



Mayor's Office of
Immigrant Affairs
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Commissioner

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Testimony of Commissioner Bitta Mostofi
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Before a hearing of the New York City Council Committees on General Welfare, Health, and
Immigration:

“Oversight: The Impact of the Proposed ‘Public Charge’ Rule on NYC”

Thank you to the Speaker, Chair Levin, Chair Levine, and Chair Menchaca, and the members of the Committees on General Welfare, Health, and Immigration. My name is Bitta Mostofi and I am the Commissioner of the Mayor's Office of Immigrant Affairs (MOIA). I am joined today by my colleagues from the Department of Health and Mental Hygiene (DOHMH) and the Department of Social Services (DSS), who are happy to answer questions. Thank you very much for calling a hearing on this important topic.

The foundation of a fair and just society is the moral responsibility we carry to help those in need. That responsibility underlies the work that City agencies do every day. Whether we are providing medical care to pregnant women, helping families get the food they need, or assisting tenants to afford their rent, ultimately we are doing so because we understand that helping those in need is the right thing to do.

The proposed rule on "Inadmissibility on Public Charge Grounds," by contrast, is an un-American and immoral attack on hard-working immigrant members of our society, one that is cruelly designed to inflict harm. As I will describe shortly, the proposed rule would have devastating effects in New York City if it is finalized. One of the most insidious aspects of this proposal is that it has already created widespread confusion and fear, even though no change has taken effect. I want to emphasize to the community that the City's services are still available, and will remain available even if the proposed rule is finalized. Moreover, the proposed rule is still only in the proposal phase and its provisions are not yet in effect.

Starting from when the proposed rule was still a rumor, the Administration has worked with our City agencies and local, state, and national partners to counteract fear and misinformation. We have worked to educate and inform the community, helped people access one-on-one help, and facilitated opportunities for concerned New Yorkers to make their voices heard.

In my testimony today, I will give a brief overview of the proposed public charge rule and the harms it would inflict on New York City and New Yorkers. I will then describe what steps the City has taken since the proposed rule was published and our plan for opposing the rule moving forward.

Overview of the proposed rule

What the proposed rule would do

Existing immigration laws provide that an applicant for admission to the United States who is or is likely to become a "public charge" can be denied a green card or visa. For the past 20 or so years, pursuant to guidance issued by the federal government, this analysis was limited to considering receipt of cash assistance for income maintenance or government-supported institutionalization for long-term care. This limitation was intended to end the damaging confusion and fear about who would face negative immigration consequences due to the public

charge language, and to alleviate dangerous public health and nutrition problems caused by that fear.¹

Despite this longstanding policy, on October 10, the federal government published a proposed rule that would create a much broader definition of “public charge.” The proposed rule would do this by (1) expanding the list of public benefit utilization that would be considered, and (2) changing the way immigration authorities determine whether someone is likely to become a public charge.

If the proposed rule were adopted, the list of public benefits to be considered would be much broader than just cash assistance and institutionalization for long-term care, as is the practice now. The proposal would also consider:

- Supplemental Nutrition Assistance Program (SNAP, also called “food stamps”);
- Non-emergency Medicaid;²
- Low Income Subsidies for Medicare Part D (for prescription drugs); and
- Public housing and Section 8 vouchers and rental assistance.

In addition, the proposed rule would change the way immigration authorities consider the likelihood that someone will become a public charge. Under current law and policy, the government weighs factors including age, health, household size, education, financial status, and skills to determine whether someone will become a public charge. But under current guidance, someone who presents an affidavit of support is generally not considered likely to become a public charge, regardless of other factors. The proposed rule, by contrast, would require each factor to be considered separately. This would make it much more likely that immigrants would be considered likely to become a public charge, even if they have never been eligible for benefits or ever used benefits, and even if they have an affidavit of support.

Taken together, this proposed rule represents a dramatic departure from existing federal policy that will harm low- and middle-income immigrant families.

What the proposed rule would not do

Because of the great degree of misinformation and anxiety that has surrounded this proposed rule, I want to address a number of things that this rule would *not* do. Notably, the published proposed rule is more limited than some leaked drafts, and does not reach as far as some rumors have suggested.

First, the only public benefits that the proposed rule would treat as negative factors would be those expressly listed. There are many benefits that are not enumerated in the proposed rule. For example, the proposed rule would not consider receipt of Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) benefits as a negative factor in the public

¹ Inadmissibility and Deportability on Public Charge Grounds, 64 FR 28676, 28680 (1999).

² Certain disability and school-based Medicaid services, and Medicaid use by children of U.S. citizens who are likely to become U.S. citizens themselves, would not be covered benefits.

charge analysis. Similarly, reduced-price or free school lunches, emergency medical assistance, discounted health care services for the uninsured (including through the NYC Health + Hospitals Options fee scale), foster care and adoption, Head Start, and other benefits, would not be counted against an applicant for a green card or visa. The use of benefits not listed in the proposed rule would not affect an application.

Second, the proposed rule would only apply to benefits after the rule is finalized. It is not proposed to be retroactive. An individual's receipt of benefits today would not be considered in a public charge determination.³

Third, the proposed rule would only consider an applicant's own benefits use when making a public charge determination. Benefits used by a child, a spouse, family or household members, or other dependents would not be considered as a negative factor concerning an application.

Last, the proposed rule exempts broad categories of immigrants from its scope, based on the immigration laws. Public charge inadmissibility does not apply to applicants for citizenship. The rule excludes refugees and asylees, applicants and re-registrants for Temporary Protected Status, Special Immigrant Juveniles, self-petitioners under the Violence Against Women Act (VAWA), U visa holders, and others.

The harms of the proposed rule

The proposed rule has not gone into effect. But, if finalized, the proposed rule would harm hundreds of thousands of New Yorkers. As written, the proposed rule would force many immigrants to choose between access to crucial public benefits and regularizing their immigration status. This impossible choice has already created anxiety and confusion that existing federal policy was meant to prevent. We have heard disturbing reports about immigrants withdrawing from public services due to confusion about what benefits use will affect their immigration status. We are deeply concerned about such reports, and we are committed to monitoring and combating this fear.

These harms are not unintended side-effects: this proposed rule appears to be designed to hurt hard-working immigrant families in the name of "self-sufficiency." The City wants New Yorkers, including immigrants, to access our benefits and services, because these services help people get the assistance they need to get back on their feet. New York City knows that immigrants make us stronger. We reject the lie that immigrants are a drain on our resources. As just one example, in 2017 immigrants contributed an estimated \$195 billion to the city's Gross Domestic Product (GDP), or about 22% of the city's total GDP.⁴

³ The current use of long-term care and cash assistance, which are both considered in the current public charge rule, will continue to be problematic under the new public charge rule.

⁴ NYC OMB estimate based on the April 2017 Executive Budget Forecast. City GDP measures the value of the goods and services produced by the New York City economy in a given time period.

If it goes into effect, this proposed rule will have grave effects on public health and the general well-being of New Yorkers. I want to highlight the broad harms that the proposed rule could cause. If the proposed rule is finalized, we estimate up to 475,000 immigrant New Yorkers could be directly harmed, including many low- and middle-income immigrants who have never used public benefits. Up to 75,000 of those immigrants are currently eligible for crucial benefits and may be forced to choose between receiving those benefits and future adverse immigration consequences. But the bulk of those who would be directly harmed, some 400,000 immigrants, are those who are not eligible for benefits but who could be deemed public charges simply because of their age, health, education and employment history, or income and assets, among other factors.

Additionally, we fear that hundreds of thousands more New Yorkers—including U.S. citizens and immigrants who are not subject to the proposed rule—may withdraw from or reduce their use of benefits. We are already working to combat this large-scale chilling effect, but the complexity of the proposed rule and fear it has engendered mean that this effect is particularly difficult to counteract.

Lastly, the proposed rule would hurt the City's economy. If finalized, we estimate that the City's economy would lose at least \$420 million annually in public benefits support and economic activity.

Timeline

It is crucial that New Yorkers understand that this proposed rule has not gone into effect. It remains possible that the proposed rule will not go into effect. Moreover, even if the proposed rule goes into effect, it would not change eligibility requirements for public benefits programs.

This proposed rule is exactly that: a proposal that must face public scrutiny and comment. The public can weigh in on the proposed rule until December 10, 2018.

The City's response

The City has been tracking this issue closely since the first days of the Trump Administration, when a leaked draft executive order revealed that the Trump Administration intended to target immigrant use of public benefits. Our focus throughout this process has been ensuring that the community and stakeholders have the information they needed, encouraging them to make their voices heard about the federal proposal, and providing avenues for New Yorkers to get more information and the help they need.

Community education and stakeholder engagement

Once the leaked draft regulations appeared in the media in early 2018, MOIA immediately began working with our sister agencies to ensure that New York City's immigrant communities and other cities were well-informed about the public charge issue. The City briefed agency heads and City leadership in the spring, and dedicated a session to this issue at the Cities for Action (C4A) conference in May.

After the Department of Homeland Security posted the draft language of the proposed rule on September 22, the Administration immediately began working to analyze the proposed rule and formulate a response. Shortly after, we produced talking points for agency staff and a public-facing information flyer. The flyer has also been made available online in all of the citywide Local Law 30 languages: Arabic, Bengali, Chinese, French, Haitian Creole, Korean, Polish, Russian, Spanish, and Urdu.

Through this interagency collaboration with DOHMH, DSS, NYC Health + Hospitals, and other agencies, we were able to distribute information about the public charge rule to thousands of front-line staff. Commissioner Banks sent a letter to DSS/HRA staff noting that no policies had changed on the federal or City-wide level, and Dr. Katz sent a similar letter to NYC Health + Hospitals staff. NYC Health + Hospitals also published a “Public Charge 101” column in its all-staff weekly newsletter, and hosted a webinar open to all staff, led by the New York Legal Assistance Group.

During this time, the City also worked with Catholic Charities, Hispanic Federation, New York Immigration Coalition, Univision, the Office of New Americans and El Diario to organize a phone bank and Facebook Live event to help provide accurate and important information to the public. Over 40 volunteers answered about 800 calls and made over 1,200 referrals to services during the phone bank, and we reached more than 14,000 people during the Facebook Live event. We heard firsthand from community members about the confusion that the proposed rule had already created. Many of the calls to the phone bank were from lawful permanent residents concerned about accessing benefits. Many of the Facebook Live questions were from immigrants concerned that their usage of public benefits would impact their ability to petition for family members in the U.S. and abroad.

The Administration hosted a community and ethnic media roundtable on public charge and the 2020 Census as part of City Hall in Your Borough in Queens, where I spoke alongside Deputy Mayor Thompson, Commissioner Banks, HRA Administrator Bonilla, and Elmhurst Hospital CEO Israel Rocha. We provided information about the scope of the rule, the harms to immigrant New Yorkers, and emphasized that services remain available to all, regardless of immigration status. The City is continuing to organize Know-Your-Rights events across the city and for different communities to circulate accurate information about the scope of the proposed rule and how individuals can get the help they need.

These efforts to provide accurate information are a crucial part of our effort to mitigate the fear that we already saw building in our immigrant communities. The City and its services remain open to all, regardless of immigration status. New Yorkers who are afraid or need help should connect with ActionNYC by calling 311 and saying “ActionNYC.”

We have also held multiple briefings for different advocates and elected representatives. In October, we worked with the Council to hold briefings for members of the City Council. We also held briefings for state and federal elected officials, the Borough Presidents, poverty advocates,

faith leaders, and multiple consulates. Our goal has been to make sure that our many partners across the City are educated on this issue, so that they can integrate this issue into their work and weigh in on the proposed rule.

Advocacy

We have consistently and publicly denounced the Trump Administration's proposal to punish immigrants and their families for seeking the help they need.

MOIA and our sister agencies are currently working with other cities to develop comments on the proposed rule. We are also working to activate community members, advocates, and community-based organizations to weigh in and communicate their views to the Trump Administration.

All New Yorkers are welcome and encouraged to make their voices heard on this important issue. New Yorkers can go to nyc.gov/PublicCharge to read about the public charge rule and submit comments to the federal government.

Legal services

The public charge proposed rule has shown why it is so vital for the City to provide immigration legal services. The best way for New Yorkers to understand how the proposed rule might affect them is by seeking immigration legal services. With the historic investments in immigration legal services from the Mayor and the City Council, MOIA has been able to work with other City agencies, legal service providers, and community partners to provide high-quality immigration legal services and help community providers build their capacity. ActionNYC providers have been trained on public charge, and are ready and able to provide individual guidance to immigrant New Yorkers. We have also worked with the Office for New Americans hotline, operated by Catholic Charities, to ensure community members can reach reliable information and referrals.

Conclusion

I want to thank the Committee Chairs for calling this important hearing. The Trump Administration's proposed rule on public charge is a hateful and draconian attack on immigrants working to make ends meet and keep food on the table, and it is vitally important for us to share accurate information and make sure that all New Yorkers know how to make their voices heard. We are gravely concerned both by the anti-immigrant sentiment behind the proposed rule and by the havoc it will wreak on our neighbors, family members, and communities. The de Blasio Administration knows that the contribution of immigrant New Yorkers are a central part of what makes this City and country great. I am proud to stand alongside my colleagues in the City Council to fight this proposed rule and work to ensure that all New Yorkers feel safe and welcome getting the help that they need.