

CRS Report for Congress

Received through the CRS Web

Alien Eligibility for Public Assistance

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Summary

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) changed almost every aspect of alien eligibility for federal, state and local government assistance programs. It established comprehensive new restrictions on the eligibility of legal aliens for designated means-tested public assistance, and also broadened restrictions on public benefits for illegal aliens and nonimmigrants (aliens temporarily here, *e.g.*, to visit, attend school, or work). Previously, legal aliens who had settled here were eligible for public assistance on the same basis as citizens. The 1996 welfare law barred most legal aliens from Supplemental Security Income (SSI) for the Aged, Blind, and Disabled, and Food Stamps. It authorized the states to limit access to Medicaid and Temporary Assistance for Needy Families (TANF, which replaced AFDC). However, the Balanced Budget Act of 1997 (P.L. 105-33) amended the welfare law to provide that “qualified aliens” who were receiving SSI and related Medicaid as of August 22, 1996 will continue to be eligible, regardless of whether their claim was based on disability or age. Additionally, qualified aliens who were here by August 22, 1996 and subsequently become disabled will be eligible for SSI.

Alien Eligibility for Federal Assistance

The 1996 welfare law and, to a lesser extent, the 1996 immigration law¹ restricted alien eligibility for Federal benefits in three basic ways:

- They barred access to programs based on alien status;
- They required legally binding affidavits of support from immigrants’ sponsors; and
- They required that sponsors’ income be deemed available to immigrants in determining eligibility for most means-tested programs.

¹The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, enacted as Division C of the Omnibus Consolidated Appropriations Act, 1997, and signed into law on September 30, 1996 (P.L. 104-208)

Alien eligibility for selected federal programs is summarized in Table 1. A more comprehensive summary of restrictions on alien access to benefits appears as Table 2. The eligibility of legal aliens for Social Security and Medicare is *not* affected by the new legislation. Legal aliens continue to remain eligible if they have met the requirements of these two programs, on the same basis as before.

Program Ineligibility

The new welfare law replaced alien eligibility standards for many federal programs, which varied, with standards that are more comprehensive and restrictive. The alien eligibility provisions of the new welfare law deny *illegal aliens* access to many more federal programs than under previous law. It also imposes unprecedented restrictions on the ability of *legal immigrants* to receive designated means-tested federal assistance. Legal immigrants remain statutorily eligible for certain federal aid, including education assistance, child nutrition, and emergency medical assistance (see Table 2). The new welfare law allows the states to determine which aliens may receive state and local benefits, though illegal aliens may only obtain benefits under state laws passed after August 22, 1996, the date the welfare law was enacted.

Classification of Aliens. The welfare law divided aliens into two general categories for purposes of benefit eligibility. The least restricted category is that of *qualified aliens*, a category that, despite its name, is subject to numerous new limitations. *Qualified aliens* consists of legal permanent residents (also referred to as immigrants), refugees, aliens paroled into the United States for at least 1 year, and aliens granted asylum or related relief. The immigration law added certain abused spouses and children as another class, and P.L. 105-33 added Cuban-Haitian entrants.

The other, more restricted category is that of *non-qualified aliens*. It consists of other noncitizens, including illegal aliens, nonimmigrants (*i.e.*, aliens admitted for a temporary purpose, such as tourists and foreign students), short-term parolees, asylum applicants, and various classes of aliens granted temporary permission to remain.

Eligibility Standards. *Non-qualified aliens* are ineligible for almost all federal assistance provided directly to households or individuals, including health, education, retirement, or disability benefits, as well as for federal contracts, loans, licenses, and grants. The limited exceptions, summarized in Table 2 below, include emergency medical services and disaster relief.

Qualified aliens are subject to three general restrictions, in addition to sponsor-to-alien deeming discussed below:

- Most legal immigrants are barred from Food Stamps and, with significant exceptions, from SSI. P.L. 105-33 amended the welfare law to provide that “qualified aliens” who were receiving SSI (and related Medicaid) as of August 22, 1996 will continue to be eligible, regardless of whether their claim was based on disability or age. Additionally, qualified aliens who were here by August 22, 1996 and subsequently become disabled will be eligible for SSI.²

²The 1997 law also grandfathers, through FY1998, aliens who have been identified by SSA as receiving benefits, but who do not appear to fit within one of the categories of “qualified aliens.” SSA and CBO estimate their number to be 20,000. Additionally, members of recognized Indian tribes and certain Canadian-born Indians are exempt from SSI and Medicaid restrictions.

- Second, most *qualified aliens* arriving after the date of enactment are barred from other designated federal means-tested benefits for 5 years after arrival. To date, the only programs so designated are TANF, Medicaid, and SSI.
- Third, states are empowered to deny most *qualified aliens* state-funded assistance and assistance under federal block grants for Temporary Assistance for Needy Families (TANF, which replaces AFDC), Title XX Social Services Block Grant (SSBG) activities, and Medicaid, effective January 1, 1997. Because of the 5-year bar on federal benefits for new arrivals, states may permit newly arriving *qualified aliens* to receive TANF, Medicaid, and SSBG only after they have been here 5 years. However, SSI recipients remain eligible for SSI-derivative Medicaid.

Table 1. Alien Eligibility for Selected Federal Programs

Alien Category	SSI	Food Stamps	Medicaid	TANF (was AFDC) and Title XX Social Services
Immigrants^a				
a) Here before 8/22/96 (P.L. 104-193 enactment)	Yes, if on rolls 8/22/96 or disabled subsequently	No	Yes, for SSI-derivative benefits or emergency services. Otherwise, state option.	State option
b) New—1st 5 years after 8/22/96	No	No	Emergency only	No
c) New—after 5 years	No	No	Yes, for emergency services. Otherwise, state option.	State option
Refugees & Asylees^b				
a) 1st 5 years after entry or asylum	Yes	Yes	Yes	Yes
b) after 5 years	Yes, for 2 more years	No	Yes, for 2 more years and emergency services. Otherwise, state option	State option
Nonimmigrants^c and Undocumented Aliens^d	No	No	Emergency only	No

^a “Immigrants.” Also known as permanent residents and green card holders. May live here indefinitely unless they commit a deportable act. Parolees admitted temporarily for at least 1 year under the Attorney General’s immigration parole power may receive same benefits.

^b “Refugees & Asylees.” Status based on individualized persecution abroad. May eventually adjust to permanent residency. Includes Cuban/Haitians and Amerasians.

^c “Nonimmigrants.” Admitted temporarily for a limited purpose. Includes, e.g., students, visitors, temporary workers.

^d Also known as illegal aliens. Includes aliens here in violation of immigration law for whom no legal relief or recognition has been extended.

Certain *qualified aliens* are excepted from the SSI/food stamp bar; the state option on Medicaid, TANF, and SSBG; and the 5-year bar on new arrivals. These groups include:

- All aliens upon naturalization;
- Aliens who have worked, or may be credited with, 40 *qualifying quarters*. A *qualifying quarter* includes a 3-month work period with sufficient income to qualify as a social security quarter and, with respect to periods beginning after 1996, during which the worker did not receive federal means-based assistance. The *qualifying quarter* work test takes into account work performed by the alien, the alien's parent before the alien became age 18, and the alien's spouse (provided the alien remains married to the spouse or the spouse is deceased);
- Refugees for 5 years after admission and asylees 5 years after obtaining asylum for all programs except SSI and Medicaid, for which they remain eligible for 7 years. The 1997 Act made Cuban/Haitian entrants and Amerasians eligible for the same benefits as refugees, as they had been prior to 1996;
- Veterans, active duty members of the armed forces, and their spouses and unmarried dependent children.

As shown in Table 2, various health, nutrition, education, and humanitarian assistance are excepted from the 5-year bar on new entrants. Pell Grants and other higher education assistance are among the excepted education programs.

Sponsor-to-Alien Deeming

The new welfare and immigration laws significantly expands the use of *sponsor-to-alien deeming* for new arrivals and couple with it new, enforceable responsibilities for sponsors who pledge support through *affidavits of support*. Both deeming and the affidavits of support upon which deeming is based are intended to implement the provision of the Immigration and Nationality Act (INA) that excludes aliens who appear "likely at any time to become a public charge."

New deeming rules. Sponsor-to-alien deeming is intended to make it more difficult for sponsored aliens to meet the financial test for means-tested benefits by taking the income and resources of the sponsor (and the sponsor's spouse) into account whenever a sponsored alien applies for covered assistance. The new welfare law expands sponsor-to-alien deeming for new entrants by covering programs for a longer period and, in combination with the new immigration law, by covering more new immigrants. Deeming now applies until the sponsored alien becomes a citizen or, if earlier, meets the 40 qualifying quarter work test, discussed above. Previously, deeming applied for 3 years under AFDC and food stamps and for 5 years under SSI. The new deeming rules apply to aliens who enter after December 19, 1997, the effective date of the new affidavit of support.³

For purposes of sponsor-to-alien deeming, *sponsorship* refers to the individual who signs an affidavit of support for a prospective immigrant to assure that the new immigrant will not become a public charge. Under previous practice, the affidavit of support was one option for meeting the public charge requirement. The new immigration act will

³The regulations accompanying it are published as an interim rule, effective December 19 with a comment period through February 17 (*Fed. Reg.*, October 20, 1997, pp. 54346-54356).

increase the number of new immigrants with affidavits of support because it requires them, regardless of income and means, for almost all family-based immigrants and for employment-based immigrants who are coming to work for relatives.

Sponsor-to-alien deeming applies to new sponsored entrants for “federal means-tested benefits.” This term is not statutorily defined, and federal agencies are designating which of their programs they have determined to be means-tested. Both HHS and SSA published notices in the *Federal Register* on August 26, 1997 interpreting the term to apply only to benefits provided by federal means-tested *mandatory* spending programs. They argue that means-tested programs under which the spending is *discretionary* are not included. Three programs—Medicaid, TANF, and SSI—have been designated as means-tested. This interpretation was and remains controversial. (See *Immigration: the New Affidavit of Support—Questions, Answers, and Issues*, CRS Report 97-1054.)

States are authorized but not required to adopt sponsor-to-alien deeming under state-funded programs. States are also allowed to make their own determinations of means-tested benefits, with exceptions prescribed by the welfare law. A state may sue sponsors for reimbursement of means-tested benefits received by sponsored immigrants regardless of whether the state has opted to deem sponsors’ income available to the sponsored immigrants. However, various health, nutrition, education, and humanitarian assistance are exempted from federal and state deeming and reimbursement requirements. As shown in Table 2, the federal programs exempted from deeming are the same as those exempted from the 5-year bar on new immigrants’ participation in means-tested programs.

Deeming pertains to whether a sponsored alien meets the means test for a covered program, and application of deeming is unnecessary if an individual is categorically disqualified from benefits on alienage grounds. For example, deeming does not come into play for SSI or food stamps or, for the first 5 years after entry, for federal programs covered by the 5-year bar on new entrants. At the same time, deeming may be applied by a state for state programs during a new entrant’s first 5 years here if the state does not categorically bar noncitizens from those programs because of their alienage.

Affidavits of support and sponsorship obligations. In implementing the public charge exclusion under the INA, administrative authorities had required that prospective immigrants without independent means or a sufficient job offer have an affidavit of support filed for them by a U.S. resident. For the first time, the welfare and immigration laws set statutory standards for affidavits of support and the pledges contained in them. The new standards, which are made part of the INA, cover requirements for sponsors, mandatory affidavits for family immigrants, and sponsorship liability, as follows:

- The sponsor signing the affidavit of support must be the person petitioning for the immigrant’s admission.
- Sponsors must demonstrate the ability to maintain an annual income of at least 125% of the federal poverty line (100% for sponsors who are on active duty in U.S. Armed Forces); **or** share liability with one or more joint sponsors, each of whom must independently meet the income requirement.
- All family-based immigrants and employment-based immigrants coming to work for relatives must have affidavits of support filed for them.
- Sponsors who fail to support sponsored aliens are legally liable to the sponsored aliens and to any government agency that provides sponsored aliens needs-based

assistance. As modified by the new immigration law, a sponsor's liability ends when the sponsored alien is no longer subject to deeming, either through naturalization or meeting the 40 hour qualifying quarter work test.

Table 2. Alien Eligibility Provisions for Federal Benefits Under the Welfare and Immigration Laws

Provisions	“Qualified aliens” regardless of entry date	“Qualified aliens” entering after 8/22/96	“Non-qualified aliens”
PROGRAM INELIGIBILITY	Food Stamps; SSI, unless on rolls 8/22/96 or here then and later disabled. At state option:* Temporary Assistance for Needy Families, Social Services Block Grant, and Medicaid (other than emergency services and SSI-related)	<i>For 5 years after entry</i> , designated federal means-tested public benefits (with exceptions noted below). <i>Thereafter</i> , the restrictions in the left column apply.	Most federal public benefits (with exceptions noted below).
PROGRAMS EXCEPTED FROM INELIGIBILITY	“Qualified aliens” here before 8/22/96 are not barred by alienage status from programs not listed above.	Emergency medical services, disaster relief, public health assistance, community level services, school lunch, child nutrition, foster care and adoption assistance, Head Start, certain job training, higher education elem./sec., and Public Health Service Act education assistance.	Emergency medical services, disaster relief, public health assistance, community services, housing assistance received at enactment, Social Security and Medicare benefits for lawful aliens, and school lunch and breakfast. Other child nutrition and food distribution programs at state option. (Does not change law regarding public education.)
INDIVIDUALS EXCEPTED FROM INELIGIBILITY	Refugees & asylees—7 yrs. for SSI, Medicaid, 5 yrs for other programs; immigrants with 40 Social Security work quarters (including quarters worked by a spouse/parent);** and alien veterans, certain active duty personnel, and families.	Refugees and asylees; immigrants with 40 Social Security work quarters (including quarters worked by spouse/parent);** and alien veterans, certain active duty personnel, and families.	Nonimmigrants only for contracts or licenses related to their authorized employment, and for benefits under reciprocal treaty agreements.
SPONSOR-TO-ALIEN DEEMING REQUIRED?	New deeming rules applicable to qualified aliens entering after 8/22/96 and with affidavits complying with new INA requirements — see next column.	<i>After 5-year bar</i> , for designated federal means-tested programs until alien has 40 Social Security quarters (including quarters worked by a spouse/parent);** with exceptions similar to 5-year bar.	Not applicable.
<p>*State option applies 5 years after entry for qualified aliens entering after 8/22/96. **For quarters worked after 1996, no quarter during which the alien received public assistance may be counted toward the 40-quarter exception.</p>			