

## FREQUENTLY ASKED QUESTIONS

# Do Aspiring Citizens Have Access to Affordable Health Care & Benefits Under S. 744?

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**T**his FAQ addresses commonly asked questions about who would be eligible for affordable health care and federal public benefits if recently introduced immigration reform legislation becomes law. The Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (S. 744), which on June 27, 2013, passed the Senate on a vote of 68 to 32, would create new immigration categories or statuses, including “registered provisional immigrant” (RPI), a new farm worker (“blue card”) status, and a new “nonimmigrant” V-visa status for people whose family members have filed immigrant visa petitions on their behalf. What affordable health care coverage or federal public benefits would people granted one of these new statuses be eligible for? Or how long would they have to wait to be eligible for such care or benefits?<sup>1</sup>

**Q 1.** Would people who get RPI status under S. 744 be immediately eligible for Medicaid, SNAP (food stamps), or other federal public benefits?

No. As passed, S. 744 excludes any person with RPI status, during the period when the person has provisional status, from eligibility for “federal means-tested public benefit” programs. These programs include nonemergency Medicaid, the Children’s Health Insurance Program (CHIP), the Supplemental Nutrition Assistance Program (SNAP, or food stamps), Temporary Assistance for Needy Families (TANF, or cash assistance), and Supplemental Security Income (SSI). People granted RPI status would have to wait, at a minimum, 13 to 15 years to become eligible for federal means-tested public benefit programs.

Under the bill, most RPIs will have to wait 10 years before they will be eligible to adjust to lawful permanent resident (LPR or “green card”) status. After 3 years in LPR status, they will be eligible to apply for U.S. citizenship. During the time they are in RPI status (for most, this will be 10 years) they will be ineligible for federal public benefits. After an RPI obtains LPR status, he or she won’t be eligible for any federal means-tested benefit program for an additional 5 years if he or she remains an LPR, according to current eligibility rules regarding

<sup>1</sup> Information about immigrants’ *current* eligibility for health care and federal public benefits is available in our table titled “A Quick Guide to Immigrant Eligibility for ACA and Key Federal Means-tested Programs” (Jan. 29, 2013), [www.nilc.org/document.html?id=844](http://www.nilc.org/document.html?id=844).

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federal benefits for noncitizens.<sup>2</sup> If a person who originally was granted RPI status naturalizes in 13 years (after 10 years as an RPI + 3 years as an LPR), he or she would become eligible for federal public benefits (if otherwise eligible under other eligibility criteria),<sup>3</sup> without any additional waiting period, just like any other U.S. citizen.

As a result, low-income people who are granted RPI status and meet all the other eligibility requirements for these programs will have to wait, at a minimum, 13 to 15 years before being able to enroll in any of these critical anti-poverty programs — programs that their tax dollars will support during that period.<sup>4</sup>

## Q 2. Will DREAMers be immediately eligible for federal public benefits?

No. The Senate bill excludes any person with RPI status, during the period when they have provisional status, from eligibility for “federal means-tested public benefit” programs. Under S. 744’s provisions covering “DREAMers” (unauthorized immigrants who were brought to the U.S. as children), people who qualify under the DREAM road to citizenship will first have to apply for RPI status and will be eligible to adjust to LPR (or “green card”) status after 5 years of being in RPI status. Therefore, during their 5 years in RPI status, DREAMers will be ineligible for federal means-tested benefit programs.

Under this bill, once a DREAMer is granted LPR status, he or she will be eligible to apply immediately for citizenship. Because DREAMers who adjust to LPR status will be subject to the 5-year bar (see footnote 2), they will not be eligible for any federal means-tested public benefit program for an additional 5 years, unless they are granted citizenship before the end of their 5-year waiting period. As a result, if a DREAMer is able to naturalize immediately after adjusting to LPR status, he or she would have to wait a minimum of 5 years to become eligible for federal means-tested public benefit programs. However, if a DREAMer remains in LPR status (after 5 years in RPI status), he or she is subject to the 5-year bar and will not be eligible for federal public benefit programs for at least 10 years after being granted RPI status.

Under existing eligibility rules for SNAP, when a child adjusts to LPR status, if he or she is otherwise eligible, the child may enroll in SNAP without any waiting period. In addition, some states may choose to use state funds to provide certain benefits to RPIs (while they are in provisional status), without any waiting periods.

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<sup>2</sup> This 5-year waiting period, which applies to most lawfully present immigrants, was created by the 1996 welfare reform law and is commonly referred to as the “5-year bar.”

<sup>3</sup> I.e., if the person were eligible under a program’s non-immigration status-related criteria, such as income, state residency, disability, etc.

<sup>4</sup> In reality, most RPIs are likely to have to wait more than 15 years to gain access to federal public benefits, depending on how much time it will take for the federal government to implement the law, as well as any additional time it will take people to complete the necessary application and renewal processes.

**Q 3. Will RPIs be able to enroll in affordable health care under the Affordable Care Act (ACA or “Obamacare”)?**

No. The Senate bill excludes RPIs, including DREAMers, from benefiting from the parts of the ACA that are most important for low- and middle-income individuals and families: the federal subsidies, in the form of premium tax credits and cost-sharing reductions, that are required to help make private insurance more affordable. The subsidies are a critical part of being able to afford health insurance in the new “marketplaces” that the ACA establishes for currently uninsured people. Without access to the subsidies, many low-income families who do not have access to employer-sponsored coverage will likely remain uninsured after 2014. Once an RPI adjusts to LPR status after 10 years, he or she should be eligible for the ACA’s tax credits without a waiting period. Thus, RPIs will have a minimum 10-year wait before they will be able to buy affordable health insurance under the ACA.

The Senate bill does allow RPIs to buy full-cost health insurance in the new ACA-created health insurance marketplaces. But because the bill denies RPIs access to the ACA’s subsidies, health insurance will remain unaffordable to RPIs, and it is likely that most will remain uninsured for 10 years or more.

**Q 4. Will an RPI be required, under the ACA, to have health insurance after Jan. 1, 2014?**

No. Under the bill, RPIs will be exempt from the ACA’s requirement to have health insurance under the individual mandate. As a result, they will not face a tax penalty for not having health insurance.

**Q 5. Will farm workers with “blue-card” status or people who obtain a V nonimmigrant visa (certain people with an approved family-based petition who are awaiting LPR status) be able to apply for Medicaid, SNAP (food stamps), and other federal public benefits?**

Under S. 744, people with blue cards or V nonimmigrant visas will face the same exclusions from federal means-tested public benefit programs (nonemergency Medicaid, CHIP, SNAP, TANF, and SSI) as RPIs. People with blue cards will have to remain in this provisional status for 5 years before they are eligible to apply for LPR status. Upon obtaining LPR status, they will be ineligible for federal means tested public benefits for another 5 years due to the 5-year bar (see footnote 2). As a result, people with blue cards will not be able to enroll in federal public benefits for at least 10 years after they get lawful status.

The amount of time people with V visas will have to wait before they can enroll in federal public benefit programs will vary. The amount of time a particular person remains in V-visa status before he or she actually adjusts to LPR status will depend on when U.S. Citizenship and Immigration Services (USCIS) processes his or her adjustment application. After people with V visas adjust to LPR status, like other individuals granted LPR status they will be subject to the 5-year bar. Therefore, V visa–holders will have to wait a minimum of 5 years after they get LPR status before they are able to enroll in federal public benefit programs.

Q 6. Will people with blue cards or V visas be eligible for affordable health care under the ACA?

No. The Senate bill excludes people with blue cards or V visas from eligibility for the ACA's subsidies during their provisional status. As a result, they will not be required, under the ACA's individual mandate, to have health insurance. After they obtain LPR status, people who previously had blue cards or V visas should be eligible for the ACA's subsidies without a waiting period and will be required to have health insurance.

People with blue cards or V visas will be able to purchase health insurance at full-cost in the ACA's marketplaces. Without access to the ACA's subsidies, however, people with blue card or V visa status are likely to find health insurance to be unaffordable, so they will likely remain uninsured until they become a lawful permanent resident (LPR).

Q 7. Will other workers, such as high-skilled workers with H-1B visas or workers in the new W-visa categories, be eligible for federal public benefits or affordable health care under the ACA?

Current immigrant eligibility rules for ACA programs and federal public benefits apply to other categories of immigrants and workers affected by the Senate bill.

Workers who obtain lawful immigration status by being sponsored by an employer may be able to get employer-sponsored health insurance, if their employer offers it and it is affordable. If they are not able to get health insurance through their employer, people granted H or W visas under the Senate bill will be considered "lawfully present" under the existing ACA eligibility rules and will be eligible to buy health insurance in the new insurance marketplaces and apply for ACA-related subsidies. They will also be subject, under the ACA's "individual mandate," to have health insurance.

However, people granted H or W visas are not considered "qualified" immigrants under the 1996 welfare law and are therefore ineligible for federal means-tested public benefits while in those statuses. If a person granted an H or W visa is able to adjust to LPR status, he or she will be subject to the 5-year bar (see footnote 2) like other people granted LPR status.<sup>5</sup> As a result, while they are in that status, current and future noncitizen workers will remain permanently ineligible for federal means-tested public benefit programs — nonemergency Medicaid, CHIP, SNAP, TANF, and SSI. If granted LPR status, they remain ineligible for federal public benefits for a *minimum* of 5 years.

Q 8. Will RPIs or people with V visas or blue cards be eligible for *any* health or public benefit programs if S. 744 becomes law?

Yes. People in provisional status will have access to certain basic services and programs. For example, an RPI or a person with a blue card or V visa should be able to get a driver's license in most states and should be eligible for in-state tuition in at least some states or at

<sup>5</sup> Not everyone who has an H or W visa will be able eventually to adjust to LPR status, however.

some colleges. The Senate bill also would make certain lawfully present, battered immigrants and their children newly eligible for financial help for public housing.

People who have RPI, blue card, or V visa status should also remain eligible for programs that currently are available to anyone, regardless of his or her immigration status, if the person is otherwise eligible for the programs. Such programs include school breakfast/lunch, WIC (supplemental nutrition for women, infants and children), emergency Medicaid, community clinics, public health services, and homeless and domestic violence shelters. In order to help ensure safe access to these types of programs, the Senate bill limits immigration enforcement actions at “sensitive locations,” which include hospitals, health clinics, schools, religious buildings, and “organizations assisting children, pregnant women, victims of crime or abuse, or individuals with mental or physical disabilities.”

In addition, RPIs and people with blue cards or V visas will be issued a Social Security number and will be eligible to apply for work authorization. If they are employed and paying payroll taxes, like other workers they may be eligible for certain work-related benefits and services, such as unemployment benefits, workers compensation, or Workforce Investment Act (WIA) job-training services.

Finally, once they have sufficient work history (generally, 10 years (or 40 quarters)), they also may be eligible for Social Security benefits, such as Social Security retirement or disability benefits and Medicare. Unfortunately, the Senate bill prevents people with RPI, blue card, or V-visa status from counting any Social Security contributions earned from 2004 to 2014, if they were earned while the person was working without authorization. As a result, despite having paid Social Security and Medicare payroll taxes during that 10-year period, such individuals’ future eligibility for those benefits will be reduced or delayed.

**Q 9. Will an employer who hires an RPI or a person with a blue card or V visa be required to provide health insurance and other benefits to this employee?**

Under existing law, an employer who offers health insurance or other benefits to its employees may not discriminate based on immigration status and must provide the same benefits to similarly situated employees. Nothing in S.744 changes the obligations required by existing law of employers to their employees.

Therefore, an employer who hires a person granted one of the new immigration statuses created under S. 744 must provide health coverage and other benefits to this employee if the employer is required to do so under the ACA or other obligations for similarly situated employees (e.g., a collective bargaining agreement).

Unfortunately, the exclusion of RPIs and people with blue cards and V visas under S. 744 creates an unintended loophole under the ACA for large employers who hire these people. Specifically, after 2015, any employer with 50 or more full-time employees will be considered a “large employer” under the ACA and will be required either to provide affordable, comprehensive health insurance to their employees or to pay a fee. However, the employer is required to pay this fee only when an employee purchases health insurance in the health insurance marketplace and obtains a premium tax credit under the ACA. Thus, because under S. 744 RPIs and people with blue cards or V visas will be ineligible for the ACA’s premium tax credits, under existing law a large employer could potentially avoid paying its

“shared responsibility” fee under the ACA even if it fails to provide these eligible employees affordable employer-sponsored coverage as required by law. This loophole undermines the goals of the ACA, as well as immigration reform, by unintentionally creating an incentive to hire people in these statuses over others, citizens and noncitizens, who are eligible for the ACA’s subsidies.

Q 10. Are there any other categories of “lawfully present” immigrants excluded from “Obamacare” (ACA-related programs and benefits)?

Yes. In addition to RPIs, blue-card holders and V-visa holders, three additional categories of lawfully present immigrants are excluded from benefiting from most ACA provisions.

In August 2012, people granted deferred action status under the Deferred Action for Childhood Arrivals (DACA) program were [excluded](#) from the ACA subsidies as well as Medicaid and CHIP.<sup>6</sup> It is unclear if they still remain subject to the ACA’s requirement, under its individual mandate, to have health insurance.

The Senate bill also would eliminate eligibility for people granted B visas (tourists for pleasure or business) and F visas (students and their families) to be able to purchase full-cost health insurance through the new insurance marketplaces and for the ACA subsidies. Thus, they would not be subject to the ACA’s individual mandate. While F-visa holders are in the U.S. temporarily, they often reside here for extended periods of time in order to complete their education. Yet during that period, F-visa holders will likely remain uninsured, because they won’t have access to affordable insurance through the ACA.

Under existing law, undocumented immigrants remain ineligible for the ACA subsidies or to purchase even full-cost insurance in the marketplaces, and they will not be required under the ACA’s individual mandate to have health insurance.

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<sup>6</sup> [www.nilc.org/acadacafaq.html](http://www.nilc.org/acadacafaq.html).