are paroled into the country have a path to a green card not subject to the public-charge test)
- Nationals of other countries who are paroled into the United States and have been in the country for at least one year
- People granted withholding of removal who are allowed to remain in the United States
- Certain citizens of Micronesia, the Marshall Islands, or Palau, who can lawfully reside and work in the United States under the Compact of Free Association (COFA)
- People who obtained temporary legal status under the 1986 *Immigration Reform and Control Act* (IRCA), but never adjusted to a green card
- Lawfully present members of the Hmong and Lao communities that helped the United States during the Vietnam War but never obtained a green card.

MPI estimates that, at maximum, there are 133,000 people in these statuses. But this number is likely an overestimate because many will never have a family member or employer who can sponsor them for a green card. Also, some may find a humanitarian path to a green card that is exempt from the public-charge test, such as through asylum or a U visa for crime victims. Moreover, many may be ineligible for public benefits because, for instance, their incomes are too high.

Noncitizens in 17 states, including Arizona, California, Illinois, Pennsylvania, and Washington, who get certain state-funded cash benefits. This group includes individuals, typically with temporary humanitarian statuses, who do not have green cards but who qualify for cash assistance at state expense. MPI estimates there are about 34,000 people in these groups receiving cash assistance. However, there is overlap that MPI cannot measure between those reporting cash receipt in certain states and the temporary humanitarian statuses listed above.

The Bigger Picture: Broad Impacts on Who Can Get a Green Card

Under the public-charge rule, USCIS officials are charged with deciding whether a green-card applicant already in the United States is more likely than not to receive one or more of the listed public benefits at any point in the future. Officials are directed to look at multiple factors, including income, assets, educational attainment, English skills, employment status, age, health, and current or past use of the listed public benefits. State Department consular officers will apply a similar screen to applicants who are seeking a green card to enter the United States.

This forward-looking test will likely have an enormous impact on future green-card grants and has the [potential to reshape U.S. immigration](#) by lowering levels of permanent immigration and tilting admissions toward those with more wealth and education. Using data on recent green-card holders, [MPI determined](#) that 69 percent have at least one factor that would be considered negative under the test, 43 percent have at least two factors, and 17 percent have at least three. In short, the public-charge rule's primary immigration impact will be through its test of the likelihood of *future* benefits use.

The other major outcome will be the rule’s chilling effects on benefits use. Since drafts of the rule were first leaked in 2017, there have been multiple accounts of immigrants being fearful of using a wide array of benefits for themselves or their U.S.-born children. Their fears are often based on mistaken information, but are understandable given the complex and evolving nature of the rule.

Sizeable numbers of noncitizens use a benefit listed in the rule (MPI has estimated that 7 million, or [31 percent of all noncitizens](#), use one or more of the four major federal benefit programs), and a substantial number might disenroll because they do not understand the rule and therefore fear its immigration consequences.

In a 2018 nationwide [Urban Institute survey](#), 14 percent of all immigrants and 21 percent of those with low incomes reported withdrawing from or not enrolling in a public-benefit program due to fears of the rule.

With all the media attention surrounding the rule over the past three years, many immigrants have become fearful of using benefits. For government agencies and nongovernmental organizations that serve immigrant populations, outreach to better explain the rule and who is—and is not—affected is important. In doing so, it is key to keep in mind that the rule will have broad impacts on green-card applications, but generally not because individuals will be denied based on existing benefits use, rather due to the complex, subjective assessment of whether they may ever do so in the future.

Table 1. Populations Subject to the Public-Charge Rule and Eligible for the Benefits Listed in It

Specific Immigration Status Group	MPI Estimates of Maximum Potentially Affected Population	Explanation
Populations eligible for federally funded benefits, estimated at about 133,000 in total		
Noncitizens granted withholding of removal	Around 67,000 people may have been granted withholding or deferral of removal between these programs' creation in 1980 and today. ¹	Individuals who are not eligible for asylum but who have a demonstrated fear of persecution in their home country may apply for withholding of removal during their immigration proceeding. The standard for this protection is higher than that for asylum. If approved, grantees are protected within the United States and have access to some federally funded public benefits, but do not have a direct path to a green card. People with such protections could potentially get a green card and be subject to the public-charge rule if they find a family or employer sponsor, meet other eligibility criteria, and have their removal orders dismissed. It is likely that very few would ever have a way to adjust to a green card, and so very few would ever be subject to a public-charge determination.
Cuban and Haitian Entrants (excluding Cuban parolees)	About 42,000 Cuban and Haitian entrants entered in FY 2018 and 2019. ² Some of this group overlaps with the 8,302 Haitian Family Reunification parolees listed below. Others are likely Cubans paroled in who have a path to a green card exempt from the public-charge test.	These entrants are Cuban and Haitian nationals who are paroled into the United States, who are applying for U.S. asylum, or who are in removal proceedings. This group includes those in the Haitian Family Reunification Parole Program, listed below. Cubans paroled into the United States can adjust to lawful permanent resident status after one year in the United States based on the 1966 Cuban Adjustment Act and will not be subject to the public-charge test when doing so. The U.S. government used to parole in nearly all Cubans who reached the United States, but now does so only for a subset. Other Cuban entrants, as well as most Haitian entrants, do not have this kind of direct path to a green card. If Cuban or Haitian entrants can find a family or employer sponsor for a green card, and meet other eligibility criteria, they would be subject to a public-charge determination.
Certain citizens of Micronesia, Marshall Islands, or Palau ("COFA noncitizens")	There were about 20,000 noncitizens in the United States in 2016 born in either Micronesia or the Marshall Islands who were not green-card holders, temporary visa holders, or refugees. ³	Compact of Free Association (COFA) noncitizens can enter the United States without a visa and are eligible to work. They could be subjected to a public-charge determination upon entry or re-entry, and would be subject to a public-charge determination when seeking to adjust to LPR status through family or employer sponsorship.
Parolees under the Haitian Family Reunification Parole Program	8,302 people had been approved under this program as of September 2019. ⁴ A substantial share have likely already gained green cards.	The Haitian Family Reunification Parole Program allows Haitians with pending family-based green-card applications to enter the United States. According to U.S. Citizenship and Immigration Services (USCIS), they generally must wait two years for a green-card number to become available. ⁵ Individuals paroled in as part of this program, classified as Haitian Entrants, are eligible for public benefits.
Noncitizens paroled into the United States who have one year or more of residence	It is not possible to count the total number of parolees due to lack of data on paroled individuals. Data are available on some group parole programs, however. For example, more than 1,400 children were granted parole through the Central American Minors program between its inception in 2014 and termination in August 2017. ⁶ Under a court order, the Trump administration is now processing 2,700 additional applications for parole under this program. ⁷ In addition, the United States had accepted 301 applications for parole for family members of Filipino World War II veterans as of September 30, 2019. ⁸	Parolees are those let into the country by the government based on urgent humanitarian reasons or significant public benefit. Some parolees have a direct path to a green card that is exempt from a public-charge determination; others do not. Parolees who find a family or employer sponsor for a green card could be subject to a public-charge determination. In addition to those in the Haitian Family Reunification Parole Program, mentioned above, another group that may be particularly affected is immigrants paroled into the United States while waiting in line for a family-based green card sponsored by a Filipino World War II veteran. According to USCIS, such parolees may wait many years for a green card to become available. ⁹
Temporary Legal Residents ("LTRs" under IRCA legalization program)	There are likely few or no people in this group.	This category includes people who applied for legal status under the 1986 Immigration Reform and Control Act (IRCA), but never received a green card. Those who apply for a green card through IRCA may be exempt from the public-charge rule. But temporary legal residents under IRCA who apply for a green card through family-based or certain employment-based categories could be subject to a public-charge determination.
Lawfully present members of the Hmong and Lao communities that helped the United States during the Vietnam War	There are likely few or no people in this group.	Most Hmong and Lao people who entered the United States based on their assistance during the Vietnam War were admitted as refugees. Among those who entered through other channels, most likely have green cards by now. But those without green cards who might find a family sponsor in the future would be subject to a public-charge determination.
Populations receiving state- or locally funded cash assistance, estimated at about 34,000		
Noncitizens in 17 states who receive certain state-funded cash benefits	There are about 34,000 noncitizens receiving cash assistance, who (1) are not refugees, asylees, or green-card holders, (2) do not live in a family with U.S.-citizen children, and (3) live in a state offering cash assistance to non-LPR noncitizens. ¹⁰	There are 17 states that offer cash assistance to some groups of noncitizens who are neither green-card holders nor refugees or asylees. ¹¹ The types of noncitizens offered cash assistance in these states varies.

1 The Migration Policy Institute (MPI) estimates this number based on the fact that between fiscal years (FY) 2001-18, about 30,000 people (or about 1,700 per year) were granted withholding. See U.S. Department of Justice, Executive Office of Immigration Review, “Statistics Yearbook,” fiscal years 2001 through 2018, [available online](#).

2 Department of Health and Human Services (HHS), Administration for Children and Families, *Justification of Estimates for Appropriations Committees, Fiscal Year 2021* (Washington, DC: HHS, 2019), 39, [available online](#).

3 Citizens of Palau could not be identified for this analysis because of data limitations. MPI analysis of U.S. Census Bureau data from the 2014-16 pooled American Community Survey (ACS) and the 2008 Survey of Income and Program Participation (SIPP), with legal-status assignments using a unique MPI methodology developed in consultation with James Bachmeier of Temple University and Jennifer Van Hook of the Pennsylvania State University, Population Research Institute.

4 U.S. Citizenship and Immigration Services (USCIS), “Number of I-131 Travel Document Applications for the Haitian Family Reunification Parole (HFRP) Program as of September 30, 2019,” [available online](#).

5 USCIS, “The Haitian Family Reunification Parole (HFRP) Program,” last updated February 21, 2018, [available online](#). The Trump administration has announced it intends to end this program, using parole only on an individual basis. See USCIS, “USCIS to End Certain Categorical Parole Programs” (news release, August 2, 2019), [available online](#).

6 Mica Rosenberg, “U.S. Ends Program for Central American Minors Fleeing Violence,” Reuters, August 16, 2017, [available online](#).

7 Richard Gonzales, “Trump Administration to Allow 2,700 Central American Children into the U.S.,” NPR, April 12, 2019, [available online](#).

8 USCIS, “Number of I-131 Travel Document Applications for the Filipino World War II Veterans Parole (FWVP) Program as of September 30, 2019,” [available online](#).

9 USCIS, “Filipino World War II Veterans Parole Program,” last updated August 7, 2019, [available online](#). The Department of Homeland Security (DHS) has announced plans to terminate this parole program, with the intent of using parole only on an individual basis.

10 MPI analysis of U.S. Census Bureau data from the 2014-16 pooled ACS and the 2008 SIPP, with legal-status assignments using a unique MPI methodology developed in consultation with Bachmeier and Van Hook.

11 Urban Institute, Welfare Rules Database, Table I.B.6 “States Using State Funds to Help Noncitizens who Entered after Enactment and are Ineligible for Federal TANF Assistance,” [available online](#).

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Authors



Randy Capps is Director of Research for U.S. Programs. [Full Bio >](#)



Julia Gelatt is a Senior Policy Analyst with the U.S. Immigration Policy Program. [Full Bio >](#)



Mark Greenberg is a Senior Fellow and Director of MPI's Human Services Initiative, which focuses on the intersections of migration policy with human services and social welfare policies. [Full Bio >](#)

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Contact Us

202-266-1940

info@migrationpolicy.org



1400 16th St NW, Suite 300, Washington, DC 20036
ph. 202-266-1940 | fax. 202-266-1900



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