

Replacement of Lost Immigration Documents

Before sending an immigrant to the INS to apply for a replacement of a lost immigration document, be sure that he or she has a lawful immigration status. You may need help from an immigration law expert to make this determination.

The Executive Office for Immigration Review, the agency that administers the immigration courts, has a toll-free number that provides case status information to immigrants who have pending deportation, exclusion, or removal cases.

Under the Freedom of Information Act, an immigrant can get a copy of his or her INS file by mailing a request including his or her name, date of birth, and "A" number to the local INS office where the file is located (with the phrase "Attention FOIA/Privacy Unit" written on the envelope below the INS office address). The INS has a form for this purpose, Form I-639. With the immigrant's written permission on the form, you can submit the FOIA request to the INS so that the file documents will be sent to you at your address.

If you are sure that an immigrant has lawful status, he or she should apply immediately for a replacement document, since the INS is usually slow to issue new documents.

To apply for a replacement resident alien card, or "green card," lawful permanent residents (LPRs) must complete and file Form I-90. Local INS districts may also place a temporary stamp in an immigrant's passport indicating that the immigrant is a permanent resident; local INS offices may also issue other temporary evidence of permanent residence status or "I-551 status."

To apply for a replacement Employment Authorization Document, Form I-766 (also known as an "EAD"), the immigrant must complete and file an I-765 application form.

Replacements for the I-94 form (Arrival/Departure Record), which is the document issued to almost all noncitizens upon their entry into the U.S., may be obtained at a local INS office.

For some benefits programs, a receipt showing that the immigrant applied for a replacement document evidencing LPR status is sufficient proof to receive benefits. Also, some programs are required to accept the "best available evidence" or help the applicant obtain needed documents (for example, by paying relevant fees).

Part 2

Benefits Eligibility

Cash Programs
 Programs for Children
 Health Programs
 Food Programs
 Employment-Related Programs
 Housing and Shelter
 Education
 Legal Services and Disaster Assistance

Cash Programs

Temporary Assistance for Needy Families (TANF)

TANF provides cash and/or services to low-income families with children

- TANF is a federal "block grant" that states can use to provide cash and/or services to low-income families with dependent children.
- States have broad discretion to develop and implement their own programs, which may vary by name and practice.
- The amount of cash assistance and/or scope of services that eligible families receive are set by each state.
- If cash assistance is provided, the money is usually paid in a monthly check sent to the head of household.
- Some of the TANF services that states may provide include job training, child care, mental health services, drug- and alcohol-related counseling, domestic violence counseling, and transportation assistance.
- Most states limit the period of time during which families may receive cash assistance, and time limits vary among states: 28 states impose a 60-month time limit; 20 states impose time limits shorter than 60 months; and two states provide TANF without a time limit. Most states exempt certain families, such as domestic violence survivors or persons with disabilities, from their time limits.

Families qualify in which...

- children are present. In most states, children must be under age 18; in some states, they may be under 19; in other states, 18-year-olds are considered eligible children if they are full-time students.

NOTE: In most states, families with two parents can qualify on the same basis as single parent families; in some states, two-parent families must meet additional eligibility requirements.

A family's financial eligibility for TANF depends on...

- financial guidelines set by each state.

NOTE: Eligibility may depend on whether an immigrant has a sponsor, because the sponsor's income may be "deemed" to be the immigrant's.

To be eligible, participants receiving cash assistance also may have to...

- cooperate with the establishment and collection of child support.
- participate in work, education, or training activities unless there is "good cause" not to, or some other exception applies.

NOTE: The U.S. Department of Health and Human Services confirmed that attendance in English as a Second Language (ESL) classes may fit within the definition of countable work activities listed in the TANF law. In most states, ESL is an allowable work activity for persons receiving TANF cash assistance; however, access to ESL is often limited.

Special considerations for immigrants and their families

- Receipt of TANF cash assistance may have "public charge" consequences.
- In nearly all states, eligible children may receive TANF even if their parents are ineligible based on their immigration status.

NOTE: In some states, state-funded TANF services are available to immigrants who are not eligible for federally funded TANF.

ALSO NOTE: TANF does not require reporting to the Immigration and Naturalization Service except in the rare circumstances outlined on page 184.

To apply, a person should...

- gather documents proving the identities and ages of household members; residence; and income and other available resources.
- submit an application in person at the local welfare or social services office.
- be prepared to be interviewed by an eligibility worker.

The law governing TANF appears at:

Social Security Act, title IV-A, 42 U.S.C. §§ 601, *et seq.*, 45 C.F.R. §§ 260, *et seq.*; immigrant eligibility at 8 U.S.C. §§ 1601, *et seq.*, 45 C.F.R. § 260.30. Each state issues its own rules.

Temporary Assistance for Needy Families (TANF)	
ELIGIBLE IMMIGRANTS	INELIGIBLE IMMIGRANTS
<p>All states currently provide TANF to:</p> <p>"Qualified" immigrants who physically entered the U.S. before Aug. 22, 1996.</p> <p>"Qualified" immigrants who physically entered the U.S. on or after Aug. 22, 1996, and have been in "qualified" immigrant status for at least five years.¹</p> <p>"Refugee" categories: individuals granted status as a refugee, asylee, person granted withholding of removal/deportation, Amerasian immigrant, or Cuban/Haitian entrant. Eligibility continues even if the "refugee" becomes a lawful permanent resident.²</p> <p>Victims of trafficking.</p> <p>Veterans and active duty military personnel, their spouses, unremarried surviving spouses, and children, who are "qualified" immigrants.</p> <p>Some states also provide state-funded TANF services to additional categories of immigrants, such as "qualified" immigrants who entered the U.S. on or after Aug. 22, 1996, during their first five years in "qualified" status, and/or "not qualified" immigrants who are permanently residing in the U.S. under color of law (PRUCOL).</p>	<p>Unless a state has decided to cover them under state-funded TANF services, the following immigrants are ineligible for TANF:</p> <p>"Qualified" immigrants not listed as eligible.</p> <p>"Not qualified" immigrants.</p>

1 *Exception:* Idaho, Indiana, Mississippi, South Carolina, and Texas provide TANF only to lawful permanent residents (LPRs) credited with 40 quarters of work and the veteran and "refugee" categories listed in the table above. Idaho also provides TANF to "qualified" abused immigrants who have lived in the U.S. for five years. However, some or all of these states may decide to take advantage of federal funding for all persons who have been in "qualified" immigrant status for five years.

2 *Exception:* In Idaho, Mississippi, South Carolina, Texas, and Wyoming, "refugees" who entered the U.S. on or after Aug. 22, 1996, are eligible only during the five years after obtaining this status. Mississippi does not address eligibility for Cuban/Haitian entrants or Amerasian immigrants. However, some or all of these states may decide to take advantage of federal funding for all persons who fall within the "refugee" categories, regardless of when they entered the United States.

TABLE 8

State-Funded TANF Replacement Programs

This table lists the state-funded programs that provide cash assistance to immigrants who are not eligible for coverage under the federally funded Temporary Assistance for Needy Families (TANF) program. In several states, General Assistance or similar programs may fill in some of the gaps for immigrants who are ineligible for federally funded TANF services. The benefit levels, however, may be lower, and other restrictions and time limits may apply. For details on the General Assistance programs available in each state, see Wendy Zimmermann and Karen Tumlin, "Patchwork Policies: State Assistance for Immigrants Under Welfare Reform" (Urban Institute, May 1999).

STATE	NAME OF PROGRAM — ELIGIBLE IMMIGRANTS
California	California Work Opportunity and Responsibility to Kids Program (CalWORKs) "Qualified" immigrants and PRUCOLs. Eligibility for this program may be affected by deeming.
Connecticut	Reach for Jobs First/Temporary Family Assistance "Qualified" immigrants, PRUCOLs, and lawfully residing immigrants (post-Aug. 22, 1996, entrants must meet 6-month residency requirement). Assistance authorized until July 1, 2002. Victims of domestic violence and persons with mental retardation are not subject to residency requirements, and assistance for these groups is authorized beyond July 1, 2002. Eligibility for this program may be affected by deeming.
Georgia	Temporary Assistance for Needy Families "Qualified" immigrants. Lawfully residing abused immigrants.
Hawaii	Temporary Assistance to Other Needy Families (TAONF) "Qualified" immigrants.
Illinois	Temporary Assistance for Needy Families (TANF) "Qualified" abused immigrants, regardless of their date of entry to the United States.
Maine	Temporary Assistance for Needy Families and Parents as Scholars "Qualified" immigrants and PRUCOLs. Eligibility for this program may be affected by deeming.
Maryland	Family Investment Program (FIP) (cash assistance component of FIP is called Temporary Cash Assistance (TCA)) "Qualified" immigrants. Eligibility for this program may be affected by deeming.
Massachusetts	Transitional Aid to Families with Dependent Children (TAFDC) "Qualified" immigrants and PRUCOLs. Must meet a 6-month residency requirement and pursue citizenship if eligible.
Minnesota	Minnesota Family Investment Program Lawfully residing immigrants. Must apply for or enroll in citizenship, literacy, or ESL class if lawful permanent resident (LPR) age 18 through 69, and have been in the country for 4 or more years. Eligibility for this program may be affected by deeming.
Missouri	Temporary Assistance "Qualified" immigrants and PRUCOLs.
Nebraska	Aid to Dependent Children (ADC) "Qualified" immigrants. Eligibility for this program may be affected by deeming.
New Jersey	Work First New Jersey "Qualified" abused immigrants. PRUCOLs who entered the U.S. before Aug. 22, 1996.
New Mexico	New Mexico Works "Qualified" immigrants are eligible for General Assistance, which provides benefits comparable to TANF. Eligibility for this program may be affected by deeming.

TABLE 8 (CONTINUED)

State-Funded TANF Replacement Programs

STATE	NAME OF PROGRAM — ELIGIBLE IMMIGRANTS
New York	Family Assistance Program (FAP). Child Assistance Program (CAP) in some counties "Qualified" immigrants who entered the U.S. on or after Aug. 22, 1996, receive assistance through the "Safety Net" program during the 5-year bar.
Oregon	Aid to Dependent Children (ADC) "Qualified" immigrants and PRUCOLs. Victims of domestic violence are eligible, regardless of immigration status. Eligibility for this program may be affected by deeming.
Pennsylvania	Temporary Assistance for Needy Families (TANF) "Qualified" immigrants and PRUCOLs. Eligibility for this program may be affected by deeming.
Rhode Island	Family Independence Program (FIP) "Qualified" immigrants, regardless of date of entry. Lawfully residing immigrants who were residents of Rhode Island prior to July 1, 1997. Eligibility for this program may be affected by deeming.
Tennessee	Families First "Qualified" immigrants and PRUCOLs. Eligibility for this program may be affected by deeming.
Utah	Family Employment Program "Qualified" immigrants. Eligibility for this program may be affected by deeming.
Vermont	Aid to Needy Families with Children (ANFC) "Qualified" immigrants and PRUCOLs. Eligibility for this program may be affected by deeming.
Washington	WorkFirst Lawfully present immigrants. Eligibility for this program may be affected by deeming.
Wisconsin	Wisconsin Works (W-2) "Qualified" immigrants. Citizen and "qualified" immigrant children whose parents are "not qualified" are ineligible for assistance. Eligibility for this program may be affected by deeming.
Wyoming	Personal Opportunities with Employment Responsibilities (POWER) "Qualified" abused immigrants, LPRs, and persons paroled into the U.S., regardless of date of entry.

Key Terms Used in Table

"Qualified" immigrants — are: (1) lawful permanent residents (LPRs); (2) refugees, asylees, persons granted withholding of deportation/removal, conditional entry (in effect prior to Apr. 1, 1980), or paroled into the U.S. for at least one year; (3) Cuban/Haitian entrants; and (4) battered spouses and children with a pending or approved (a) self-petition for an immigrant visa, or (b) immigrant visa filed for a spouse or child by a U.S. citizen or LPR, or (c) application for cancellation of removal/suspension of deportation, whose need for benefits has a substantial connection to the battery or cruelty. Parent/child of such battered child/spouse are also "qualified."

"PRUCOL" or Permanently Residing in the U.S. under Color of Law — is not an immigration status, but a benefit eligibility category. The term, which generally means that the INS is aware of a person's presence, but has no plans to deport/remove him or her, has been interpreted differently depending on the benefit program and jurisdiction.

Deeming — in some cases, a sponsor's income and/or resources may be added to the immigrant's in determining eligibility. Exemptions from deeming may apply.

NOTE: The information in this table is subject to change. Please check with your state or local social services agency or legal assistance office regarding the most current rules.

Refugee Resettlement Programs

Refugee cash and medical assistance and social services

Refugee Resettlement Programs...

- provide assistance to “refugees” to attain economic self-sufficiency and social adjustment as soon as possible following arrival in the U.S.
- are funded by the U.S. Department of Health and Human Services through its Office of Refugee Resettlement (ORR).
- are administered by states or, in some cases, by local nonprofit agencies.
- vary by state, but usually provide cash and medical assistance, job training and placement services, English language training, and other supportive services.

NOTE: As used here, the term “refugee” includes all eligible categories of immigrants listed on the next page.

Refugee Cash Assistance, Refugee Medical Assistance, and Refugee Social Services provide...

- **Refugee Cash Assistance (RCA)** – cash payments to low-income refugees who are ineligible for Temporary Assistance for Needy Families, and/or Supplemental Security Income or similar programs for seniors and persons with disabilities. Eligibility is limited to the first eight months a refugee is in the U.S. For asylees, the eight-month period begins on the date that they are granted asylum.

NOTE: Regulations issued in March 2000 granted states flexibility in the administration of their RCA programs. States may choose among various RCA delivery models ranging from those providing exclusive state control over the program to models based on state and nonprofit agency partnerships.

- **Refugee Medical Assistance (RMA)** – medical assistance to low-income refugees ineligible for Medicaid and/or State Children’s Health Insurance Programs. Refugees eligible for RCA are also eligible for RMA. Refugees may receive RMA without receiving RCA or Refugee Social Services. Eligibility is limited to the first eight months a refugee is in the U.S. For asylees, the eight-month period begins on the date that they are granted asylum.

- **Refugee Social Services (RSS)** – a broad range of services including employment services, day care, transportation, English language training, assistance to naturalize, adjust status to lawful permanent residence, and obtain employment authorization documents, and similar supportive services. RSS may be provided to refugees who have been in the U.S. for five years or less. For asylees, the five-year eligibility period begins on the date that they are granted asylum. Certain services, such as naturalization, interpretation, and translation may be available beyond this period. Refugees may receive RSS without receiving RCA or RMA.

A person’s financial eligibility for RCA, RMA, and RSS depends on...

- income guidelines set by each state.

NOTE: States have flexibility to establish an RMA financial eligibility standard at up to 200 percent of the federal poverty level

Other issues that affect eligibility...

- Unless an exemption applies, refugees must participate in work or training activities to be eligible for RCA, RMA, and RSS.
- Full-time students in institutions of higher education are ineligible for RCA. They may be eligible for RMA if enrollment is part of an individual employability plan or part of a plan for an unaccompanied minor.

Other programs for refugees include...

- **Unaccompanied Minors Program** – In certain states, unaccompanied refugee children receive regular foster care services, and culturally and linguistically appropriate supplemental services. Emphasis is placed on reuniting children with relatives whenever possible. Individuals ineligible for the Unaccompanied Minors Program due to their immigration status may still receive regular foster care.
- **Voluntary Agency Matching Grant Program** – Using private funds that are matched by the government, voluntary resettlement agencies work

Refugee Resettlement Programs	
ELIGIBLE IMMIGRANTS	INELIGIBLE IMMIGRANTS
<p>“Refugee” categories: individuals granted status as a refugee, asylee, Amerasian immigrant, Cuban/Haitian entrant, or immigrants paroled as refugees or asylees under INA section 212(d)(5).</p> <p>Victims of trafficking.</p>	<p>Immigrants who are not listed as eligible.</p>

with refugees during their first four months in the U.S. to help them become self-sufficient. Emphasis is on job placement and intensive social services.

Special considerations for refugees

- Refugees and most other immigrants eligible for RCA are not subject to public charge inquiries, and therefore the use of RCA will not cause public charge problems for them. But for immigrants subject to public charge inquiries, receipt of RCA may have public charge consequences.

To apply, a person should...

- gather documents that prove household members’ identities, ages, residence, income, expenses, and available resources.
- submit an application at his or her local welfare or resettlement agency as applicable.

NOTE: Additional information about refugee resettlement programs and local service providers may be obtained from ORR’s website at: www.acf.dhhs.gov/programs/orr.

The law governing refugee resettlement programs appears at:

8 U.S.C. §§ 1521 *et seq.*, 45 C.F.R. §§ 400.1 *et seq.*; immigrant eligibility at 45 C.F.R. § 400.43, as amended by “Refugee Resettlement Program: Requirements for Refugee Cash Assistance; and Refugee Medical Assistance; Final Rule,” 65 Fed. Reg. 15,409–50 (March 22, 2000); *see also* ORR State Letter #00-12 (June 15, 2000) (announcing eligibility for asylees with date of grant of asylum treated as date of entry).

Supplemental Security Income (SSI)

Cash assistance for seniors and persons who are blind or have disabilities

SSI provides...

- a monthly check; some states supplement the basic federal SSI grant.
- automatic eligibility for Medicaid in most states.

NOTE: SSI's needs-based benefits are not the same as Social Security insurance or retirement benefits, which are based on past earnings credited to a Social Security account.

Individuals qualify who are low-income and...

- 65 or older, *or*
- blind (their better eye's corrected vision is no better than 20/200), *or*
- disabled (adults qualify if they have a physical or mental impairment that has lasted or is expected to last at least 12 months or to result in death, and the impairment prevents performance of "substantial gainful activity"; children qualify if their impairment results in "marked and severe functional limitations").

A person's financial eligibility for SSI depends on...

- guidelines set by the federal government and by each state, for those states with supplemental programs.
- the income and resources of the applicant, spouse, and/or parents (if applicant is under 18).
- whether the applicant receives in-kind contributions of food, clothing, or shelter.

NOTE: Eligibility may also depend on whether an immigrant has a sponsor, because a sponsor's income may be "deemed" to be the immigrant's.

Special considerations for immigrants and their families

- Receipt of SSI may have "public charge" consequences.
- Parents ineligible for SSI based on their immigration status may receive SSI on behalf of an eligible child.
- An immigrant parent who has no Social Security number may still apply to become a disabled child's "representative payee."
- For immigrants 65 or older, their age, impairments associated with advanced age, illiteracy, or inability to communicate in English are weighed in the disability determination; for immigrants over 72, any medically determinable impairments are considered "severe."

NOTE: In some states, cash assistance is available to immigrants who are not eligible for SSI.

ALSO NOTE: SSI law does not require reporting to the Immigration and Naturalization Service except in the rare circumstances outlined on page 184.

To apply, a person should...

- gather documents to prove identity, income, resources, and age, blindness, or disability.
- submit an application by telephone or in person at the local Social Security office.
- phone (800) 772-1213 to receive a "protected filing date." If approved, the applicant will receive a retroactive payment for the period between the "protected filing date" and the date when the application was approved.

The law governing SSI appears at:

Social Security Act, title XVI, 42 U.S.C. §§ 1381, *et seq.*; immigrant eligibility at 8 U.S.C. § 1612, Social Security Administration, Program Operations Manual System (POMS) SI.00502 (SSI Eligibility for Noncitizens), Social Security Ruling, SSR 99-3p, "Title XVI: Evaluation of Disability and Blindness in Initial Claims for Individuals Age 65 or Older," 64 Fed. Reg. 33,337 (June 22, 1999); *see also* POMS GN 00502.107 and GN 00502.117 (representative payee).

Supplemental Security Income (SSI)	
ELIGIBLE IMMIGRANTS	INELIGIBLE IMMIGRANTS
<p>Persons receiving SSI on Aug. 22, 1996, or whose SSI applications were pending on that date.</p> <p>Persons who are blind or have disabilities, who were lawfully residing in the U.S. on Aug. 22, 1996, and are now "qualified" immigrants.</p> <p>NOTE: Haitians who adjusted status under the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) who were not "qualified" immigrants on HRIFA's enactment date of Oct. 21, 1998, cannot be considered "qualified" immigrants for SSI and Medicaid purposes prior to Oct. 2, 2003. However, nearly all immigrants eligible to adjust under HRIFA were "qualified" immigrants at the time HRIFA was enacted.</p> <p>Lawful permanent residents (LPRs) credited with 40 quarters of work. LPRs who physically entered the U.S. on or after Aug. 22, 1996, must have been in "qualified" immigrant status for at least five years.</p> <p>"Refugee" categories: individuals granted status as a refugee, asylee, person granted withholding of removal/deportation, Amerasian immigrant, or Cuban/Haitian entrant, during the seven years after obtaining this status. Eligibility continues during this period even if the "refugee" becomes a lawful permanent resident (LPR). Even after the seven- or five-year period expires, these immigrants may be eligible under another category listed on this page.</p> <p>Victims of trafficking.</p> <p>Veterans and active duty military personnel, their spouses, unremarried surviving spouses, and children, who are "qualified" immigrants.</p> <p>A member of a federally recognized Indian tribe, or an American Indian born in Canada.</p> <p>In some states, state or local cash assistance programs may be available to additional categories of immigrants.</p>	<p>"Qualified" immigrants not listed as eligible.</p> <p>"Not qualified" immigrants, other than Native Americans, who were not receiving SSI on Aug. 22, 1996.</p>

TABLE 9

State-Funded SSI Replacement Programs

This table lists the state-funded programs that provide cash assistance to immigrants who are not eligible for coverage under the federal Supplemental Security Income (SSI) program. In many other states, General Assistance and similar programs may fill in some of the gaps for immigrants who are ineligible for federally funded Supplemental Security Income (SSI). The benefit levels, however, are generally much lower than those provided by SSI, and other restrictions and time limits may apply. For details on the General Assistance programs available in each state, see Wendy Zimmermann and Karen Tumlin, "Patchwork Policies: State Assistance for Immigrants Under Welfare Reform" (Urban Institute, May 1999).

STATE	ELIGIBLE IMMIGRANTS
California	"Qualified" immigrants and PRUCOLs who are ineligible for federal SSI. Benefit levels for individuals are \$10 less than the federal SSI and state SSI supplement. Eligibility for this program may be affected by deeming.
Hawaii	"Qualified" immigrant seniors and persons with disabilities can receive Aid to the Aged, Blind and Disabled (AABD), which provides \$418 per month.
Illinois	"Qualified" immigrants who were lawfully residing in the U.S. before Aug. 22, 1996, were not receiving SSI on that date, are 65 or older, and are determined ineligible for SSI because they do not have a disability. Eligibility for this program may be affected by deeming.
Maine	"Qualified" immigrants and PRUCOLs who are ineligible for federal SSI.
Nebraska	"Qualified" immigrants, regardless of date of entry into the U.S. Eligibility for this program may be affected by deeming.
New Hampshire	"Qualified" immigrants who entered the U.S. before Aug. 22, 1996, and post-Aug. 22, 1996, entrants who have been in "qualified" immigrant status for 5 years.

Key Terms Used in Table

"Qualified" immigrants – are: (1) lawful permanent residents (LPRs); (2) refugees, asylees, persons granted withholding of deportation/removal, conditional entry (in effect prior to Apr. 1, 1980), or paroled into the U.S. for at least one year; (3) Cuban/Haitian entrants; and (4) battered spouses and children with a pending or approved (a) self-petition for an immigrant visa, or (b) immigrant visa filed for a spouse or child by a U.S. citizen or LPR, or (c) application for cancellation of removal/suspension of deportation, whose need for benefits has a substantial connection to the battery or cruelty. Parent/child of such battered child/spouse are also "qualified."

"PRUCOL" or Permanently Residing in the U.S. under Color of Law – is not an immigration status, but a benefit eligibility category. The term, which generally means that the INS is aware of a person's presence, but has no plans to deport/remove him or her, has been interpreted differently depending on the benefit program and jurisdiction.

Deeming – in some cases, a sponsor's income and/or resources may be added to the immigrant's in determining eligibility. Exemptions from deeming may apply.

NOTE: The information in this table is subject to change. Please check with your state or local social services agency or legal assistance office regarding the most current rules.

Programs for Children

Adoption Assistance

Payments and services for children who cannot be returned safely to their families

Adoption assistance provides...

- payments to adoptive families for one-time adoption expenses.
- regular payments to cover the needs of the child.
- eligibility for Medicaid.
- social services for or on behalf of the child, such as counseling.

Federally funded adoption assistance is available to prospective parents, on behalf of a child who meets all the following requirements:

- the child is up to age 18 or, at state option, under age 21 for a child with disabilities, *and*
- the child cannot or should not be returned to the natural parents, as determined by the relevant state agency, *and*
- the child has been determined to have special needs, e.g., ethnic background, age, and/or medical condition, due to which he or she cannot be placed with adoptive parents without the provision of adoption assistance, *and*
- the state has attempted unsuccessfully to place the child in an adoptive home without state adoption assistance (unless it is determined that such an attempt would be contrary to the best interest of the child), *and*
- the child is
 - AFDC-linked, i.e., is a former recipient or would have been eligible to receive benefits under the old Aid to Families with Dependent Children (AFDC) program in the month the dependency court petition was filed, under AFDC rules in effect July 16, 1996, *or*
 - eligible for Supplemental Security Income disability benefits, *or*
 - an infant born to and living with a teen parent in foster care who is AFDC-linked.

NOTE: Adoption assistance payments are available regardless of the prospective parents' income.

Prospective adoptive parents may receive federally funded adoption assistance on behalf of an immigrant child depending on...

- whether the adoption agreement was signed before August 22, 1996.
- the child's immigration status and his or her date of entry into the U.S.
- the adoptive parents' immigration status.

Special considerations for immigrants

- Receipt of adoption assistance does not have "public charge" consequences.
- "Qualified" immigrant children eligible for adoption assistance can receive Medicaid, regardless of when they entered the U.S.
- An immigrant child who has been abused or subjected to extreme cruelty in the U.S. may be eligible for "qualified" immigrant status for purposes of receipt of public assistance. *See* Immigration Categories for Public Benefits Purposes (abused immigrants), page 36.
- In order to receive federal adoption assistance, "qualified" immigrant children who entered the U.S. on or after August 22, 1996, must be placed with a citizen or "qualified" immigrant parent.
- U.S. citizen or lawful permanent resident (LPR) adoptive parents of an immigrant child who is considered "adopted" under relevant state law may, in some cases, petition for the child's lawful permanent residence (if the adoption occurred before the child reached the age of 16).

Adoption Assistance	
ELIGIBLE IMMIGRANTS	INELIGIBLE IMMIGRANTS
<p>Children covered under adoption agreements signed before Aug. 22, 1996, regardless of the child's or adoptive parent's immigration status.</p> <p>"Qualified" immigrant children who:</p> <ul style="list-style-type: none"> • physically entered the U.S. before Aug. 22, 1996, regardless of the adoptive parent's immigration status, <i>or</i> • physically entered the U.S. on or after Aug. 22, 1996, and <ul style="list-style-type: none"> • are placed with a citizen or "qualified" immigrant adoptive parent, <i>or</i> • have been in "qualified" immigrant status for at least five years, regardless of the adoptive parent's immigration status. <p>"Refugee" categories: children granted status as a refugee, asylee, person granted withholding of removal/deportation, Amerasian immigrant, and Cuban/Haitian entrant—regardless of the adoptive parent's immigration status or the date the child entered the U.S. Eligibility continues even if the "refugee" becomes a lawful permanent resident.</p> <p>Victims of trafficking.</p> <p>Unmarried, dependent children or stepchildren of a veteran or member of the active duty military, or children of a deceased veteran, regardless of the adoptive parent's immigration status or the date the child entered the U.S., as long as the children are "qualified" immigrants.</p> <p>Some states or counties provide adoption assistance to additional categories of immigrant children not listed above.</p>	<p>"Qualified" immigrant children who are not listed as eligible.</p> <p>"Not qualified" immigrant children unless they are covered under adoption agreements signed before Aug. 22, 1996.</p>

The law governing adoption assistance appears at:

Social Security Act, title IV-B, 42 U.S.C. §§ 620, *et seq.*, 45 C.F.R. Parts 1355, *et seq.*, Social Security Act, title IV-E, 42 U.S.C. §§ 670, *et seq.*, 42 U.S.C. §§ 606, 607 (as such sections were in effect on July 16, 1996), 42 U.S.C. §§ 1396a, 1396v; 65 Fed. Reg. 4,019 (Jan. 25, 2000); immigrant eligibility at 8 U.S.C. §§ 1601, *et seq.*, 45 C.F.R. §§ 260, *et seq.*; immigrant eligibility at 45 C.F.R. § 263.2, 64 Fed. Reg. 17,721, 17,819 (Apr. 12,

1999), Foster Care Independence Act of 1999, Pub. L. No. 106-169, §§ 1, 101, *et seq.*, 113 Stat. 1822, *et seq.* (1999), U.S. Dept. of Health and Human Services, Administration for Children, Youth and Families-Policy Interpretation Question-99-01 (Jan. 14, 1999); U.S. Dept. of Health and Human Services, Administration for Children, Youth and Families-Children's Bureau-Information Memorandum-98-04 (Sept. 25, 1998).

Foster Care and Independent Living

Programs for children who cannot live safely at home

Foster care is 24-hour care for children who cannot remain in their own homes due to abuse or neglect and who are the responsibility of the designated state agency. The federal program is funded jointly by the federal government and the state. Most states have state-funded programs to provide benefits to some children who do not qualify for the federal program.

The federal foster care program provides...

- placement in an emergency shelter, foster family home, home of a relative, group home, child-care institution, or other residential facility licensed or approved by the state.
- payments to the foster care provider to meet the child's essential needs.
- eligibility for Medicaid.

NOTE: Essential needs covered by this payment include the cost of food, clothing, shelter, daily supervision, school supplies, personal incidentals, liability insurance for the child, and reasonable travel for a child's visitation with family. Food stamps are optional; if the child is added to the family's food stamp case, the child's foster care benefits are counted as income to the household.

ALSO NOTE: Benefit amounts are set by the individual state, typically based on the child's age.

A state or county may choose to supplement these amounts with clothing allowances, and/or a "special needs" rate for children with special medical or psychological needs.

Relative Caregivers

- The federal program does not distinguish between relative and nonrelative caregivers. Children who meet the eligibility requirements receive the same cash aid and services whether placed with a relative or a nonrelative.
- Relatives do not need to be licensed, but their homes must be approved by the state agency as meeting state licensing standards. (Relatives must prove their relationship to the child.)

- Both relatives and nonrelatives may qualify for the federal Adoption Assistance Program (AAP), which encourages adoption of older children and those with special needs. Benefits are generally paid at the foster care rate.
- Most states have their own state-funded foster care program for children who do not meet the federal eligibility requirements. State programs may cover children placed with relative caregivers. States set their own eligibility requirements and benefit amounts. States may offer other benefits such as a "kinship" program or a guardianship subsidy for relatives who become legal guardians.
- Children with nonparent relatives who do not qualify for either federal or state foster care payments should qualify for Temporary Assistance for Needy Families (TANF) benefits. If needy, relatives can obtain TANF benefits for themselves as well as the child, or just for themselves if the child receives foster care benefits. Although relative caregivers may be subject to TANF work requirements and time limits, many states provide exemptions for them.

Independent Living

This federal program is partially state-funded. Each state designs its own program to help minors in foster care make the transition to self-sufficiency by providing such services as:

- assistance to obtain a high school diploma, vocational training, or higher education; skills development for job placement/retention, daily living, budgeting, and financial management, etc.
- personal and emotional support through mentors and other dedicated adults.
- other support and services, including financial, housing, counseling, employment, and education.

Foster Care and Independent Living	
ELIGIBLE IMMIGRANTS	INELIGIBLE IMMIGRANTS
<p>"Qualified" immigrant children who:</p> <ul style="list-style-type: none"> • physically entered the U.S. before Aug. 22, 1996, regardless of the foster parent's immigration status, <i>or</i> • physically entered the U.S. on or after Aug. 22, 1996, and <ul style="list-style-type: none"> • have been in "qualified" status for at least five years, regardless of the status of the foster parent, <i>or</i> • are placed with a citizen or "qualified" immigrant foster parent. <p>"Refugee" categories: children granted status as a refugee, asylee, person granted withholding of removal/deportation, Amerasian immigrant, or Cuban/Haitian entrant—regardless of the foster parent's immigration status or the date the child entered the U.S. Eligibility continues even if the "refugee" becomes a lawful permanent resident.</p> <p>Victims of trafficking.</p> <p>Unmarried, dependent children or stepchildren of a veteran or member of the active duty military, or children of a deceased veteran, regardless of the foster parent's immigration status or the date the child entered the U.S., as long as the children are "qualified" immigrants.</p>	<p>"Qualified" immigrants not listed as eligible.</p> <p>"Not qualified" immigrants.</p> <p>NOTE: If they are not covered by federal funds, children who are removed from their homes and are the responsibility of the state agency would be provided for by state or local funds.</p>

Federally funded foster care is available for children who meet these requirements:

- The child is under 18. States may choose to continue benefits or services to age 21.
- The child:
 - (1) has been removed from his or her home by a court order; (2) is the responsibility of the state agency; and (3) received or was eligible for Aid to Families with Dependent Children (AFDC) (under AFDC rules in effect on July 16, 1996) in the home from which he or she was removed and lived in that home within six months of court removal; and
 - the juvenile court has determined that reasonable efforts were made to (1) prevent or eliminate the need for foster care and/or (2) reunify the family.

NOTE: An infant born to and living with a teen parent who is in foster care typically receives benefits under the foster care program, but the infant is not otherwise a "foster child."

Special considerations for immigrants

- Receipt of foster care benefits (or AAP) does not have public charge consequences.
- Medicaid is available to "qualified" immigrant children in foster care, regardless of when they entered the U.S. Some states provide state-funded medical assistance for other categories of immigrant children in foster care.
- Special programs, including foster care assistance, are available for "unaccompanied minors," who are refugees or asylees without family members in the U.S.
- Immigrant children in long-term foster care who are not lawful permanent residents (LPRs) may be eligible for Special Immigrant Juvenile Status. Children who receive this status become LPRs and therefore become "qualified" immigrants.

NOTE: Some state or locally funded programs provide benefits to all immigrant children who are removed from the parental home and placed in foster care.

continued next page ►

Foster Care and Independent Living

► continued from preceding page

The law governing foster care and Independent Living appears at:

Social Security Act, title IV-B, 42 U.S.C. §§ 620, *et seq.*, 45 C.F.R. Part 1355, *et seq.*, 45 C.F.R. § 1356.80, Social Security Act, title IV-E, 42 U.S.C. §§ 670, *et seq.*, 42 U.S.C. §§ 606, 607 (as such sections were in effect on July 16, 1996), 42 U.S.C. § 677, 42 U.S.C. §§ 1396a, 1396v, 65 Fed. Reg. 4,019 (Jan. 25, 2000), Foster Care Independence Act of 1999, Pub. L. No. 106-169, §§ 1, *et seq.*, 113 Stat. 1822, *et seq.* (1999); immigrant

eligibility at 8 U.S.C. §§ 1601, *et seq.*, 45 C.F.R. §§ 260, *et seq.*, 45 C.F.R. § 263.2, 64 Fed. Reg. 17,721, 17,819 (Apr. 12, 1999), U.S. Dept. of Health and Human Services, Administration for Children, Youth and Families-Policy Interpretation Question-99-01 (Jan. 14, 1999), U.S. Dept. of Health and Human Services, Administration for Children, Youth and Families-Children's Bureau-Information Memorandum-98-04 (Sept. 25, 1998).

Special Immigrant Juvenile Status A means for children in foster care to obtain lawful status

Children eligible for long-term foster care who are not LPRs may be eligible for Special Immigrant Juvenile Status, which allows them to adjust to LPR status and become "qualified" immigrants.

To obtain LPR status through Special Immigrant Juvenile adjustment, each of the following requirements must be met:

- the child must have been placed, by court order, in the physical custody of the state due to abuse, neglect, or abandonment, *and*
- the Immigration and Naturalization Service (INS) must be provided with evidence that establishes abuse, neglect, or abandonment as the underlying cause of the court's dependency order, *and*
- the court must have found that the child needs long-term foster care, meaning that family reunification is no longer a viable option, *and*
- a judicial or administrative entity must have determined that it is not in the best interest of the child to be returned to the child's or parent's previous country of residence.

In cases where a child is already in INS custody, in addition to the above requirements, the INS must consent to the juvenile court's jurisdiction before the court issues a dependency order.

NOTE: It is important to begin the application process as soon as possible. If the child is emancipated or turns 21 before the application is granted, current INS policy is to deny the application.

ALSO NOTE: Applicants for this status are not subject to "public charge" determinations.

The law governing SIJ status appears at:

8 U.S.C. § 1101(a)(27)(J), and the regulations are at 8 C.F.R.204.11. The INS has not yet issued regulations to implement a 1997 amendment to the statute, but pending the issuance of regulations, the agency is following an Aug. 7, 1998, "Interim Field Guidance Memorandum," as modified by "Special Immigrant Juveniles-Memorandum #2: Clarification of Interim Field Guidance" (July 9, 1999).

Child Welfare Services

Programs for families at risk of being unable to care for their children or to support children and youth

ELIGIBLE IMMIGRANTS	INELIGIBLE IMMIGRANTS
All immigrants are eligible, regardless of status.	None.

Child welfare services are...

- funded by the U.S. Department of Health and Human Services through grants to public and nonprofit agencies to prevent or remedy problems of neglect, abuse, exploitation, or delinquency of children.
- available to families considered at risk of being unable to care for their children.
- available to support families, children, and youth.

Examples of child welfare programs

- **Abandoned Infants Assistance Program** – grants to public and nonprofit agencies to develop and operate programs to prevent child abandonment and care for abandoned children.
- **Community Food and Nutrition** – grants for community-based, local, and statewide programs to coordinate food assistance resources.
- **Domestic Violence Hotline** – national toll-free hotline providing crisis assistance and local shelter referrals.
- **Family Preservation and Support programs** – programs aimed at preventing children from entering substitute care, and which provide reunification services to return children who are in substitute care to their homes.
- **Head Start and Early Head Start** – comprehensive early childhood education services for low-income, pre-school children ages three to five, and social services for their families.
- **Runaway and Homeless Youth** – grants to public and nonprofit agencies to provide short-term shelter, crisis intervention, and family reunification services to runaway and homeless youth and their families.
- **Transitional Living for Homeless Youth** – programs to help homeless youth aged 16 to 21 make the transition to independent living.

- **Community Schools Youth Services and Supervision** – resources for community-based programs for children and at-risk youth, such as structured recreational activities, education enrichment, workforce preparation, and access to health care programs.
- **National Youth Sports Program** – instructional and developmental program for economically disadvantaged youths aged 10 to 18.
- **Family Violence Prevention and Services Program** – helps states and local agencies increase public awareness about family violence prevention, provides funds for shelter and related assistance for victims and their dependents, and provides technical assistance and training for local agencies, such as law enforcement, courts, and social service agencies.

The law governing child welfare programs appears at:

Social Security Act, title IV-B, 42 U.S.C. §§ 620, *et seq.*, 45 C.F.R. Part 1355, *et seq.*; immigrant eligibility at 8 U.S.C. §§ 1601, *et seq.*, 8 C.F.R. Part 104, Memorandum from James A. Harrell, U.S. Dept. of Health and Human Services, Deputy Commissioner, Administration for Children, Youth and Families to State and Territorial Agencies Administering or Supervising the Administration of Titles IV-B and IV-E of the Social Security Act, *et al.*, Log No. ACYF-CB-IM-98-04, Re: Guidance on Interpretation of "Federal Public Benefit," (Sept. 25, 1998), Policy Interpretation Question (PIQ) from Patricia Montoya, U.S. Dept. of Health and Human Services, Commissioner, Administration for Children, Youth and Families to State and Territorial Agencies Administering or Supervising the Administration of Titles IV-B and IV-E of the Social Security Act, *et al.*, Log. No. ACYF-CB-PIQ-99-01, Re: The Effects of the Provisions to Restrict Welfare and Public Benefits for Aliens in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 on titles IV-B and IV-E of the Social Security Act (Jan. 14, 1999).

Child Care

Child care assistance for low-income families and families receiving Temporary Assistance for Needy Families (TANF)

There are two major sources of federal funding for child care: Temporary Assistance for Needy Families (TANF) and the Child Care and Development Block Grant (CCDBG), also known as the Child Care and Development Fund (CCDF). In addition, some states use state or local funds to pay for child care assistance.

CCDF-funded child care...

- is provided by states, which were granted flexibility to design their own child care assistance programs within broad federal requirements.
- is provided to children:
 - under age 13 or, at state option, under 19 if the child is physically or mentally incapable of caring for himself or herself, or is under court supervision;
 - in a family whose income does not exceed 85 percent of the state median income (although states may set a lower income eligibility level); and
 - when parents are working or attending an educational or job training program.
- is provided to children who meet the age requirements when the child is receiving or needs to receive child protective services. These services are provided whether or not the parents are working or engaged in education or training. States may waive income criteria on a case by case basis when child care is determined to be necessary.
- is not a federal entitlement; therefore, some eligible families may not be able to receive assistance.

NOTE: Parents with CCDF subsidies have a right to choose their child care provider, who can be a relative, a family child care home, or child care center.

CCDF requires states to...

- give priority to very low-income families and to families with children who have special needs, as defined by the state.
- spend a substantial portion of CCDF funds to meet the needs of families that are receiving TANF assistance, transitioning off TANF, or at risk of needing TANF.

TANF-funded child care...

- may be provided by states, which were granted flexibility regarding program design and eligibility

criteria, as long as the expenditures are directed at one or more of the goals of the TANF program.

- may be provided to families that are receiving TANF cash assistance, families transitioning off of TANF cash assistance, and families at risk of needing TANF cash assistance.
- is not a federal entitlement, but may be an entitlement under state law.

NOTE: TANF funds may be transferred to the CCDF funding stream, in which case, CCDF rules (including immigrant eligibility criteria) rather than the TANF rules, govern.

Special considerations for immigrants and their families

- Eligibility criteria and restrictions related to immigration status vary according to the funding source. Therefore, families should check with the agency providing child care assistance to determine which rules apply. If families are ineligible under one funding source, they should ask whether another funding source may provide eligibility.
- For CCDF-funded child care, only the citizenship or immigration status of the child (who is considered the primary beneficiary of the child care benefit) is relevant for eligibility purposes. However, some CCDF-funded child care is available to children regardless of their immigration status.
- Receipt of subsidized child care is not considered in "public charge" determinations. However, receiving TANF cash assistance may have public charge consequences.
- Child care providers may be required to provide an employer tax identification number or a Social Security number (SSN).

NOTE: State agencies cannot require an SSN from persons seeking CCDF-funded child care and cannot deny the benefit to families that do not provide an SSN. Families receiving child care through CCDF are not affected by TANF's SSN requirement—even when the CCDF funding stream includes transferred TANF funds (as those funds are governed by CCDF rules).

continued following table ►

CCDF-Funded Child Care	
ELIGIBLE IMMIGRANTS	INELIGIBLE IMMIGRANTS
<p>"Qualified" immigrant children.</p> <p>NOTE: All immigrants, regardless of immigration status, are eligible for CCDF child care when:</p> <ul style="list-style-type: none"> • child care is provided in settings subject to public educational standards, including public or private pre-kindergarten or public and private child care provided after school or during school holidays. • child care is subject to Head Start performance standards. • eligibility for child care services is determined by a nonprofit charitable organization. 	<p>Except in states that provide child care to all state residents regardless of immigration status, the following immigrants are ineligible:</p> <p>"Not qualified" immigrants.</p>

TANF-Funded Child Care	
ELIGIBLE IMMIGRANTS	INELIGIBLE IMMIGRANTS
<p>The following immigrants are eligible in all states:</p> <p>"Qualified" immigrants who physically entered the U.S. before Aug. 22, 1996.</p> <p>"Qualified" immigrants who physically entered the U.S. on or after Aug. 22, 1996, and have been in "qualified" immigrant status for at least five years.¹</p> <p>"Refugee" categories: individuals granted status as a refugee, asylee, person granted withholding of removal/deportation, Amerasian immigrant, or Cuban/Haitian entrant. Eligibility continues even if the "refugee" becomes a lawful permanent resident.²</p> <p>Victims of trafficking.</p> <p>Veterans and active duty military personnel, their spouses, unremarried surviving spouses, and children, who are "qualified" immigrants.</p> <p>Some states provide child care to additional categories of immigrants not listed above. Check with your state's lead child care agency about rules in your state.</p>	<p>Unless a state has decided to cover them using state funds, the following immigrants are ineligible:</p> <p>"Qualified" immigrants not listed as eligible.</p> <p>"Not qualified" immigrants.</p>

¹ *Exception:* Idaho, Indiana, Mississippi, South Carolina, and Texas provide TANF only to lawful permanent residents (LPRs) credited with 40 quarters of work and the veteran and "refugee" categories listed in the table above. Idaho also provides TANF to "qualified" abused immigrants who have lived in the U.S. for five years. However, some or all of these states may decide to take advantage of federal funding for all persons who have been in "qualified" immigrant status for five years.

² *Exception:* In Idaho, Indiana, Mississippi, South Carolina, Texas, and Wyoming, "refugees" who entered the U.S. on or after Aug. 22, 1996, are eligible only during the five years after obtaining this status. Mississippi does not address eligibility for Cuban/Haitian entrants or Amerasian immigrants. However, some or all of these states may decide to take advantage of federal funding for all persons who fall within the "refugee" categories, regardless of when they entered the United States.

Child Care

To apply, a person should...

- seek information from his or her state's lead child care agency about community child care options and where to apply for subsidies and local child care services. State contacts are listed at www.nccic.org/dirs/devfund.html. State pages are at www.nccic.org/dirs/statehp.html.
- get information from the local Child Care Resource and Referral Agency, if one exists in the community. Local Resource and Referral agencies can be found at www.childcareaware.org/findcarenow.htm.
- check with the local welfare agency about availability of child care subsidies if she or he is receiving or eligible for TANF.

The law governing child care appears at:

42 U.S.C. §§ 601, *et seq.*, 9858, *et seq.*, 45 C.F.R. Parts 98, *et seq.*, 99, *et seq.*; immigrant eligibility at 8 U.S.C. § 1601, *et seq.*, 45 C.F.R. §§ 260, *et seq.*, 8 C.F.R. Part 104, *et seq.*, Program Instruction from James A. Harrell, U.S. Dept. of Health and Human Services, Deputy Commissioner, Administration for Children, Youth and Families to Lead Agencies Administering Child Care Programs Under the Child Care and Development Block Grant (CCDBG) Act of 1990 as amended, and other interested parties, Log. No. ACYF-PI-CC-98-08, Re: Clarification of Interpretation of "Federal Public Benefit" Regarding Child Care and Development Fund (CCDF) Services, (Nov. 25, 1998), U.S. Dept. of Health and Human Services, Administration for Children, Youth and Families, "Clarifying Policy Regarding Limits of the Use of Social Security Numbers under the CCDF and the Privacy Act of 1974," Log. No. ACYF-PI-CC-00-04 (Oct. 27, 2000). *Important case: Ruiz v. Blum*, 549 F. Supp. 871 (S.D. N.Y. 1982) (child is the primary beneficiary of child care benefits, which cannot be denied based on the immigration status of the parent).

Health Programs

Medicaid

Medical assistance for families, seniors, and persons with disabilities

Medicaid provides...

- payments to participating providers for medical care to low-income persons.
- coverage for doctors' services, hospital care, clinic services, family planning services, and (depending upon the state) prescription drugs and other services. These services are covered under "full-scope" Medicaid.
- more limited "emergency" Medicaid services for persons who do not meet the immigration requirements for "full-scope" Medicaid.

NOTE: In most states, the agency accepting Medicaid applications will provide reimbursement for qualifying expenses incurred during the three months immediately preceding application.

Individuals who qualify are low-income, state residents, and...

- children (maximum age 18-21, depending on the state), *or*
- 65 or older, *or*
- blind or disabled (as defined by federal Supplemental Security Income (SSI) eligibility rules or by state rules), *or*
- pregnant, *or*
- members of families with children who would have been eligible for the old Aid to Families with Dependent Children (AFDC) program, under AFDC rules in effect on July 16, 1996, *or*
- others as defined by the individual state and permitted under federal rules.

NOTE: In most states, SSI recipients are automatically eligible for Medicaid.

A person's financial eligibility for Medicaid depends on...

- household income and resources (the amount of income and resources a person can have without losing eligibility depends on age and other factors).

NOTE: In some states, persons exceeding Medicaid income and resource limits but who have high medical expenses may qualify for Medicaid through "medically needy" programs.

Special considerations for immigrants and their families

- Eligible children can receive Medicaid even if their parents are ineligible for Medicaid based on their immigration status.
- Special rules allow migrant workers to meet the requirement that Medicaid applicants be residents of the state in which they are applying.
- All immigrants, regardless of status, can receive emergency Medicaid, if they meet the other eligibility requirements.
- Receipt of Medicaid does not have "public charge" consequences, unless the person is institutionalized for long-term care.

NOTE: Eligibility for Medicaid may also depend on whether an immigrant has a sponsor, because a sponsor's income may be "deemed" to be the immigrant's. Immigrant sponsor deeming does not apply to "emergency" Medicaid services.

ALSO NOTE: In some states, medical assistance is available to immigrants who are not eligible for federally funded Medicaid.

To apply, a person should...

- find out which documents the state requires to be submitted with the Medicaid application. Depending on the state, an applicant may need to provide documents to prove identity, state residence, age, income, resources, and any disability.
- find out whether an "in-person" interview at the welfare or social services office is required. Many states accept applications by mail, and at community sites such as local hospitals and clinics.

The law governing Medicaid appears at:

Social Security Act, title XIX, 42 U.S.C. §§ 1396a, *et seq.*, 42 C.F.R. Part 430, *et seq.*; immigrant eligibility at 8 U.S.C. §§ 1601, *et seq.* *Important case:* *Aliessa v. Novello*, 96 N.Y.2d 418 (N.Y. Ct. App. June 5, 2001).

Full-Scope Medicaid

ELIGIBLE IMMIGRANTS	INELIGIBLE IMMIGRANTS
<p>"Qualified" immigrants who physically entered the U.S. before Aug. 22, 1996.¹</p> <p>NOTE: Haitians who adjusted status under the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) who were not "qualified" immigrants on HRIFA's enactment date of Oct. 21, 1998, cannot be considered "qualified" immigrants for Medicaid and Supplemental Security Income (SSI) purposes prior to Oct. 2, 2003. However, nearly all immigrants eligible to adjust under HRIFA were "qualified" immigrants at the time HRIFA was enacted.</p> <p>"Qualified" immigrants who physically entered the U.S. on or after Aug. 22, 1996, and have been in "qualified" immigrant status for at least five years.²</p> <p>"Refugee" categories: individuals granted status as a refugee, asylee, person granted withholding of removal/deportation, Amerasian immigrant, or Cuban/Haitian entrant. Eligibility continues even if the "refugee" becomes a lawful permanent resident.³</p> <p>Victims of trafficking.</p> <p>Veterans and active duty military personnel, their spouses, unremarried surviving spouses, and children, who are "qualified" immigrants.</p> <p>SSI recipients in states that link Medicaid to SSI eligibility.</p> <p>"Qualified" immigrant children who are receiving federally funded foster care.</p> <p>A member of a federally recognized Indian tribe, or an American Indian born in Canada.</p> <p>Some states also provide state-funded Medicaid services to additional categories of immigrants, such as "qualified" immigrants who entered the U.S. on or after Aug. 22, 1996, during their first five years in "qualified" status, and/or "not qualified" immigrants who are permanently residing in the U.S. under color of law (PRUCOL).</p>	<p>Unless a state has decided to cover them under state-funded Medicaid services, the following immigrants are ineligible for Medicaid:</p> <p>"Qualified" immigrants not listed as eligible.</p> <p>"Not qualified" immigrants.</p>

Emergency Medicaid

ELIGIBLE IMMIGRANTS
<p>All states must provide emergency Medicaid services to state residents, regardless of immigration status, if they meet Medicaid's other eligibility requirements. This includes undocumented immigrants. An emergency is defined as a medical condition (including labor and delivery) with acute symptoms that could place the patient's health in serious jeopardy, result in serious impairment to bodily functions, or cause serious dysfunction of any bodily organ or part.</p>

- Exception:** Wyoming provides Medicaid only to "qualified" abused immigrants, parolees, lawful permanent residents (LPRs) credited with 40 quarters of work, and to the veteran and "refugee" categories listed in the table above ("refugees" are eligible only during the seven years after obtaining this status).
- Exception:** Alabama, Idaho, Indiana, Mississippi, North Dakota, Ohio, Texas, Virginia, and Wyoming provide Medicaid only to LPRs credited with 40 quarters of work and the veteran and "refugee" categories listed in the table above. Idaho also provides Medicaid to "qualified" abused immigrants who have lived in the U.S. for five years. Wyoming also provides Medicaid to "qualified" abused immigrants and persons paroled into the U.S., regardless of their date of entry. However, some or all of these states may decide to take advantage of federal funding for all persons who have been in "qualified" immigrant status for five years.
- Exception:** In Alabama, Idaho, Mississippi, North Dakota, Ohio, Texas, Virginia, and Wyoming, "refugees" who entered the U.S. on or after Aug. 22, 1996, are eligible only during the seven years after obtaining this status. In Texas, Amerasian immigrants are eligible only during the five years after obtaining this status. Alabama, Mississippi, and North Dakota do not address eligibility for Cuban/Haitian entrants or Amerasian immigrants. However, some or all of these states may decide to take advantage of federal funding for all persons who fall within the "refugee" categories, regardless of when they entered the United States.

TABLE 10

State-Funded Medical Assistance Programs

This table lists the state-funded programs that provide medical care to immigrants who are not eligible for coverage under the federally funded Medicaid program. In many states or counties, limited medical assistance, such as prenatal or preventive care, are available to all persons regardless of immigration status. These programs are not systematically listed here. For more information on the health programs available at the state and local level, see Wendy Zimmermann and Karen Tumlin, "Patchwork Policies: State Assistance for Immigrants Under Welfare Reform" (Urban Institute, May 1999).

STATE	ELIGIBLE IMMIGRANTS
California	"Qualified" immigrants and PRUCOLs. Prenatal care, long-term care, and certain other medical services are available regardless of immigration status.
Colorado	Lawfully present immigrants can receive prenatal care. Pilot projects in some counties provide prenatal care to all women regardless of immigration status. Program expires July 1, 2003. Long-term care is available to persons who were receiving Medicaid-reimbursed Nursing Facility or Elderly, Blind, or Disabled services on July 1, 1997.
Connecticut	"Qualified" immigrants, PRUCOLs, and lawfully residing immigrants. Assistance authorized until July 1, 2002. Victims of domestic violence and persons with mental retardation are not subject to sunset date of July 1, 2002. Eligibility for this program may be affected by deeming.
Delaware	"Qualified" immigrants and lawfully residing immigrants. Coverage is subject to availability of funds.
District of Columbia	All immigrants who are ineligible for Medicaid and SCHIP, regardless of immigration status, are eligible for preventive care. Enrollment is limited.
Florida	Children who were enrolled in the state's SCHIP program ("KidCare") as of July 1, 2000 (and have maintained coverage since that date), regardless of immigration status. NOTE: In 2000 the Florida legislature placed a limit on the state funds that could be used to cover children who are not eligible for federal SCHIP funds. Some of these children (including immigrants, state employee dependents, and children over 19 years old) are on a waiting list for coverage. It is not clear whether any of these children will be given an opportunity to enroll.
Georgia	Lawfully residing abused immigrants.
Hawaii	Children who are lawful permanent residents (LPRs) or PRUCOLs.
Illinois	Children who are "qualified" immigrants or PRUCOLs, regardless of date of entry; all pregnant women, regardless of immigration status; and "qualified" abused immigrants (and their parents/children), regardless of date of entry.
Indiana	Lawfully residing immigrants.
Maine	"Qualified" immigrants and PRUCOLs.
Maryland	"Qualified" immigrant pregnant women and children.
Massachusetts	"Qualified" immigrants and PRUCOLs. (Long-term care is not included.) All children, regardless of immigration status, are eligible for primary and preventive care. Prenatal care and certain other services are available regardless of immigration status.
Michigan	Prenatal care is available regardless of immigration status through the Maternity Outpatient Medical Services (MOMS) program.
Minnesota	"Qualified" immigrants, PRUCOLs and lawfully residing immigrants. Prenatal care is available regardless of immigration status. Eligibility for this program may be affected by deeming.
Missouri	All pregnant women, regardless of immigration status, are eligible for outpatient prenatal care.
Nebraska	"Qualified" immigrants. All pregnant women, regardless of immigration status, are eligible for outpatient prenatal care.
New Jersey	"Qualified" immigrants. PRUCOLs who were in Medicaid-approved nursing homes prior to Jan. 1, 1997, remain eligible for nursing home care. Prenatal services are available to women who are residing in New Jersey and are ineligible for Medicaid or NJ FamilyCare, regardless of immigration status. Services are limited to outpatient hospital care, physician or certified nurse midwife services, pharmaceutical, and radiological and clinical laboratory services.

TABLE 10 (CONTINUED)

State-Funded Medical Assistance Programs

STATE	ELIGIBLE IMMIGRANTS
New Mexico	PRUCOLs who entered the U.S. before Aug. 22, 1996.
New York	"Qualified" immigrants and PRUCOLs. Prenatal care is available regardless of immigration status. All children, regardless of immigration status, are covered under the state Child Health Plus program.
Oklahoma	PRUCOLs who entered the U.S. before Aug. 22, 1996.
Pennsylvania	"Qualified" immigrants and PRUCOLs.
Rhode Island	Lawfully residing persons who were in the U.S. prior to Aug. 22, 1996, and RI residents prior to July 1, 1997. All children and pregnant women, regardless of immigration status, are covered under the state Rite Care program.
Texas	"Qualified" immigrant children who entered the U.S. on or after Aug. 22, 1996, are eligible for services comparable to SCHIP (during the federal 5-year bar).
Virginia	"Qualified" immigrants and PRUCOLs who are under 19 years old who meet the immigration status requirements that were in effect before July 1, 1997, and PRUCOLs receiving long-term-care services on June 30, 1997.
Washington	Lawfully present or PRUCOL families with children and pregnant women (regardless of date of entry), and seniors and persons with disabilities who entered the U.S. before Aug. 22, 1996, are eligible for Medicaid-like services. Lawfully present or PRUCOL seniors and persons with disabilities who entered the U.S. on or after Aug. 22, 1996, if eligible for General Assistance, are eligible for state-funded medical services (not including dental/mental health). Eligibility for these programs may be affected by deeming. Other medical programs are available to children and pregnant women, regardless of immigration status. NOTE: Effective Oct. 1, 2002, "qualified" immigrants and PRUCOLs receiving medical assistance related to the state's TANF program for immigrants, and immigrant children who are ineligible for full-scope Medicaid, may be eligible only for federal emergency Medicaid. These immigrants will be able to transfer to the state-subsidized health care program, the Basic Health Plan, with premiums, co-pays, and a more restrictive scope of coverage than Medicaid.
Wyoming	"Qualified" abused immigrants and persons paroled into the U.S., regardless of date of entry. NOTE: Wyoming is the only state that denies federal Medicaid to most "qualified" immigrants who entered the country prior to Aug. 22, 1996. In Wyoming, abused immigrants, parolees, veterans, active duty military, their spouse, unmarried surviving spouse, or child are eligible regardless of date of entry. Refugees, asylees, persons granted withholding of deportation/removal, Cuban/Haitian entrants, and Amerasian immigrants are eligible for Medicaid during the 7 years after securing that status. LPRs with 40 quarters of work history are eligible if they entered the U.S. prior to Aug. 22, 1996, or have been in qualified immigrant status for 5 years.

Key Terms Used in Table

"Qualified" immigrants are: – (1) lawful permanent residents (LPRs); (2) refugees, asylees, persons granted withholding of deportation/removal, conditional entry (in effect prior to Apr. 1, 1980), or paroled into the U.S. for at least one year; (3) Cuban/Haitian entrants; and (4) battered spouses and children with a pending or approved (a) self-petition for an immigrant visa, or (b) immigrant visa filed for a spouse or child by a U.S. citizen or LPR, or (c) application for cancellation of removal/suspension of deportation, whose need for benefits has a substantial connection to the battery or cruelty. Parent/child of such battered child/spouse are also "qualified."

"PRUCOL" or Permanently Residing in the U.S. under Color of Law – is not an immigration status, but a benefit eligibility category. The term, which generally means that the INS is aware of a person's presence, but has no plans to deport/remove him or her, has been interpreted differently depending on the benefit program and jurisdiction.

Deeming – in some cases, a sponsor's income and/or resources may be added to the immigrant's in determining eligibility. Exemptions from deeming may apply.

NOTE: The information in this table is subject to change. Please check with your state or local social services agency or legal assistance office regarding the most current rules.

State Children's Health Insurance Program (SCHIP)

Health insurance for children in low-income working families

SCHIP is...

- a source of federal-state funding for children's health insurance, created in 1997.
- a federal block grant allocated to states to implement, with state matching funds, a health insurance program within federal guidelines.
- a flexible grant that allows a state to choose its own program name and to decide, within federal guidelines, what percentage of low-income children are served, which services are offered, and whether to make the services available through Medicaid, a separate state program, or a combination of the two.
- a federal grant allocated to states at an enhanced matching rate—the federal government pays a greater percentage of the costs than it does under the Medicaid program.

NOTE: States have the option of pursuing a waiver to cover parents of children enrolled in the Medicaid and SCHIP programs. As a condition of securing such waivers, states must meet certain requirements aimed at maximizing the enrollment of eligible children. To be eligible for federally funded SCHIP, parents must meet the citizenship/immigration requirements of the SCHIP program.

SCHIP provides...

- health insurance to uninsured children in low-income working families.
- reimbursement to participating providers for medical care to enrolled children.
- coverage for doctors' services, immunizations, hospital care, laboratory and x-ray services, and (depending on the state) prescription drugs, mental health services, eyeglasses, hearing aids, and other services.

Children who qualify are low-income and...

- under age 19, in most states.
- state residents—which means that they need only be physically present in the state; in addition, special rules allow children of migrant workers to meet this state residency requirement.
- uninsured.

NOTE: Children eligible for Medicaid cannot be enrolled in a separate SCHIP-funded program.

A child's eligibility for SCHIP depends on...

- family income, the age of the child, and, in some states, the value of the family's resources.

NOTE: Eligibility may also depend on whether a child's parent has a sponsor, because a sponsor's income may be "deemed" to be the immigrant's.

Special considerations for immigrants and their families

- Children who meet SCHIP eligibility criteria can get SCHIP-funded services even if their parents are ineligible for federal benefit programs.
- Receipt of SCHIP does not have "public charge" consequences, unless the person is institutionalized for long-term care.
- States must gather data on the race and ethnicity of persons enrolled in the SCHIP program.

NOTE: In some states, medical assistance is available to immigrants who are not eligible for federally funded SCHIP.

State Children's Health Insurance Program (SCHIP)

ELIGIBLE IMMIGRANTS	INELIGIBLE IMMIGRANTS
<p>"Qualified" immigrants who either physically entered the U.S. before Aug. 22, 1996, or who physically entered the U.S. on or after Aug. 22, 1996, and have been in "qualified" immigrant status for at least five years.</p> <p>"Refugee" categories: individuals granted status as a refugee, asylee, person granted withholding of removal/deportation, Amerasian immigrant, or Cuban/Haitian entrant. Eligibility continues even if the "refugee" becomes a lawful permanent resident.</p> <p>Victims of trafficking.</p> <p>Veterans and active duty military personnel, their spouses, unremarried surviving spouses, and children, who are "qualified" immigrants.</p> <p>Some states also provide state-funded SCHIP services to additional categories of immigrants, such as "qualified" immigrants who entered the U.S. on or after Aug. 22, 1996, during their first five years in "qualified" status, and/or "not qualified" immigrants who are permanently residing in the U.S. under color of law (PRUCOL).</p>	<p>Unless a state has decided to cover them under state-funded SCHIP services, the following immigrants are ineligible for SCHIP:</p> <p>"Qualified" immigrants not listed as eligible.</p> <p>"Not qualified" immigrants.</p>

To apply, a person should...

- gather required documents – all states require proof of a noncitizen child's immigration status; most states also require proof of family income (though a few states allow self-declaration of income) and many states may also require proof of residency and allowable deductions.
- complete an application – most states that operate a separate SCHIP program allow families to apply for health coverage using a single, joint application for both Medicaid and SCHIP; the agency administering SCHIP determines the program for which a child is eligible.
- in most states, apply by mail; otherwise, apply in person at the local welfare or social services office.

The law governing SCHIP appears at:

Social Security Act, title XXI, 42 U.S.C. §§ 1397aa, *et seq.*, Implementing Regulations for the State Children's Health Insurance Program, 66 Fed. Reg. 2,489–2,538 (Jan. 11, 2001) (to be codified at 42 C.F.R. Parts 431, 433, 435, and 457); immigrant eligibility at 8 U.S.C. §§ 1601, *et seq.*, U.S. Dept. of Health and Human Services, Health Care Financing Administration, Interim Final Rule, "Revisions to the Regulations Implementing the State Children's Health Insurance Program," 66 Fed. Reg. 33,810–24 (June 25, 2001). Each state issues its own rules.

TABLE 11

State-Funded SCHIP Programs

This table lists the state-funded programs that provide medical care to immigrants who are not eligible for coverage under the federally funded State Children's Health Insurance Program (SCHIP), which covers children who are over-income for Medicaid. For more information about programs for children in lower income families, see page 120. In some states or counties, limited medical services, such as preventive care, are available to all children regardless of immigration status. These programs are not systematically listed here. For more information on the health programs available at the state and local level, see Wendy Zimmermann and Karen Tumlin, "Patchwork Policies: State Assistance for Immigrants Under Welfare Reform" (Urban Institute, May 1999).

STATE	NAME OF PROGRAM — ELIGIBLE IMMIGRANTS
California	Healthy Families (combined SCHIP and Medicaid expansion program) "Qualified" immigrants up to 250% of the federal poverty level.
Connecticut	Husky B (combined SCHIP and Medicaid expansion program) "Qualified" immigrants, PRUCOLs, and lawfully residing immigrants up to 300% of the federal poverty level. Program authorized until July 1, 2002. Victims of domestic violence and persons with mental retardation are not subject to sunset date.
District of Columbia	DC Healthy Families (Medicaid expansion) All children up to 200% of the federal poverty level, regardless of immigration status, who are ineligible for Medicaid and SCHIP. Enrollment is limited.
Florida	KidCare (combined SCHIP and Medicaid expansion program) Children who were enrolled in the state's SCHIP program ("KidCare") as of July 1, 2000 (and have maintained coverage since that date), regardless of immigration status. In 2000 the Florida legislature placed a limit on the state funds that could be used to cover children who are not eligible for federal SCHIP funds. Some of these children (including immigrants, state employee dependents, and children over 19 years old) are on a waiting list for coverage. It is not clear whether any of these children will be given an opportunity to enroll.
Hawaii	Med-QUEST (Medicaid expansion) Lawful permanent residents and PRUCOLs up to 200% of the federal poverty level.
Illinois	KidCare (combined SCHIP and Medicaid expansion program) "Qualified" immigrants and PRUCOLs up to 185% of the federal poverty level.
Indiana	Hoosier Healthwise (combined SCHIP and Medicaid expansion program) Lawfully residing immigrants between 150% and 200% of the federal poverty level.
Maine	Cub-Care (combined SCHIP and Medicaid expansion program) "Qualified" immigrants and PRUCOLs up to 200% of the federal poverty level.
Maryland	Children's Health Program (combined SCHIP and Medicaid expansion program) "Qualified" children under 18 (19 if full-time student) up to 200% of the federal poverty level.
Massachusetts	MassHealth/Children's Medical Security Plan (combined SCHIP and Medicaid expansion program) "Qualified" immigrants and PRUCOLs up to 200% of the federal poverty level are eligible for MassHealth Family Assistance. (Long-term care is not included.) All children over 200% of the federal poverty level are eligible for the Children's Medical Security Plan, regardless of immigration status.
Minnesota	Minnesota Care (Medicaid expansion) "Qualified" immigrants, PRUCOLs, and lawfully residing immigrants up to 275% of the federal poverty level. Eligibility for this program may be affected by deeming.
Nebraska	Kids Connection (Medicaid expansion) "Qualified" immigrants up to 185% of the federal poverty level.
New Jersey	NJ KidCare (combined SCHIP and Medicaid expansion program) "Qualified" immigrants up to 200% of the federal poverty level are eligible under NJ FamilyCare during the 5-year bar.

TABLE 11 (CONTINUED)

State-Funded SCHIP Programs

STATE	NAME OF PROGRAM — ELIGIBLE IMMIGRANTS
New Mexico	New Mexikids (Medicaid expansion) PRUCOLs up to 235% of the federal poverty level who entered the U.S. before Aug. 22, 1996.
New York	Child Health Plus (Medicaid expansion) All children up to 250% of the federal poverty level, regardless of immigration status.
Oklahoma	SoonerCare (Medicaid expansion) PRUCOLs up to 185% of the federal poverty level who entered the U.S. before Aug. 22, 1996.
Pennsylvania	CHIP (separate SCHIP program) "Qualified" immigrants and PRUCOLs up to 235% of the federal poverty level.
Rhode Island	Rite Care (Medicaid expansion) All children up to 250% of the federal poverty level, regardless of immigration status.
Texas	TexCare Partnership (combined SCHIP and Medicaid expansion program) "Qualified" immigrant children up to 200% of the federal poverty level.
Washington	Healthy Options (separate SCHIP program) "Qualified" immigrants, PRUCOLs, and lawfully present immigrants up to 200% of the federal poverty level. Eligibility for these programs may be affected by deeming. Other medical programs are available to children up to 100% of the federal poverty level, regardless of immigration status. NOTE: Effective Oct. 1, 2002, "qualified" immigrants and PRUCOLs receiving medical assistance related to the state's TANF program for immigrants, and immigrant children who are ineligible for full-scope Medicaid, may be eligible only for federal emergency Medicaid. These immigrants will be able to transfer to the state subsidized health care program, the Basic Health Plan, with premiums, co-pays and a more restrictive scope of coverage than Medicaid.
Wyoming	Kid Care (separate SCHIP program) "Qualified" abused children up to 133% of the federal poverty level.

Key Terms Used in Table

"Qualified" immigrants are: – (1) lawful permanent residents (LPRs); (2) refugees, asylees, persons granted withholding of deportation/removal, conditional entry (in effect prior to Apr. 1, 1980), or paroled into the U.S. for at least one year; (3) Cuban/Haitian entrants; and (4) battered spouses and children with a pending or approved (a) self-petition for an immigrant visa, or (b) immigrant visa filed for a spouse or child by a U.S. citizen or LPR, or (c) application for cancellation of removal/suspension of deportation, whose need for benefits has a substantial connection to the battery or cruelty. Parent/child of such battered child/spouse are also "qualified."

"PRUCOL" or Permanently Residing in the U.S. under Color of Law – is not an immigration status, but a benefit eligibility category. The term, which generally means that the INS is aware of a person's presence, but has no plans to deport/remove him or her, has been interpreted differently depending on the benefit program and jurisdiction.

Deeming – in some cases, a sponsor's income and/or resources may be added to the immigrant's in determining eligibility. Exemptions from deeming may apply.

NOTE: The information in this table is subject to change. Please check with your state or local social services agency or legal assistance office regarding the most current rules.

Medicare

Federal medical insurance for seniors and persons with disabilities

Medicare provides...

- health insurance to seniors and persons with disabilities.
 - "Part A Hospital Insurance" helps pay for inpatient hospital care, skilled care in a nursing facility, home health care, and hospice care.
 - "Part B Medical Insurance" helps pay for doctor care, some home health care, outpatient hospital services, medical equipment, and other services.

There are no financial eligibility requirements for Medicare

Individuals who qualify for "premium free" Medicare Part A are...

- 65 or older and eligible for Social Security retirement or Railroad Retirement benefits, *or*
- 65 or older and the spouse or former spouse of someone receiving Social Security retirement or Railroad Retirement benefits, *or*
- under 65 and have been receiving Social Security disability benefits for 24 months, *or*
- certain government employees 65 or older.

NOTE: These persons will be charged a premium for Medicare Part B (unless they decline this coverage).

Persons who are not automatically eligible for Medicare Part A may still obtain Medicare if they...

- are 65 or older, *and*
- pay the premiums for Medicare Parts A and B, or Part B only (Part A may not be purchased by itself).

NOTE: Medicare purchased in this way is sometimes referred to as "premium" or "buy-in" Medicare.

Several premium assistance programs can help pay the costs of Medicare Parts A and B for low-income individuals if they are also eligible for Medicaid:

- The *Qualified Medicare Beneficiary* (QMB) program pays for Part A and B premiums, copayments, and deductibles.

- The *Specified Low-Income Medicare Beneficiary* (SLMB) program pays for Part B premiums.
- The *Qualified Individual 1* (QI-1) program pays for Part B premiums.
- The *Qualified Individual 2* (QI-2) program pays for a portion of the Medicare Part B premium.

NOTE: The Qualified Individual programs have limited funding, and benefits are available within each state on a first come, first served basis until December 31, 2002.

Special considerations for immigrants and their families

- Medicare does not routinely pay for services outside of the U.S.

To apply for Medicare, a person should...

- apply in person at the local Social Security office, or by mail.

To apply for the programs that assist with Medicare costs...

- individuals can, in most states, apply in person at the local Medicaid office. To find out where to apply in your state, you can also call the "Elder Care Locator," at (800) 677-1116.

The law governing Medicare appears at:

Social Security Act, title XVIII, 42 U.S.C. §§ 1395, *et seq.*, 42 C.F.R. §§ 405.201, *et seq.*; immigrant eligibility at 8 U.S.C. 1611(b)(3), 42 U.S.C. § 1395i-2(a)(3), 42 C.F.R. § 406.20(b)(2)(ii), 42 C.F.R. § 407.10.

The law governing the programs that assist with Medicare costs appears at:

42 U.S.C. §§ 1396a(a)(10)(E)(i), 1396d(p) (Qualified Medicare Beneficiary), 42 U.S.C. § 1396a(a)(10)(E)(iii) (Specified Low-Income Medicare Beneficiary), 42 U.S.C. § 1396a(a)(10)(E)(iv)(I) and (II), 42 U.S.C. § 1396u-3 (Qualified Individuals 1 and 2).

Medicare	
ELIGIBLE IMMIGRANTS	INELIGIBLE IMMIGRANTS
"PREMIUM FREE" MEDICARE PART A (eligibility based on work history)	"Premium Free" Medicare Part A (eligibility based on work history)
Lawfully present immigrants whose eligibility is based on authorized employment (i.e., quarters of coverage were earned while they were in a status that permitted lawful employment).	Immigrants who are not lawfully present . Immigrants whose eligibility for assistance is not based on authorized employment .
Premium "Buy-in" Medicare	Premium "Buy-in" Medicare
Lawful permanent residents (LPRs) who have resided in the U.S. continuously for at least five years.	Immigrants who are not LPRs . LPRs who have not resided in the U.S. continuously for at least five years.
Premium Assistance Programs QMB, SLMB, QI-1, AND QI-2	Premium Assistance Programs QMB, SLMB, QI-1, AND QI-2
LPRs who have resided in the U.S. continuously for at least five years.	Immigrants who are not LPRs . LPRs who have not resided in the U.S. continuously for at least five years.

Food Programs

Food Stamps

Supplemental food for individuals and families

The food stamp program provides...

- on a monthly basis, coupons or a plastic card similar to an ATM card that can be used to pay for food at participating stores.

Families or individuals qualify based on...

- the level of household income and resources.

A household's financial eligibility for food stamps depends on...

- eligibility levels set by the federal government.
- the household's income, resources, housing costs, and other expenses. The rules for considering resources and vehicles vary by state.

NOTE: To qualify for food stamps, an applicant household's adjusted net income must generally be below the federal poverty income level.

ALSO NOTE: In some cases, eligibility for food stamps may depend on whether one or more immigrant household members have a sponsor, because the sponsor's income may be "deemed" as available to the immigrant.

To be eligible, some participants also may have to...

- be employed or participate in a work experience or job training program. Many participants, including children, seniors, and persons with disabilities, are exempt from this work requirement.

NOTE: In most cases, able-bodied individuals without children who are between the ages of 18 and 50 can receive food stamps for only 3 months out of each 36-month period—and only if they are not working or participating in a workfare or approved job-training program.

Special considerations for immigrants and their families

- Receipt of food stamps does not have "public charge" consequences.
- A parent who is ineligible for food stamps can apply for them on behalf of an eligible child.

- Household members who do not provide immigration status information are treated as "ineligible." In these cases the state agency "shall not" continue efforts to obtain that documentation. A lack of information on immigration status or Social Security numbers (SSNs) renders that person ineligible (and can reduce the household benefit amount), but does not affect the eligibility of other household members.

NOTE: In some states, state-funded food assistance is available to immigrants who are not eligible for federal food stamps.

ALSO NOTE: The Food Stamp Program does not require reporting to the Immigration and Naturalization Service except in the rare circumstances outlined on page 184.

To apply, a person should...

- gather documents proving identity, age, SSN, residence, income, resources, immigration status, and expenses.
- submit an application in person or have someone else file as a representative at the local food stamp, welfare, or social services office, *or*
- mail in the application.

NOTE: To begin the application process, individuals need only fill out their names and addresses and date and sign the application. Persons found eligible should begin receiving food stamps within 30 days of applying (7 days if they qualify for emergency food stamps).

The law governing food stamps appears at:

7 U.S.C. §§ 2011, *et seq.*, 7 C.F.R. §§ 271, *et seq.*; immigrant eligibility at 8 U.S.C. § 1612, 7 U.S.C. § 2015(f), 7 C.F.R. § 273.4; *see also* U.S. Dept. of Agriculture, "Food Stamp Program: Noncitizen Eligibility, and Certification Provisions of Public Law 104-193, as Amended by Public Laws 104-208, 105-33 and 105-185," 65 Fed. Reg. 70,133-212 (Nov. 21, 2000); Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171 (May 13, 2002).

Food Stamps	
ELIGIBLE IMMIGRANTS	INELIGIBLE IMMIGRANTS
<p>Children under 18 years old who were lawfully residing in the U.S. on Aug. 22, 1996, and who are now "qualified" immigrants.</p> <p>Seniors who were born before Aug. 22, 1931, were lawfully residing in the U.S. on Aug. 22, 1996, and who are now "qualified" immigrants.</p> <p>Persons receiving benefits for blindness or disability, who were lawfully residing in the U.S. on Aug. 22, 1996. Disability-related benefits may include: Supplemental Security Income, Social Security disability, state disability or retirement pension, railroad retirement disability, veteran's disability, disability-based Medicaid, or possibly General Assistance for certain persons with disabilities.</p> <p>Lawful permanent residents (LPRs) credited with 40 quarters of work.</p> <p>"Refugee" categories: individuals granted status as a refugee, asylee, person granted withholding of removal/deportation, Amerasian immigrant, or Cuban/Haitian entrant, during the seven years after obtaining this status. Eligibility continues during this period even if the "refugee" becomes an LPR. Even after the seven-year period expires, these immigrants may be eligible under another category listed on this page.</p> <p>Victims of trafficking.</p> <p>Veterans and active duty military personnel, their spouses, unremarried surviving spouses, and children, who are "qualified" immigrants.</p> <p>Certain Hmong or Highland Laotian tribe members who are lawfully present in the U.S., and were members of these tribes during the Vietnam era; spouses, unremarried widows/widowers, and children of these tribe members also are eligible.</p> <p>A member of a federally recognized Indian tribe, or an American Indian born in Canada.</p> <p>Some states also provide state-funded food assistance to additional categories of immigrants.</p> <p><small>NOTE: Effective Oct. 1, 2002, "qualified" immigrants receiving disability-related assistance will be eligible, regardless of their date of entry. Effective Apr. 1, 2003, "qualified" immigrants who have lived in the U.S. for five years or more as a "qualified" immigrant will be eligible. "Refugee" categories will remain eligible even after the seven-year period expires. Effective Oct. 1, 2003, "qualified" immigrant children will be eligible, regardless of their date of entry (children will not be subject to sponsor deeming).</small></p>	<p>"Qualified" immigrants not listed as eligible.</p> <p>"Not qualified" immigrants other than Native Americans and Hmong or Laotian tribe members described as eligible.</p>

TABLE 12

State-Funded Food Assistance Programs

This table lists the state-funded programs that provide nutritional assistance to immigrants who are not eligible for coverage under the federally funded Food Stamp Program. Unless otherwise noted, state-funded assistance is provided at the federal food stamp benefit level.

STATE	ELIGIBLE IMMIGRANTS
California	"Qualified" immigrants and lawful temporary residents. Eligibility for this program may be affected by deeming.
Connecticut	Immigrants ineligible for federal food stamps due to the 1996 federal welfare law. Immigrants who entered the U.S. on or after Apr. 1, 1998, must meet a 6-month residency requirement. Applications accepted until July 1, 2002.
Georgia	Lawfully residing abused immigrants.
Illinois	"Qualified" immigrants ineligible for federal food stamps, who were lawfully residing in the U.S. before Aug. 22, 1996, and are either 60-64 years old (without a disability), or parents residing with children who are eligible for federal food stamps. Benefit level is \$50 a month per person. Eligibility for this program may be affected by deeming. NOTE: The Illinois statute covers all "qualified" immigrants except abused immigrant spouses and children.
Maine	Immigrants ineligible for federal food stamps due to the 1996 federal welfare law.
Maryland	"Qualified" immigrant children who are under 18, or are included in a cash assistance grant. Eligibility for this program may be affected by deeming.
Massachusetts	"Qualified" immigrants and PRUCOLs. Must meet a 60-day residency requirement.
Minnesota	"Qualified" immigrants and lawfully residing immigrants. Eligibility for this program may be affected by deeming.
Missouri	Immigrants who were lawfully residing in the U.S. on Aug. 22, 1996, were receiving TANF on Aug. 22, 1996, and are receiving TANF at the time of application for food assistance. Benefit is paid in cash.
Nebraska	Immigrants ineligible for federal food stamps due to the 1996 federal welfare law. Eligibility for this program may be affected by deeming.
New Jersey	Immigrants ineligible for federal food stamps due to the 1996 federal welfare law, who were lawfully in the U.S. before Aug. 22, 1996, and are: (1) 65 or older; (2) parents, step-parents, or legal guardians living with dependent children under age 18; (3) mentally or physically incapacitated; or (4) receiving GA benefits and considered unemployable. Must pursue citizenship within 60 days of becoming eligible to apply for citizenship or within 60 days of being certified for state food stamps, whichever is later. Eligibility for this program may be affected by deeming.
New York	Immigrants ineligible for federal food stamps due to the 1996 federal welfare law who are (1) 60 years or older, or (2) "qualified" abused immigrants, and live in the same social services district in which they resided on Aug. 22, 1996. Must apply for citizenship if eligible. This program is a county option; New York City and several other counties participate.
Ohio	"Qualified" immigrants who are eligible for Supplemental Security Income (SSI), have lived in the U.S. for 7 years prior to application, are in the process of naturalizing, and were Ohio residents as of Aug. 22, 1996.
Rhode Island	Immigrants ineligible for federal food stamps due to the 1996 federal welfare law who were RI residents before Aug. 22, 1996.
Texas	Immigrants ineligible for federal food stamps due to the 1996 federal welfare law who received food stamps in Texas at any time from Sept. 1996 to Aug. 1997, and are 65 or older, or were receiving SSI when they last received federal food stamps.
Washington	"Qualified" immigrants, PRUCOLs, and lawfully present immigrants. Eligibility for this program may be affected by deeming.
Wisconsin	"Qualified" immigrants ineligible for federal food stamps due to the 1996 federal welfare law. Eligibility for this program may be affected by deeming.

TABLE 12 (CONTINUED)

State-Funded Food Assistance Programs

Key Terms Used in Table

"Qualified" immigrants – are: (1) lawful permanent residents (LPRs); (2) refugees, asylees, persons granted withholding of deportation/removal, conditional entry (in effect prior to Apr. 1, 1980), or paroled into the U.S. for at least one year; (3) Cuban/Haitian entrants; and (4) battered spouses and children with a pending or approved (a) self-petition for an immigrant visa, or (b) immigrant visa filed for a spouse or child by a U.S. citizen or LPR, or (c) application for cancellation of removal/suspension of deportation, whose need for benefits has a substantial connection to the battery or cruelty. Parent/child of such battered child/spouse are also "qualified."

Immigrants ineligible for federal food stamps due to the 1996 welfare law – includes all persons now categorized as "qualified" immigrants, except abused spouses and certain Cuban/Haitian entrants.

"PRUCOL" or Permanently Residing in the U.S. under Color of Law – is not an immigration status, but a benefit eligibility category. The term, which generally means that the INS is aware of a person's presence, but has no plans to deport/remove him or her, has been interpreted differently depending on the benefit program and jurisdiction.

Deeming – in some cases, a sponsor's income and/or resources may be added to the immigrant's in determining eligibility. Exemptions from deeming may apply.

NOTE: The information in this table is subject to change. Please check with your state or local social services agency or legal assistance office regarding the most current rules.

Child Nutrition Programs

School, child care, and summer food programs

Child nutrition programs provide...

- free or reduced price meals or snacks to children in schools, child care centers, family child care homes, residential institutions, summer day camps, and after-school programs.
- meals subsidized with federal funds, and planned, prepared, and served according to U.S. Department of Agriculture standards.
- assistance under the following programs:
 - the *School Lunch and Breakfast programs*, providing meals to children in public or private nonprofit schools, including parochial schools and residential child care institutions, and providing snacks to children participating in after-school programs.
 - the *Child and Adult Care Food Program (CACFP)*, providing reimbursement to eligible child care centers, family child care homes, and homeless shelters for the costs associated with feeding children in their care, and providing snacks for after-school programs.
 - the *Summer Food Program*, providing free meals and snacks to all children attending summer programs in low-income neighborhoods.

Financial criteria for eligibility vary by program

- In the School Lunch and Breakfast programs and CACFP (except for after-school snacks and meals and snacks served in family child care homes and homeless shelters), the level of assistance is based on family income. All participating children may receive subsidized meals, but the amount a family must pay varies:
 - “free” meals are provided without any cost to the family.
 - “reduced price” meals are partially subsidized.
 - “paid” or “full price” meals are partially subsidized, but to a lesser degree, and are available to all who do not apply or qualify for “free” or “reduced price” meals.
- In the Summer Food Program, all children in participating institutions are fed for free; institutions are eligible to participate in the

program based on the percentage of low-income children enrolled in the program, or living in the area served by the program.

- Eligibility for free after-school snacks in the School Lunch and Breakfast programs and CACFP is based either on family income or on the percentage of low-income children living in the area served by the participating after-school program.

Generally, a child is financially eligible for free school lunches or breakfasts if...

- his or her household is financially eligible for food stamps (but check with the local program, because many low-income households ineligible for food stamps are still eligible for free or reduced price breakfasts or lunches).

Special considerations for immigrants and their families

- The child’s family must ordinarily fill out a financial application to obtain free or reduced priced meals in the School Lunch and Breakfast programs:
 - the application requests a Social Security number from the household member who signs the application, but if that person does not have one, he or she may write “none” in the blank.
 - children in families already participating in the Food Stamp Program have streamlined paperwork requirements; in some cases these families may not have to file a separate application.
- A financial application also is ordinarily required for CACFP in child care centers, but usually is not needed for CACFP in family child care homes, the Summer Food Program, or for after-school snacks provided by the School Lunch program or CACFP.
- Financial applications are never required for CACFP in homeless shelters.

Child Nutrition Programs	
ELIGIBLE IMMIGRANTS	INELIGIBLE IMMIGRANTS
All immigrants are eligible, regardless of immigration status.	None.

To apply, a person should...

- inquire at the child’s school, preschool, day camp or local park whether the institution participates in the School Lunch and Breakfast Program, Summer Food Service programs, or in CACFP, and request an application.
- contact the state’s education agency for more information.

The law governing child nutrition programs appears at:

42 U.S.C. §§ 1751, *et seq.*, 7 C.F.R. §§ 210–245. The application process and Social Security number requirement are discussed in 7 C.F.R. § 245.6. *Important case: Alcaraz v. Block*, 746 F.2d 593 (9th Cir. 1984).

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)

ELIGIBLE IMMIGRANTS	INELIGIBLE IMMIGRANTS
All immigrants are eligible, regardless of immigration status.	None.

WIC provides...

- nutritious foods, nutrition education, and access to health care for low-income pregnant women, new mothers, infants, and children under five years old who are at nutritional risk.
- vouchers that may be used to obtain supplemental food items that meet the special dietary needs of program participants, such as milk, infant formula, juice, cereal, cheese, and eggs.

Pregnant women, new mothers, infants, and young children qualify based on...

- family income level.
- nutritional risk factors such as inadequate diet; abnormal weight gain during pregnancy; history of high-risk pregnancy; child growth problems such as stunting, being underweight, or anemia; homelessness; and "migrancy."

A family's financial eligibility for WIC depends on...

- income eligibility standards and risk factor priorities set by each state within U.S. Department of Agriculture guidelines.

NOTE: WIC is not an entitlement; whether assistance is provided to applicants who fall in the lower-prioritized categories usually depends on the availability of funds.

To apply, a person should...

- gather documents proving the residence and income of everyone in the family, and the age and identity of program applicants.
- contact the state or local health department to find the address for the nearest WIC clinic and to ask which specific documents WIC applicants may need to bring when applying in person.

NOTE: Persons receiving WIC must renew their eligibility every six months.

The law governing WIC appears at:

42 U.S.C. § 1786, 7 C.F.R. §§ 246.1, *et seq.*

Employment-Related Programs

Workforce Investment Act Programs

Job and training opportunities for low-income working immigrants

The Workforce Investment Act (WIA) replaced the Job Training Partnership Act and created a streamlined one-stop job training and placement system coordinated by local Workforce Investment Boards.

WIA services...

- are provided at three levels, Core, Intensive, and Training, with participation at one level a prerequisite for the next level.
- are obtained by eligible persons using training accounts or vouchers to “pay” the training provider of their choice.
- are also provided to youths aged 14-21 who are one or more of the following:
 - deficient in basic literacy skills;
 - high school drop-outs;
 - homeless, runaways, or in foster care;
 - pregnant or parenting;
 - offenders;
 - in need of additional assistance to complete an educational program or secure and hold employment.

The WIA outlines...

- criteria for certifying eligible training providers.
- standards for measuring the performance of providers based on participants’ success.
For *adult participants*, indicators of success include:
 - entry into unsubsidized employment;
 - job retention after six months;
 - job earnings after six months;
 - attainment of a recognized credential; *and*
 - other criteria, at state option.
- For *youth participants*, indicators of success include:
 - attaining basic skills for work or occupational readiness;
 - obtaining secondary school diplomas and their equivalents; *and*
 - placement and retention in postsecondary education or advanced training, or in military service, employment, or qualified apprenticeships.

NOTE: The Youth Council, a subgroup of the local Workforce Investment Board, is responsible for developing the youth portion of the plan and coordinating youth activities.

Whether individuals qualify for WIA varies, depending on the level of service

- For Core services, all individuals aged 18 or over and displaced workers are eligible, regardless of income. All individuals regardless of immigration status can obtain informational and self-help Core services offered at one-stop centers. These services do not require registration (i.e., determination and documentation of eligibility).
- For Intensive services, adults and displaced workers are eligible who...
 - are unemployed, recipients of at least one core service, unable to obtain work through core services, and have been determined to need more intensive services in order to obtain work, *or*
 - are employed, recipients of at least one core service, but have been determined to need intensive services to obtain or retain work leading to self-sufficiency.
- For Training services, adults and displaced workers are eligible who...
 - have received at least one Intensive service and are unable to obtain or retain work through such services, *or*
 - after interview, evaluation, and case management, are determined to need training services and to have qualifications necessary for successfully completing the training program, and who...
 - select training programs directly linked to work opportunities in the local area or in another area where they are willing to relocate, *or*
 - are unable to obtain other financial assistance from other sources, or need WIA assistance, *or*
 - are determined to be eligible according to a funding priority system set by the state and local Workforce Investment Boards.

Workforce Investment Act Programs

ELIGIBLE IMMIGRANTS	INELIGIBLE IMMIGRANTS
<p>All immigrants regardless of status are eligible for informational or self-help Core services, which do not require registration or eligibility information.</p> <p>All immigrants who are employment-authorized are eligible for Intensive and Training WIA services. These services require registration, which is a procedure for determining and documenting eligibility for services.</p>	<p>All immigrants not listed as eligible.</p>

Special considerations for immigrants and their families

- WIA forbids training providers from discriminating on the basis of national origin, race, color, or citizenship.
- Local Workforce Investment Boards are required to ensure that WIA services are available to all eligible community members and to take affirmative steps to reach out to them with information on their programs.
- Local Workforce Investment Boards and one-stop training providers are required...
 - to take steps to ensure services and information are provided in the language of a “significant number or proportion” of the eligible population, *and*
 - to make reasonable efforts to “meet the particularized needs” of limited English-proficient individuals.

To apply for WIA, a person should...

- see his or her local Workforce Investment Board’s One-Stop Job Center.
- The law governing WIA appears at:**
 29 U.S.C. § 2801, *et seq.*; 20 C.F.R. Part 660, *et seq.*; 29 C.F.R. Part 37, *et seq.*; 65 Fed. Reg. 49,293 (to be codified at 20 C.F.R. Part 652 *et seq.*, (Aug. 11, 2000); U.S. Dept. of Labor, Employment and Training Administration, Training and Employment Guidance Letter No. 7-99 (Mar. 3, 2000); immigrant eligibility at 29 U.S.C. § 2938.

Earned Income Credit

A tax credit for low-income workers

The Earned Income Credit (EIC) provides...

- a federal tax benefit for low- or moderate-income working people, including workers whose earnings were too small to have been taxable.
- a refund of some or all of the federal income tax deducted from a worker's paycheck during the year.
- a tax credit which varies in amount, depending on the number of children supported by the worker and the size of the worker's income.
- advance EIC payments—the opposite of an income tax deduction—for workers supporting at least one child, added to paychecks by the employer at the worker's option.

To be eligible, individuals must be full or part-time workers and must...

- claim the EIC on their federal tax return, *and*
 - have low or moderate income and support one or more "qualifying children" in their home, *or*
 - be between the ages of 25 and 64, with very low income.

Under EIC rules, a "qualifying child" includes...

- sons, daughters, stepchildren, grandchildren, and adopted children, if they lived with the worker in the U.S. for more than half the year, and if they are under the age of 19, under age 24 if a full-time student, or of any age if they are totally and permanently disabled.
- foster children if they lived with the worker in the U.S. all year and were supported as members of the family.

NOTE: For EIC purposes, a foster child includes...

- a brother, sister, stepbrother, or stepsister, *or*
- a descendant (such as a child or adopted child) of a brother, sister, stepbrother, stepsister, *or*
- a child placed with the worker by an authorized placement agency. (In tax years prior to 2000, placement by an authorized agency was not required.)

ALSO NOTE: To claim the EIC, a worker does **not** need to claim the child as a dependent on his or her tax return.

A person's financial eligibility for the EIC depends on...

- EIC income limits, which are adjusted annually for inflation.
- whether income from investments, as defined by the Internal Revenue Service (IRS), exceeds a certain annual limit (there is no other resource test).

NOTE: Public assistance benefits, nontaxable Social Security benefits, and child support do not count as income for EIC purposes.

Special considerations for immigrants and their families

- To claim the EIC, each immigrant worker and his or her spouse and children listed on Schedule EIC must have a Social Security number (SSN) that is currently valid for work purposes. Individual Taxpayer Identification Numbers (ITINs) issued by the IRS and nonwork SSNs do not satisfy this requirement.
- Workers and qualifying children must have lived together in the U.S. for at least 6 months in a given tax year (or for at least 12 months for foster children).
- The worker's main home must be in the U.S.
- To claim the EIC, married workers must file a joint return. If one spouse does not have an employment-authorized SSN, the couple may not claim the EIC. The spouse with an SSN risks IRS penalties if he or she improperly files for the EIC as a single parent.
- A worker can lose eligibility for the EIC for two years in cases of "reckless or intentional disregard" of IRS rules, and for ten years in cases of fraud.
- If a worker, or his or her qualifying child, does not have an SSN in time to file a tax return, the worker may file the EIC claim after obtaining the number, by amending the tax return and, if claiming a child, attaching Schedule EIC. Or, if receipt of the SSN is imminent, the claimant may request a four-month tax return extension using Form 4868.

Earned Income Credit	
ELIGIBLE IMMIGRANTS	INELIGIBLE IMMIGRANTS
Immigrants with Social Security numbers (SSNs) currently valid for employment. If they are married or claiming the credit based on children they are supporting, the spouse and children also must have SSNs.	All immigrants not listed as eligible.

To apply a person should...

- if raising children, file a tax return using either Form 1040 or 1040A—not the 1040EZ—and fill out and attach Schedule EIC.
- if not raising children, file a tax return using any tax form and complete the EIC line on the tax form—Schedule EIC should not be submitted.
- if married, file a joint return—but filing status cannot be "married filing separately."
- if requesting advance payments, provide the employer with IRS Form W-5.

NOTE: An amended tax return (IRS Form 1040-X) may be filed to claim the EIC for up to three preceding years. If a person believes he or she is eligible for an EIC not claimed in a previous year, the person should submit a return for that year claiming the EIC.

ALSO NOTE: Workers do not have to calculate their own EIC; if they choose, the IRS will do it for them. Workers can also obtain free tax assistance at Volunteer Income Tax Assistance (VITA) sites from February through April. Such assistance may be desirable because the IRS gives particular scrutiny to returns that claim the EIC. For VITA locations, call the IRS at (800) 829-1040.

The law governing the EIC appears at:

26 U.S.C. § 32. Regulations appear at 26 CFR § 1.32-2; but are not current on immigrant issues. See IRS Publication 596, "Earned Income Credit" (annually updated), for statements of policy, credit calculation procedures, and examples.

Unemployment Insurance

For workers who are unemployed and seeking work

Unemployment Insurance...

- provides periodic payments to eligible workers who are unemployed and looking for work.
- is administered by each state under the provisions of state law and minimal guidelines set by the federal government.
- is funded by payments made by employers through state and federal unemployment taxes.
- pays benefits as a matter of right and not based on need or income.
- pays an amount of money that depends on the wages earned by the worker during a "base period," which, depending on the state, either consists of the first four of the last five quarters of work completed, or also includes recent earnings.

Individuals qualify who are...

- unemployed through no fault of their own (such as due to layoffs, discharge not based on misconduct, or resignation for "good cause").
- physically able to work and actively seeking employment (with certain exceptions, such as for illness, training, lay-offs with recall, or jury duty).

Special considerations for immigrants and their families

- Unemployment benefits are earned and are therefore not considered in "public charge" determinations.
- State employment agencies may use Systematic Alien Verification for Entitlements (SAVE), the Immigration and Naturalization Service (INS) verification system, to check an applicant's immigration status.

NOTE: The requirement that individuals have employment authorization to be considered available for work does not mean that they must have an INS Employment Authorization Document (e.g., the I-688B or I-766 EAD). A variety of documents may be used to demonstrate employment authorization, including both INS documents and documents issued by other agencies, as shown on the INS Form I-9 "Employment Eligibility Verification."

To apply, a person should...

- contact a local office of the state agency that administers the Unemployment Insurance program. (In some states the initial application is made by telephone.)
- complete an application and submit proof of identity, work history, and availability for employment, including evidence of current work authorization.

NOTE: If approved, the worker will receive, in addition to regular payments for a set period of weeks, a one-time payment for the period beginning one week after the application was submitted to the date it was approved.

The law governing Unemployment Insurance appears at:

The Federal Unemployment Tax Act (FUTA), 26 U.S.C. §§ 3301, *et seq.*; immigrant eligibility at 26 U.S.C. § 3304(a)(14)(A). U.S. Dept. of Labor program letters regarding the agency's interpretation of PRUCOL status and immigration status verification procedures are set forth at Unemployment Insurance Program Letter (UIPL) Nos. 1-86, 12-87, 11-88, 7-98, and 47-98 (the more recent UIPLs may be obtained at www.doleta.gov/directives).

Unemployment Insurance

ELIGIBLE IMMIGRANTS	INELIGIBLE IMMIGRANTS
<p>There are eligibility requirements for immigrants: (1) during the "base period" and (2) at the time of applying for unemployment compensation and while receiving benefits.</p> <p>Status during "base period" The "base period" is the period of the applicant's employment prior to applying for benefits that serves as the basis for calculating the applicant's benefits. An immigrant's wages count towards the calculation of benefits only if they were earned while the immigrant was in one of the following three categories:</p> <ul style="list-style-type: none"> • Lawful permanent residents (LPRs) • Immigrants or nonimmigrants with employment authorization However, a few states do not include this category in their unemployment statutes. • Immigrants who are permanently residing under color of law (PRUCOL) The U.S. Department of Labor (DOL) has adopted a restrictive definition of the term PRUCOL, requiring that such immigrants have a permanent status, and a written assurance from the INS that they will not be deported. DOL recognizes the following categories of immigrants as PRUCOL: <ul style="list-style-type: none"> • refugees, asylees, and persons granted withholding of deportation/removal; • persons granted deferred action status; • parolees, including paroled Cuban/Haitian entrants; <i>and</i> • other immigrants granted written permission from the INS to remain indefinitely in the United States. <p>However, states vary in their treatment of PRUCOL for unemployment purposes.</p> <p>Status at time of applying for Unemployment Insurance and while receiving benefits Immigrants must have employment authorization when they apply for unemployment and while they are collecting unemployment benefits.</p> <p>NOTE: The federal Unemployment Insurance program for Federal Employees (UCFE), Disaster Unemployment Insurance (DUA), and federal extended benefits (extensions that provide for payment of benefits beyond the normal 26-week period) are only available to individuals who are U.S. citizens or nationals or "qualified" immigrants at the time they apply for Unemployment Insurance.</p>	<p>Immigrants without current employment authorization.</p>

Social Security

Retirement, disability, and survivors' benefits

Social Security provides...

- a monthly check to “fully insured” persons based on age or disability, *or*
- a monthly check to the insured person’s dependents, *or*
- death benefits in the form of a monthly check to the insured person’s surviving spouse and children

Individuals qualify based on whether they are...

- “fully insured” (worked in qualifying employment for a certain minimum number of years and the employer withheld “FICA” taxes from the worker’s paycheck and reported them to the Social Security fund), and either:
 - aged – 62 years old for reduced retirement benefits; 65 or older for full benefits, *or*
 - disabled – a physical or mental impairment has kept or will keep the person from “substantial gainful activity” for 12 continuous months (sometimes referred to as “Social Security disability”) or is expected to result in death

NOTE: For many years, full retirement age has been 65. However, under a new law, the age at which a worker may receive full retirement benefits will change. Beginning with people born in 1938 or later, retirement age will gradually increase until the year 2027, when it will reach 67 for people born after 1959.

ALSO NOTE: If an employer fails to report a worker’s qualifying employment to Social Security, the worker may still be able to get “fully insured status” by proving that he or she performed the qualifying work.

There are no financial eligibility requirements for Social Security

- The level of benefits is not determined by the financial needs of workers or their families, but by the amount of money persons have earned in the past and their retirement age.

Special considerations for immigrants and their families

- Individuals who are citizens of countries that have signed bilateral Social Security agreements with the United States (known as “totalization agreements”) may receive Social Security benefits calculated based on past employment both in the United States and their home country.

Receipt of benefits while absent from the U.S.

- U.S. citizens who leave the country may continue to receive their Social Security benefits indefinitely (in almost all countries).
- Noncitizens who leave the country ordinarily may continue to receive Social Security benefits for up to six consecutive calendar months (after the first full calendar month abroad, each subsequent calendar month counts towards the six-month limit, unless the immigrant is not outside of the U.S. for any part of the month).
- After six calendar months, eligibility for continued benefits depends on a number of factors, including:
 - **Country of citizenship:** Citizens of many foreign countries who qualify for U.S. Social Security benefits based on their own work (not as a dependent or survivor of a worker) may continue to receive Social Security indefinitely even if they leave the U.S. These countries are designated by the Social Security Administration, based on a finding of reciprocity (i.e., that the other country’s social insurance system allows U.S. citizens to receive benefits while outside that country regardless of the length of the absence). Citizens of most other countries can continue to receive Social Security benefits if they lived in the U.S. for at least 10 years or earned at least 40 “quarter credits” under the U.S. Social Security system.

Social Security	
ELIGIBLE IMMIGRANTS	INELIGIBLE IMMIGRANTS
<p>Lawfully present immigrants.</p> <p>Immigrants not under a final order of deportation whose eligibility is based on an application for Social Security filed before Dec. 1, 1996.</p> <p>Citizens of certain countries with whom the U.S. has Social Security “totalization” agreements, regardless of immigration status. (Currently 19 countries have these agreements: Austria, Belgium, Canada, Chile, Finland, France, Germany, Greece, Ireland, Italy, Korea (South), Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom.)</p> <p><small>NOTE: Whether immigrants can continue to receive benefits for more than six months while outside the United States depends upon several factors, including the individual’s country of citizenship and whether eligibility is based on the immigrant’s own work or on being a dependent or survivor.</small></p>	<p>Immigrants who are not lawfully present, unless they:</p> <ul style="list-style-type: none"> • are citizens of one of the 19 countries that have signed “totalization” agreements with the U.S., <i>or</i> • are not under final orders of deportation and applied for Social Security before Dec. 1, 1996

- **Whether eligibility is based on the immigrant’s own work, or on being a dependent or survivor of someone who worked:** In most instances where a noncitizen’s eligibility for Social Security benefits is based on someone else’s work, the noncitizen’s benefits terminate after six months unless the worker meets the country of citizenship requirements listed above and the person receiving benefits can satisfy certain U.S. residency requirements.
- **Whether the immigrant falls within certain exceptions:** Active duty service members, survivors of persons killed in active duty, railroad workers, and persons who were eligible for Social Security benefits in December 1956 qualify for special exemptions permitting continued receipt of Social Security benefits for an indefinite period in most countries outside of the U.S.

- If an individual’s Social Security benefits lapse because the person is absent from the U.S. for more than six months, they can be restarted after he or she is present in the U.S. for a full calendar month.

NOTE: Regardless of any of the above considerations, immigrants who have been deported or removed from the U.S. usually cannot continue to receive Social Security benefits until and unless they are readmitted to the U.S. as lawful permanent residents. But the dependents of deported or removed immigrants can continue to receive benefits. (Generally, U.S. citizen dependents can continue to receive benefits regardless of where they live; noncitizen dependents of deported or removed immigrants are subject to a harsher rule: they cannot receive benefits for any month if they spend any part of that month outside the U.S.).

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Social Security

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Obtaining a Social Security card

- To obtain a Social Security card, an applicant must show proof of identity, age, and an employment-authorized immigration status.
- Lawful permanent residents, asylees, refugees, and other immigrants permitted to work in the U.S. indefinitely qualify for an unrestricted Social Security card, which is the same card as the one provided to U.S. citizens. Asylees and refugees do not need to have an Employment Authorization Document to obtain a card—they may present an INS Form I-94 (Arrival/Departure Record) showing asylum or refugee status, or an order of an immigration judge granting asylum.
- Other work-authorized immigrants will receive a card that states “valid for work only with INS authorization.”

NOTE: Persons who now have a valid card but who worked in the past under an invalid or fictitious card can receive Social Security credit for these past earnings (but no amnesty is available for past violations of the law, such as failure to pay income taxes on the earnings).

ALSO NOTE: Persons not entitled to work in the U.S. may, under certain limited circumstances, obtain a “not valid for employment” Social Security card, but such cards are no longer available for opening a bank account or filing a tax return. Persons not eligible for a work-authorized Social Security card must use an individual taxpayer identification number (ITIN) in order to file a tax return. To obtain an ITIN, individuals must file a Form W-7 with the Internal Revenue Service (IRS). The ITIN may not be used to secure employment, obtain Social Security or other benefits, or to claim the Earned Income Credit.

To apply for Social Security, a person should...

- apply in person at the local Social Security office, or by mail.

The law governing Social Security appears at:

Social Security Act, title II, 42 U.S.C. §§ 401, *et seq.*, 20 C.F.R. §§ 404, *et seq.*; immigrant eligibility at 42 U.S.C. §§ 402(n), 402(t), 402(y) and note, 405(c)(2)(B)(i), 20 C.F.R. §§ 404.460, 422.104, 8 C.F.R. § 103.12 (definition of lawful presence for Social Security purposes), SSA Memo “Processing SSN Card Requests from Asylees,” No. EM-01061 (Apr. 4, 2001), Program Operations Manual System (POMS) sections RM 00203.510 and RM 00203.560 (“nonwork” Social Security numbers).

Information about totalization agreements, and receipt of benefits outside the U.S. is available from the SSA website: www.ssa.gov/international.

Housing and Shelter

Low-Income Home Energy (LIHEAP) and Weatherization Assistance Programs (WAP)

Payments for heating, cooling, and weatherization

The Low-Income Home Energy Assistance Program (LIHEAP)...

- provides states with block grants, from the U.S. Department of Health and Human Services (HHS), to help low-income households defray the cost of heating or cooling and weatherizing their homes.
- sends the federal block grant to state social services agencies, welfare departments, or similar agencies which, in turn, often contract with local providers, such as community action agencies, to operate the programs. The names of the programs and services provided vary throughout the country.
- furnishes the highest level of assistance to households with the lowest incomes and highest energy costs or needs, taking into account family size.

LIHEAP programs typically include...

- *Heating or Cooling Assistance Programs* – payments to help persons defray the costs of heating or cooling their residences.
- *Energy Crisis Intervention Programs* – emergency payments to cover unpaid energy bills or the costs of weather-related emergencies.
- *Weatherization Assistance* – in some areas, LIHEAP funds are occasionally used for weatherization assistance, such as insulation, weather sealants, and other energy-related home repairs.

Households qualify for LIHEAP in which...

- one or more individuals in the household are receiving Temporary Assistance for Needy Families, Supplemental Security Income, food stamps, or certain veterans' benefits or payments; or
- household income does not exceed 60 percent of the state median income or 150 percent of the federal poverty level, whichever is greater.

NOTE: There are exceptions to the income cap. A state may not exclude a household from eligibility solely on the basis of their income, if their income is less than 110 percent of that state's poverty level.

However, a state may give priority to households with the highest home energy costs or needs in relation to household income.

ALSO NOTE: The term "household" means "any individual or group of individuals who are living together as one economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent."

The U.S. Department of Energy's Low-Income Weatherization Assistance Program (WAP)...

- provides weatherization, such as insulation, weather sealants, and other energy-related home repair, for low-income units.
- is administered by the states, which subcontract with local providers such as community action agencies or other public or nonprofit agencies who then enter into agreements with homeowners and landlords to weatherize their properties.
- is supplemented by some states with contributions from utility companies and other sources.
- follows LIHEAP's immigrant eligibility rules.

NOTE: Agencies using both WAP and LIHEAP funds for weatherization activities may follow either WAP or LIHEAP income eligibility and priority rules (which differ in some respects).

Special considerations for immigrants and their families in LIHEAP and WAP programs

- Advocates argue that all households or family units which include a U.S. citizen or "qualified" immigrant should be eligible for LIHEAP and WAP. Federal agencies have not issued guidance on this issue.

To apply, an applicant should...

- gather documents proving income and showing utility expenses and bills, energy needs, and type and location of housing.
- apply through local programs administering LIHEAP or WAP funds.

LIHEAP and DOE Weatherization Assistance Programs

ELIGIBLE IMMIGRANTS	INELIGIBLE IMMIGRANTS
LIHEAP Heating, Cooling, and Crisis Assistance Programs	LIHEAP Heating, Cooling, and Crisis Assistance Programs
"Qualified" immigrants.	"Not qualified" immigrants.
LIHEAP Weatherization Assistance and DOE Weatherization Assistance Programs	LIHEAP Weatherization Assistance and DOE Weatherization Assistance Programs
<p>Multi-Unit Dwellings Families living in multi-unit dwellings are eligible without regard to the immigration status of the inhabitants.</p> <p>Single-Unit Dwellings "Qualified" immigrants.</p>	<p>Multi-Unit Dwellings None.</p> <p>Single-Unit Dwellings Not "Qualified" immigrants.</p>

The law governing LIHEAP appears at:

Low-Income Home Energy Assistance Act of 1981, 42 U.S.C. §§ 8621, *et seq.*, 45 C.F.R. §§ 96.80, *et seq.*, Interpretation of "Federal Public Benefit," 63 Fed. Reg. 41,658 (Aug. 4, 1998), Memorandum from Janet M. Fox, Director, Division of Energy Assistance, Office of Community Services to Low-Income Home Energy Assistance Program (LIHEAP) Grantees and Other Interested Parties, Re: Revision-Guidance on the Interpretation of "Federal Public Benefits" Under the Welfare Reform Law (June 15, 1999).

The law governing WAP appears at:

42 U.S.C. §§ 6861, *et seq.*, 10 C.F.R. §§ 440.1 *et seq.*; immigrant eligibility at Weatherization Program Notice 98-1, Gail McKinley, Acting Director, Office of State Community Programs, Energy Efficiency and Renewable Energy, Re: Program Year 1998 Weatherization Grant Guidance (effective Nov. 19, 1997).

Rental Housing Programs

Public housing, Section 8, rural housing, and low-income tax credit housing

Rental housing programs provide...

- **Public housing** – Apartments owned by local public housing authorities that tenants typically rent for a maximum of 30 percent of household income. Local housing authorities administer this program under rules set out by the U.S. Department of Housing and Urban Development (HUD).
- **Project-based Section 8 housing** – Apartments owned by private landlords who receive subsidies from HUD on behalf of eligible tenants. Tenants typically pay 30 percent of their income for rent.
- **Section 8 certificates and vouchers** – Issued by public housing authorities to eligible households to rent apartments or homes from private landlords. The certificate or voucher guarantees a payment to the landlord from the local housing authority for the difference between the rent charged for the unit and the tenant household's share, usually 30 percent of income. Local housing authorities administer this program under HUD rules.
- **Section 515 rural rental housing** – Apartments in rural areas served by the Rural Housing Service (RHS) under the U.S. Department of Agriculture. The apartments are owned by private landlords who receive subsidies from RHS on behalf of eligible tenants. Residents in heavily subsidized units typically pay 30 percent of household income for rent. Residents in minimally subsidized units pay rent based on the cost of operating the complex.
- **Section 514/516 farm labor housing** – Apartments built specifically for farmworkers and their families, and owned by private or public landlords who receive subsidies from the RHS on behalf of eligible tenants. Tenants pay 30 percent of household income if the units are heavily subsidized or a flat rent in nonsubsidized units.
- **Low Income Housing Tax Credit (LIHTC) housing** – apartments owned by private landlords who receive tax benefits in return for renting some or all the units to eligible tenants. All the units

have flat rents that are regulated under the LIHTC program, which is administered by the Internal Revenue Service.

Individuals or households qualify if...

- generally, their household income is less than 80 percent of the area's median income for families of the same size. (However, the LIHTC program has higher income limits, and the RHS Section 514/516 farm labor housing program has no income limits.)
- family size matches an available unit.
- they are good tenants and have sufficient income to pay their portion of the rent.
- (in some cases) they meet special building requirements, such as being a senior, a person with disabilities, or a current or retired farmworker.

Special considerations for immigrants and their families

- Receipt of housing assistance is not considered in "public charge" determinations.
- HUD-funded programs that provide emergency shelter and transitional housing (for up to two years) are available to all immigrants, regardless of status.

HUD public housing and Section 8 programs

- At least one person in the household must be eligible, based on his or her immigration status, to reside in the housing (the eligible person may be a minor child).
- Household members ineligible for housing assistance based on their immigration status may live in an assisted unit, but the household's subsidy will be prorated, resulting in a higher rent.
- Immigration documents will be verified for current tenants and new applicants, but not for household members who do not claim eligibility based on immigration status.

NOTE: Federal housing programs do not require reporting to the INS except in the rare circumstances outlined on page 184. Immigrants in households with eligible members need not reveal the precise

Rental Housing Programs	
ELIGIBLE IMMIGRANTS	INELIGIBLE IMMIGRANTS
HUD Public Housing and Section 8 Programs	HUD Public Housing and Section 8 Programs
<p>Lawful permanent residents (LPRs).</p> <p>Lawful temporary residents under the general amnesty program created by the Immigration Reform and Control Act of 1986.</p> <p>Refugees, asylees, and persons granted withholding of deportation/removal.</p> <p>Victims of trafficking.</p> <p>Parolees.</p> <p>Citizens of Micronesia, the Marshall Islands, and Palau.</p> <p>Abused immigrants and Cuban/Haitian entrants are arguably eligible for these programs and have been granted access to public housing in some jurisdictions.</p>	Immigrants not listed as eligible.
Rural Housing Programs	Rural Housing Programs
<p><i>Section 515 rural rental housing:</i> All immigrants, regardless of status, unless the RHS issues new regulations.</p> <p><i>Section 514/516 Farm Labor Housing:</i> LPRs (immigration status requirement applies only to head of household).</p>	<p><i>Section 515 rural rental housing:</i> None, unless the RHS issues new regulations.</p> <p><i>Section 514/516 Farm Labor Housing:</i> Families in which the head of household is neither a citizen nor an LPR.</p>
Tax Credit (LIHTC) Housing	Tax Credit (LIHTC) Housing
All immigrants, regardless of status.	None.

immigration status that makes them ineligible—they can simply indicate that they do not claim to be eligible based on immigration status.

IMPORTANT: Households with ineligible family members that were receiving assistance before June 19, 1995, may continue to reside in the housing and receive subsidies without proration as long as:

- the household head or his or her spouse is eligible, *and*

- the ineligible members are either the children or parents of the household head or spouse, *and*
- any other household members (such as uncles, aunts, nieces, nephews, and cousins) are eligible, *and*
- the household was determined eligible for assistance without proration before November 29, 1996.

continued next page ➤

Rental Housing Programs

► *continued from preceding page*

RHS Section 514/516 farm labor housing

- Households are eligible for RHS Section 514/516 farm labor housing as long as the tenant signing the lease is an agricultural worker and a citizen or lawful permanent resident.

To apply, a person should...

- for public housing and Section 8 certificates or vouchers, contact the local housing authority.
- generally, for Section 8 project-based housing, RHS rental and farm labor housing, and LIHTC housing, visit the manager's office for each development.
- contact HUD, RHS, or a legal services office to find out where else to apply.

The laws governing housing programs appear at:

42 U.S.C. §§ 1401, *et seq.*, 24 C.F.R. §§ 5.500, *et seq.*, 880.101, *et seq.*, 960.201, *et seq.*, 982.1, *et seq.* (public housing and section 8), 42 U.S.C. §§ 1471, 1484-1486, 7 C.F.R. §§ 1930.101, *et seq.*, 1944.151, *et seq.* (RHS housing), 26 U.S.C. § 42, 26 C.F.R. §§ 1.42-0, *et seq.* (LIHTC housing); immigrant eligibility at 42 U.S.C. § 1436a, 24 C.F.R. §§ 5.500, *et seq.* (public housing and section 8), 42 U.S.C. §§ 1471 (section 515 rural rental housing and section 514/516 farm labor housing), 1484(f)(3) and 1486(g)(4) (section 514/516 farm labor housing), 7 C.F.R. § 1944.153 (section 514/516 farm labor housing); *see also* "Eligibility Restrictions on Noncitizens: Inapplicability of Welfare Reform Act Restrictions on Federal Means-Tested Public Benefits," 65 Fed Reg. 49,994-95 (Aug. 16, 2000) (no HUD programs fall within the category of "federal means-tested public benefits"). *Important case: Yolano Donnelly Tenant Ass'n v. Pierce*, No. CIV S 86-0846 MLS (E.D. Cal. Sept. 18, 1986).

Education

Higher Education

Public colleges and universities, tuition, and federal financial aid

Public colleges and universities provide...

- postsecondary education and degrees.

Individuals qualify to attend public colleges and universities...

- based on admissions standards set by each state.

NOTE: Admission to public colleges and universities is not based on financial eligibility.

Public colleges and universities charge tuition amounts...

- that may vary depending on whether the student is a "resident" or "nonresident" of the state.

NOTE: "Residence" is defined by each state. In this context, "residence" is not an immigration term. However, persons who are not "lawfully present" in the U.S. cannot secure postsecondary education benefits that are based on state residence, unless citizens or nationals of the U.S. who are not state residents can secure the same benefit. Federal agencies have not issued guidance regarding whether this restriction applies only to direct assistance, such as state financial aid, or to in-state tuition. However, states may impose rules that apply equally to residents and nonresidents (e.g., offering benefits to students who have graduated from state high schools).

Federal financial aid programs are available to students at public and private colleges and universities and provide...

- Grants – such as Pell Grants, Federal Supplemental Education Opportunity Grants (FSEOG), and State Student Incentive Grants (SSIG). Grants do not need to be repaid.
- Federal work-study – provides employment for students who generally work in jobs that are related to their course of study, or that provide community services.

- Loans – such as William D. Ford Federal Direct Loans, Federal Family Education Loans (FFEL), Perkins Loans, and PLUS Loans. Loans need to be repaid.

NOTE: PLUS loans are available to students' parents on behalf of a student. Parents and students must both meet the loan's eligibility requirements, including immigrant eligibility requirements.

Generally, students are eligible for federal financial aid programs if they...

- meet specific criteria that vary depending on the grant, loan, or work-study sought. Examples of these criteria include enrollment in or acceptance for enrollment in a degree, certificate, or other program leading to a recognized educational credential at an institution of higher education; maintaining satisfactory academic progress; showing that the student is not in default on student loans; showing that the student does not owe refunds on previously received grants; and compliance with Selective Service requirements.

A student's financial eligibility for federal financial aid programs...

- varies, depending on the program, but is often determined by the cost of attending school minus the family's expected contribution.

Special considerations for immigrants and their families

- Immigrants ineligible for federal financial aid or those who must pay nonresident tuition may seek private scholarships, grants, and loans.

To apply for postsecondary education or federal financial aid, a student should...

- obtain information and applications from the school's admissions or financial aid office, or via the Internet.

Federal Financial Aid for Higher Education	
ELIGIBLE IMMIGRANTS	INELIGIBLE IMMIGRANTS
<p>"Qualified" immigrants who have evidence from the Immigration and Naturalization Service (INS) that they are in the U.S. on more than a temporary basis with the intent to become a lawful permanent resident (LPR) or citizen.</p> <p>NOTE: The federal financial aid application lists the following immigrants as eligible: LPRs, refugees, asylees, indefinite parolees, humanitarian parolees, and conditional entrants.</p> <p>ALSO NOTE: Other "qualified" immigrants, such as persons granted withholding of deportation/removal, abused immigrants, or Cuban/Haitian entrants, who have evidence from the INS that they are in the U.S. on more than a temporary basis with the intent to become an LPR or citizen should also be eligible even if not listed on the application.</p>	<p>"Qualified" immigrants who lack evidence from the INS that they are in the U.S. on more than a temporary basis with the intent to become an LPR or citizen.</p> <p>"Not qualified" immigrants.</p>

The law governing financial aid is found at:

20 U.S.C. §§ 1070, *et seq.*, 42 U.S.C. § 2751, *et seq.*, 8 U.S.C. §§ 1601, *et seq.*, 34 C.F.R. Parts 668, 674, 675, 676, 682, 685 690, 692, immigrant eligibility at 20 U.S.C. § 1091, 8 U.S.C. §§ 1601, *et seq.*; 34 C.F.R. §§ 668.33, 668.130, *et seq.*, U.S. Dept. of Education, Student Financial Assistance Programs, Policy Development Division, *Policy Bulletin: Welfare Reform Legislation* (July 30, 1997), Letter from Elizabeth M. Hicks, Deputy Assistant Secretary for Student Financial Assistance Programs, U.S. Dept. of Education, to Dear Colleague, GEN-98-2 (Jan. 1998).

The law governing residence-based education benefits is found at:

8 U.S.C. § 1623. Each state has its own rules.
Important case regarding in-state tuition:
Toll v. Moreno, 458 U.S. 1 (1982).

K-12 Education

Public primary and secondary education

ELIGIBLE IMMIGRANTS	INELIGIBLE IMMIGRANTS
All children, regardless of immigration status.	None.

Public primary and secondary education provides...

- basic schooling from kindergarten through 12th grade, with preschool available in some schools.
- in some areas, compensatory education such as:
 - vocational education to help students improve their academic, vocational, and technical skills.
 - educational programs targeted to increase the performance of low-performing students in high-poverty schools.
 - programs to assist limited English-proficient persons improve their English skills.
 - preschool programs, like Head Start, that help disadvantaged students prepare for school.

NOTE: Either independently or in conjunction with public schools, many community-based organizations and social services programs also provide education and literacy programs for low-income children, adults, and families.

Individuals who qualify for public primary and secondary education...

- must meet local requirements, as applicable, such as those relating to age, residency in the appropriate school district (or authorization to attend an out of district school), and immunizations.

Special considerations for immigrants and their families

- Free public and secondary education is guaranteed by the Constitution to all residents of a state.
- Individuals issued nonimmigrant student visas under 8 U.S.C. section 1101(a)(15)(F)(i) must pay for the full cost of their education.

To enroll in public primary and secondary schools, a student should...

- contact his or her local public school district office.

The law governing primary and secondary education is found at:

20 U.S.C. §§ 2301, *et seq.* (vocational education), 20 U.S.C. §§ 6311, *et seq.*, §§ 6391, *et seq.* (regular and migrant education), 20 U.S.C. §§ 7401, *et seq.* (bilingual education), 42 U.S.C. §§ 9831, *et seq.* (Head Start), 8 U.S.C. §§ 1184(l), 1182(a)(6)(G) (nonimmigrant students and excludability). Each state has its own rules. *Important case: Plyler v. Doe*, 457 U.S. 202 (1982).

Legal Services and Disaster Assistance

LSC-Funded Legal Services

Free legal advice and representation in public benefits, family law, evictions, and other civil matters

The Legal Services Corporation (LSC) provides...

- grants to legal services programs to give free legal services to low-income clients in noncriminal matters such as public benefits, housing, consumer issues, employment, education, and family law.

An LSC-funded program can accept a new case based on...

- the size and workload of its staff.
- the program's priorities, which define the types of cases each office will handle based on the local community's legal needs.
- federal law and LSC regulations limiting the types of clients and types of cases LSC-funded programs may handle.

A person's financial eligibility for services at LSC-funded programs depends on...

- income thresholds set by the local program, which reflect federal poverty guidelines.
- his or her assets (levels are set by local programs).

NOTE: In most instances, a person is not eligible for LSC-funded services if his or her family's income is more than 125 percent of the federal poverty guidelines.

Special considerations for immigrants and their families

- Only certain categories of immigrants are eligible for legal services from LSC-funded programs. However, certain victims of domestic violence, regardless of immigration status, can receive services if the program uses non-LSC funds to serve them.
- To be eligible for legal services, noncitizens must also be "present in the United States." Even if they leave the country, noncitizens meet this

requirement if they maintain their U.S. residence or other lawful immigration status. Nonimmigrant agricultural workers may be represented as long as they were present in the U.S. under an "H-2A contract" and their need for legal assistance arises out of an issue involving the contract.

- LSC-funded programs in the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands can serve persons without regard to the LSC immigration restrictions.

To apply, a person should...

- contact the nearest office and request an appointment.

IMPORTANT: Immigrants who are not eligible for services at LSC-funded programs should be referred to non-LSC-funded programs for assistance. A number of independent non-LSC-funded programs represent immigrants without restriction.

The law governing LSC-funded programs appears at:

Legal Services Corporation Act of 1974, 42 U.S.C. §§ 2996, *et seq.*, Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134 (1996); Depts. of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. No. 105-119, (1997) and subsequent appropriations acts, 42 U.S.C. § 11607(b) (implementing the Hague Convention on the Civil Aspects of International Child Abduction), 45 C.F.R. §§ 1600, *et seq.*; immigrant eligibility at 45 C.F.R. §§ 1626.1-1626.12. *Important case: Legal Aid Soc'y v. Legal Services Corp.*, 145 F.3d 1017 (9th Cir. 1998), *cert. denied*, 525 U.S. 1015 (1998).

1626.1-1626.12

LSC-Funded Legal Services

ELIGIBLE IMMIGRANTS

- **Lawful permanent residents**
- **Refugees**
- **Asylees**
- **Persons granted withholding of removal/deportation**
- **Victims of trafficking**
- **Conditional entrants**
- **Immigrants who have filed an application for "adjustment of status"** to permanent residence and who are married to a U.S. citizen, the parent of a U.S. citizen, or the unmarried child under 21 of a U.S. citizen (see box at right)
- **Special Agricultural Worker (SAW)** temporary residents
- **Nonimmigrant agricultural laborers (H2A workers)** (eligibility is limited to assistance regarding issues of wages, housing, transportation, and other employment rights provided in the H-2A contract under which the nonimmigrant worker was admitted)
- **Certain American Indians born outside the U.S.** (who either were born in Canada or are members of the Texas Band of Kickapoo)
- **Foreign nationals** who seek assistance pursuant to the Hague Convention on the Civil Aspects of International Child Abduction

LSC programs can also represent certain immigrant **victims of domestic violence** or abuse regardless of their immigration status, provided that:

- the immigrant seeking assistance either
 - has been abused or subjected to extreme cruelty in the U.S. by a parent or spouse (or by another member of the parent's or spouse's family residing in the same household as the immigrant, if the immigrant's parent or spouse acquiesced to the abuse), or
 - is a parent whose child has been abused or subjected to extreme cruelty in the U.S. by a spouse, parent, or other member of the parent's or spouse's family in the same household, and the immigrant did not participate in or acquiesce to the abuse;
- the program provides the representation using non-LSC funds; and
- the legal assistance is directly related to preventing or obtaining relief from the abuse (e.g., such representation may include, but is not limited to: civil protection orders, divorce, housing, public benefits, employment, and immigration services).

INELIGIBLE IMMIGRANTS

Immigrants not listed as eligible.

DOCUMENTATION

For LSC purposes, **any of the following documents** can be used to demonstrate a pending "adjustment of status" application¹:

- **I-485** (application for adjustment of status on the basis of a family-based visa, registry, Cuban Adjustment, Cuban/Haitian Adjustment, or spouses and children eligible for Violence Against Women Act relief) and proof of filing
- **I-256A** or **EOIR-40** (application for suspension of deportation) and proof of filing
- **EOIR-42** (application for cancellation of removal) and proof of filing
- **OF-230** (application at consulate for visa) and proof of filing with consulate
- **I-360** (application to qualify as abused spouse or child under the Violence Against Women Act)
- **I-688B** or **I-766** (Employment Authorization Document) coded 8 C.F.R. section 274a.12(c)(9) (applicant for adjustment) or (c)(16) (registry applicant) or (c)(10) (suspension applicant)
- **letter** or **Form I-797** from INS acknowledging receipt of I-485
- **I-94**, with stamp indicating entry pursuant to advance parole (INA § 212 (d)(5)) pending Section 245
- **I-512** (advance parole), indicating entry to pursue pending section 245 application, or passport with stamp or writing by INS officer indicating pending section 245 application
- **I-130** (visa petition) and proof of filing
- any verification from the INS or other authoritative document

¹ LSC is currently revising its regulation regarding immigrant eligibility for services, and its list of acceptable documents. It is likely that this list will be updated and expanded to include other application forms, such as Form I-881 (application for NACARA suspension or special rule cancellation and adjustment).

Disaster Assistance

Food, shelter, cash payments, loans, and other help for victims of major disasters

Federal disaster assistance is provided to victims of a major disaster through...

- the Federal Emergency Management Agency (FEMA), the Individual and Family Grant Program (IFGP), Disaster Unemployment Assistance (DUA), the Small Business Administration (SBA), and emergency provisions of other benefit programs such as food stamps.
- FEMA, the key federal coordinating agency, works in concert with and provides referrals to other agencies administering disaster relief.

NOTE: The most common "major disasters" are earthquakes, storms, and civil unrest.

FEMA provides...

- **Temporary Housing Assistance** – Rent payments for people who must relocate due to disaster-related damage to their home or apartment.
- **Mortgage and Rental Assistance** – Rent or mortgage payments for people suffering a financial hardship due to the disaster and facing eviction or foreclosure.
- **Minimal Repairs Program** – Grants to homeowners, typically up to \$10,000, to restore the habitability of their home.

Other programs

The Individual and Family Grant Program (IFGP)

- Provides grants to persons needing financial help for disaster-related expenses such as housing repairs and cleanup, replacement of household and job essentials (including transportation), and medical, dental, and funeral costs.
- To receive IFGP for purposes other than medical, dental, and funeral costs, an individual must be ineligible for an SBA loan, or must have received an SBA loan that is inadequate to cover his or her needs.
- The IFGP is administered through state Offices of Emergency Services or similar state agencies.

Disaster Unemployment Assistance (DUA)

- Provides cash income to persons who become unemployed due to a major disaster. DUA is administered by the U.S. Department of Labor through state employment agencies.

Food Programs

- Emergency food stamps and food distribution are provided to meet emergency food needs arising after a disaster. These food programs are administered by the U.S. Department of Agriculture through state social services agencies or similar state or local organizations.

Short-term, noncash, in-kind emergency disaster assistance

- Numerous agencies independently provide food, water, shelter, medical care, emergency shelter, search and rescue, and other services to minimize threats to life, property, and public health and safety.

Small Business Administration (SBA) Loans

- Low-interest loans to homeowners, renters, and large and small businesses to repair or replace damaged homes, personal property, or businesses.

Individuals qualify for disaster assistance who...

- have suffered a loss caused by an event that the president of the United States has declared to be a major disaster.
- apply soon after a disaster is declared, within the application period for the particular benefit program.

Special considerations for immigrants and their families

- Receipt of disaster relief does not have public charge consequences.
- All immigrants, regardless of status, are eligible for short-term, noncash, in-kind, emergency disaster relief and similar services.

continued following table ►

Disaster Assistance	
ELIGIBLE IMMIGRANTS	INELIGIBLE IMMIGRANTS
FEMA Assistance Programs, Individual and Family Grant Program, and Disaster Unemployment Assistance	
<p>"Qualified" immigrants.</p> <p>NOTE: To receive DUA, "qualified" immigrants must have employment authorization.</p>	<p>"Not qualified" immigrants are ineligible, except for services that provide short-term, noncash, in-kind emergency disaster relief.</p>
Short-Term, Noncash, In-Kind Emergency Disaster Relief	
<p>All immigrants, regardless of status.</p> <p>NOTE: FEMA interprets the short-term disaster relief provision to apply to programs that provide: search and rescue; emergency medical care; emergency mass care; emergency shelter; clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services; warning of further risk or hazards; dissemination of public information and assistance regarding health and safety measures; provision of food, water, medicine, and other essential needs, including movement of supplies or persons; and reduction of immediate threats to life, property, and public health and safety.</p>	<p>None.</p>
Emergency Food Stamps¹	
<p>Children under 18 years old who were lawfully residing in the U.S. on Aug. 22, 1996, and who are now "qualified" immigrants.</p> <p>Seniors who were born before Aug. 22, 1931, were lawfully residing in the U.S. on Aug. 22, 1996, and who are now "qualified" immigrants.</p> <p>Persons receiving benefits for blindness or disability, who were lawfully residing in the U.S. on Aug. 22, 1996. Disability-related benefits may include: Supplemental Security Income, Social Security disability, state disability or retirement pension, railroad retirement disability, veteran's disability, disability-based Medicaid, or possibly General Assistance for certain persons with disabilities.</p> <p>Lawful permanent residents (LPRs) credited with 40 quarters of work.</p> <p>"Refugee" categories: individuals granted status as a refugee, asylee, person granted withholding of removal/deportation, Amerasian immigrant, or Cuban/Haitian entrant, during the seven years after obtaining this status. Eligibility continues during this period even if the "refugee" becomes an LPR. Even after the seven-year period expires, these immigrants may be eligible under another category listed on this page.</p> <p>Victims of trafficking.</p> <p>Veterans and active duty military personnel, their spouses, unremarried surviving spouses, and children, who are "qualified" immigrants.</p> <p>Certain Hmong or Highland Laotian tribe members who are lawfully present in the U.S., and were members of these tribes during the Vietnam era; spouses, unremarried widows/widowers, and children of these tribe members also are eligible.</p> <p>A member of a federally recognized Indian tribe, or an American Indian born in Canada.</p> <p>Some states also provide state-funded food assistance to additional categories of immigrants.</p>	<p>"Qualified" immigrants not listed as eligible.</p> <p>"Not qualified" immigrants other than American Indians and Hmong or Laotian tribe members described as eligible.</p>

¹ See the chapter on Food Stamps (page 132) for additional detail.

To apply a person should...

- contact FEMA via telephone at (800) 462-9029; TDD (800) 462-7585 (following some disasters, FEMA opens Disaster Recovery Centers where people can obtain information or apply for assistance).

The law governing federal disaster assistance appears at:

Stafford Disaster and Relief Act 42 U.S.C. §§ 5121, *et seq.*, 44 C.F.R. §§ 206.1, *et seq.* (FEMA and IFGP), 20 C.F.R. §§ 625.1, *et seq.* (DUA), 7 C.F.R. §§ 280.1, *et seq.* (Emergency Food Coupons and Food Distribution), 15 U.S.C. §§ 634, *et seq.*, 13 C.F.R. §§ 123.1, *et seq.* (SBA); immigrant eligibility described in Memorandum from Lacy E. Suiter, Federal Emergency Management Agency, Executive Associate Director, Response and Recovery Directorate Policy No. 4430.140C, Policy on Verification of Citizenship, Qualified Alien Status and Eligibility for Disaster Assistance (Mar. 2, 1998).

Part 3

Access Barriers

Public Charge

Affidavits of Support

Immigrant Sponsor Deeming

Confidentiality, Verification, and Reporting

Public Charge

When receiving government benefits may affect an immigrant's status

“Public charge” is a term used by the Immigration and Naturalization Service (INS), the immigration court, and the U.S. State Department to refer to persons who are considered primarily dependent on the government for subsistence, as demonstrated by either receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense. Where this consideration is applicable, an immigrant who is found “likely at any time to become a public charge” can be denied entry to the U.S. or denied status as a lawful permanent resident (LPR).

Public charge...

- is an issue for most immigrants seeking to become LPRs, who generally must show the INS, a consular officer, and/or an immigration judge that they are not likely to become a public charge in the future.
- is **not** an issue for refugees, asylees, naturalization applicants, and certain other immigrants, as described below.
- is **not** a test that U.S. citizens or LPRs who want to sponsor a family member to immigrate must meet themselves. (However, these sponsors must meet a separate test to show they can support the immigrant, as demonstrated by filing an affidavit of support).
- is a potential problem for low-income LPRs who travel outside the U.S. for more than six months since, upon seeking reentry into the U.S., they may need to demonstrate they are not likely to become a public charge.
- is, in very rare cases, a cause for deportation, as explained below.

How does the government decide whether someone is likely to become a public charge?

The INS, immigration judge, or U.S. State Department must look at several factors to decide if an applicant for lawful permanent residence is likely to become a public charge in the future. Among these factors are:

- age (is the immigrant elderly or very young, and therefore likely to need support?)
- health (does the immigrant have an illness that requires costly treatment and prevents employment?)
- income (is the immigrant low-income?)
- family size (does the immigrant have a large family to support?)
- education and skills (is the immigrant now working, or easily able to find work?)
- affidavit of support (For most persons immigrating through family members, the “enforceable” Affidavit of Support, Form I-864, is required. If the sponsor meets the form’s income requirements, this satisfies most concerns about the immigrant’s future support. If the new I-864 form is not required, the “traditional,” nonbinding version of the Affidavit of Support, Form I-134, may be used to help meet public charge concerns.)

Can an immigrant's receipt of public benefits be considered in public charge determinations?

- The federal government’s May 1999 public charge guidance clarified that receipt of noncash benefits is not relevant and may not be considered in public charge determinations. There is one exception: immigration officials may consider use of Medicaid or other government funding for institutionalization for long-term care (e.g., in a nursing home or mental health institution) in determining whether an immigrant is likely to become a public charge (however, institutionalization for short periods of rehabilitation is not considered). No other noncash programs can

be considered, including food stamps, Medicaid (other than for long-term care), Women, Infants, and Children (WIC), housing, school lunch, job training, child care, shelters, disaster relief, health clinics, and other noncash programs.

- Cash benefits can be considered in public charge determinations if they are received for income maintenance, rather than for specific supplemental purposes such as child care, transportation, or job training. The principal cash benefits that can be considered are Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF) (but not cash for child care or other supplemental purposes), and state and local cash assistance programs such as General Assistance.
- Cash benefits that are earned are not considered in public charge determinations. These include benefits such as unemployment insurance, Social Security retirement and survivors' benefits, government pension benefits, and veterans' benefits.
- Receipt of cash benefits for income maintenance by members of the immigrant's family, including the immigrant's children, is not relevant unless the benefits represent the family's sole means of support.
- The fact that an immigrant received cash benefits for income maintenance in the past is a negative factor, but does not by itself establish that the immigrant is likely to become a public charge in the future. Immigrants can show, for example, that they are not likely to become primarily dependent on the government for support because they now have a job, have acquired new job skills or education, or can otherwise demonstrate that they will be able to rely on themselves or family members for their support.
- Benefits, including cash benefits, received by abused immigrants who have filed self-petitions for immigrant visas cannot be considered in public charge determinations.

Public charge is an issue for...

- Most applicants for LPR status.
- Low-income LPRs who depart the country for more than six months.

Public charge does not apply to...

- LPRs who leave the U.S. for a period of six months or less.
- Refugees and asylees (either when first granted this status, or when they apply for LPR status).
- Applicants for adjustment of status under certain specific programs, including registry (based on residency in the U.S. since before January 1, 1972), the Nicaraguan Adjustment and Central American Relief Act (for eligible Cubans and Nicaraguans), the Haitian Refugee Immigration Fairness Act (for eligible Haitians), the Cuban Adjustment Act, and legislation for certain Indochinese, Polish, and Hungarian parolees.
- Applicants for special immigrant juvenile status.
- Lautenberg parolees (either when first admitted or when they apply for LPR status, although they are required to submit the traditional version of the Affidavit of Support, Form I-134).
- Applicants for temporary protected status (TPS), deferred enforced departure (DED), or deferred action status (however, these individuals will have to meet the public charge test if they later apply for LPR status).
- Amerasians at initial admission to the U.S.
- Applicants for naturalization.
- LPRs and U.S. citizens sponsoring their relatives or potential employees to immigrate (however, sponsors must meet a separate affidavit of support test, to show they can support the immigrant).

NOTE: Immigrants applying for suspension of deportation or cancellation of removal are not subject to the public charge provisions of the immigration laws, but some immigration judges nevertheless consider their receipt of benefits to be a factor in deciding whether to approve their applications.

Benefits that may not be considered in public charge determinations

(This is not a complete list, since there are many noncash programs that are not relevant to public charge.)

- Food stamps.
- Medicaid (other than payments for long-term institutional care).
- State Children's Health Insurance Program (SCHIP).
- Health insurance and health services (other than payments for long-term institutional care).
- Nutrition programs, including WIC and school lunch programs.
- Emergency disaster relief.
- Housing benefits.
- Child care services.
- Energy assistance, such as the Low-Income Home Energy Assistance Program (LIHEAP).
- Foster care and adoption benefits.
- Transportation vouchers or other noncash transportation services.
- Educational benefits, including Head Start and aid for elementary, secondary, or higher education.
- Noncash benefits under TANF.
- Job training programs.
- State and local noncash benefits similar to the above-listed federal programs.
- Any other federal, state, or local public benefit program under which benefits are provided in-kind, through vouchers, or any other medium of exchange except the payment of cash assistance for income maintenance.
- Cash benefits that have been earned, including unemployment insurance, Social Security retirement and survivors' benefits, government pension benefits, and veterans' benefits.
- Benefits, including cash benefits, received by abused immigrants who have filed self-petitions for immigrant visas.

Benefits that may be considered in public charge determinations

- SSI.
- TANF, but not including TANF cash payments for specific supplemental purposes, such as child care, transportation, or job training.
- State and local cash assistance programs for income maintenance (such as General Assistance or General Relief).
- Institutionalization for long-term care (e.g., in a nursing home or mental health institution) at government expense. Institutionalization for short periods of rehabilitation is not considered.

Only in very rare cases can public charge be a basis for deportation or removal

Becoming a public charge can cause an LPR to be subject to deportation or removal only where all of the following conditions are met:

- the LPR became primarily dependent on government cash benefits for income maintenance, or long-term institutionalization, within five years of being admitted to the U.S., *and*
- the need for the benefits arose from circumstances that existed before the LPR was admitted to the U.S., *and*
- the LPR's receipt of the benefits created a legal debt for the LPR and/or his or her sponsor, *and*
- the agency that provided the benefit demanded payment within five years of the LPR's entry to the U.S., received no such payment, obtained a final judgment, and took all legal action necessary to recover the debt.

NOTE: No federal benefit programs create such a debt against individuals entitled to receive the benefit. However, the enforceable Affidavit of Support, Form I-864, makes the sponsor legally responsible for repaying the government if it can be shown that the immigrant received a means-tested public benefit during the period that the sponsor's support obligation was in effect. In addition, receipt of some state benefits does create a debt for the immigrant receiving the benefit.

The law governing public charge appears at:

8 U.S.C. § 1182(a)(4), INS Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, HQOPS-70-21.1.13 (May 20, 1999), 64 Fed. Reg. 28,689-93 (May 26, 1999), Dept. of State Policy Guidance, Ref: 9 FAM 40.41. Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,676-88 (May 26, 1999). *Important cases: Matter of B-*, 3 I&N Dec. 323 (AG and BIA 1948) and *Matter of Perez*, 15 I&N Dec. 136 (BIA 1974).

Affidavits of Support

Who can become an immigrant's sponsor and the obligations a sponsor undertakes

About the "Affidavit of Support"

- The Affidavit of Support is a form completed by the sponsor of a prospective immigrant who is applying for lawful permanent residency in the U.S., as evidence that the prospective immigrant is not "likely to become a public charge."
- There are three different Affidavit of Support forms and each is governed by a different set of rules:
 - The "traditional" Affidavit of Support (Form I-134) is optional; it was the principal form used before December 19, 1997, and is still used for several categories of immigrants, as explained below.
 - The "enforceable" Affidavit of Support (Form I-864) is mandatory for most family-based immigrants who apply for an immigrant visa after December 19, 1997.
 - Another type of "enforceable" Affidavit of Support (Form I-361) must be submitted with a petition for treatment as an Amerasian for certain nationals of Korea, Vietnam, Laos, Kampuchea, or Thailand born after 1950 and before October 22, 1982.
- The mandatory, enforceable Affidavit of Support (I-864) is a binding contract by the sponsor or sponsors for support of the immigrant, and for repayment of certain public benefits received by the immigrant. The traditional Affidavit of Support is not an enforceable, binding contract.

NOTE: When determining an immigrant's financial eligibility for a benefit, some public benefits agencies will "deem" the income of the sponsor to be the immigrant's income. See page 177 for a discussion of "immigrant sponsor deeming."

Immigrants who must submit the enforceable Affidavit of Support (I-864) are...

- family-based immigrants who file for adjustment of status with the Immigration and Naturalization Service (INS) or who attend their immigrant visa interview at a consulate on or after December 19, 1997 (except for "self-petitioning" widows/widowers and abused spouses/children).
- employment-based immigrants who file for adjustment of status with the INS or who attend their immigrant visa interview at a consulate on or after December 19, 1997, if the employer/petitioner is a relative or if a relative owns five percent or more of the employer/petitioner's business.

NOTE: The enforceable Affidavit of Support is not required for immigrants who have credit for 40 quarters of work and immigrants who will automatically become citizens when they obtain lawful permanent resident (LPR) status under the Child Citizenship Act.

Individuals not required to submit an affidavit of support, but who may use the "traditional" Affidavit of Support (I-134) in order to overcome public charge concerns include...

- widows/widowers of U.S. citizens, and abused spouses/children who are eligible to self-petition for lawful permanent residence.
- applicants for legalization under the Immigration Reform and Control Act or the Legal Immigration Family Equity Act.
- diversity immigrant visa lottery applicants.
- beneficiary or dependent applicants for employment visas whose employer/petitioner is not a relative with a significant interest in the business.
- applicants for LPR status as special immigrant religious workers.
- returning LPRs subject to public charge inquiries.
- nonimmigrants (such as K-1 fiancée applicants, certain students, or tourists).

NOTE: Lautenberg parolees are required by statute to have an I-134 Affidavit of Support, even though they are exempt from the public charge ground of inadmissibility. In some other contexts where the public charge ground of inadmissibility does not apply, the INS nonetheless requests an I-134 Affidavit of Support, such as for applicants for humanitarian parole and for asylum applicants detained on arrival at the U.S. who request release from detention.

Because they are not subject to "public charge" inquiries, the following immigrants do not need an affidavit of support:

- refugees and asylees applying for LPR status.
- applicants for adjustment of status under certain specific programs, including registry (based on residence in the U.S. since before January 1, 1972), the Nicaraguan Adjustment and Central American Relief Act (for eligible Cubans and Nicaraguans), the Haitian Refugee Immigration Fairness Act (for eligible Haitians), the Cuban Adjustment Act, certain Indochinese, Polish and Hungarian parolees, and persons applying as special immigrant juveniles.
- individuals applying for cancellation of removal or suspension of deportation.

The law governing affidavits of support is found at:

8 U.S.C. §§ 1182(a)(4), 1183a (1996).

Rules for Sponsors Completing an Enforceable Affidavit of Support (I-864)

Sponsors must submit an enforceable Affidavit of Support (Form I-864) when...

- they are petitioning to immigrate a family member who files for adjustment of status with the INS or attends an immigrant visa interview at a consulate on or after December 19, 1997.
- they are petitioning to immigrate an employment-based immigrant who is their relative, or they own five percent or more of a business which is petitioning for an employment-based immigrant who is their relative.
- the petitioner (the relative or other person who signs the immigrant visa petition, Form I-130) must also complete an Affidavit of Support (Form I-864) and become the immigrant's sponsor. If the petitioner cannot meet the minimum income requirement for a sponsor, the immigrant may have an additional "joint sponsor," or may include income or assets of a member of the sponsor's "household." A joint sponsor or household member must also agree to support the immigrant by signing a form.

To qualify as a sponsor, a person must be...

- a U.S. citizen or national, or an LPR, *and*
- 18 years of age or older, *and*
- domiciled in the U.S. with the intention of living here for the foreseeable future, *and*
- able to meet the income requirements.

To meet income requirements, a sponsor must...

- earn at least 125 percent of the federal poverty level for the sponsor's entire "household," except that active duty military personnel sponsoring a spouse or child need only earn an income equal to 100 percent of the federal poverty level for their household size.

NOTE: The sponsor's "household" includes the sponsor, the prospective immigrant, the immigrant's family members who are accompanying the immigrant or following to join the prospective immigrant, relatives residing with the sponsor, any others claimed as dependents by the sponsor for income tax purposes, and any other immigrants sponsored under a Form I-864.

When the sponsor's income is below the minimum requirement...

- the sponsors' assets may be counted: (1) if the assets have a minimum value of five times the amount of the income deficit (the difference between 125 percent of the federal poverty level and the sponsor's income), and (2) if the assets can be turned into cash within one year.
- the income or qualifying assets of a member of the sponsor's "household" may be used if the household member submits a separate Form I-864A.
- the immigrant may find a "joint sponsor" willing to submit a second affidavit (Form I-864) if he or she meets all the requirements.

The income or assets of a member of the sponsor's household may be counted if...

- he or she has lived in the sponsor's household for at least the previous six months and is related to the sponsor by birth, marriage, or adoption, or is a person listed as a dependent on the sponsor's tax return.
- he or she agrees to accept the same amount of liability as the sponsor by filing a Form I-864A.

The sponsor's income and assets must be verified with...

- tax returns for the most recent three years.
- proof of current employment.
- documents proving ownership, value, and location of assets.
- documents indicating any liens against the asset.

By signing an affidavit of support, a sponsor agrees to...

- provide support until the immigrant becomes a citizen, is credited with 40 quarters of work, abandons lawful permanent residency status, or dies.
- reimburse the government if the immigrant uses any "means-tested public benefit." The federal government has designated the following programs as "federal means-tested public benefits": Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), Medicaid, the State Children's Health Insurance Program (SCHIP), and the Food Stamp Program. The following programs are excluded from the definition of federal means-tested public benefits and will not give rise to sponsor liability: emergency Medicaid; short-term, noncash emergency relief; services provided under the National School Lunch and Child Nutrition Acts; immunizations and testing and treatment for communicable diseases; student assistance under the Higher Education Act and the Public Health Service Act; foster care or adoption assistance under the Social Security Act; Head Start programs under the Elementary and Secondary Education Act; and Job Training Partnership Act programs.

As of the time of publication of this *Guide*, states generally have not yet designated any program as a "state or local means-tested public benefit."

NOTE: The U.S. Department of Agriculture has clarified that states cannot seek reimbursement for food stamps received by a sponsored immigrant if the sponsor is also receiving food stamps.

ALSO NOTE: Whether a sponsor might be excused from liability for reasons such as bankruptcy is an open question.

Rules for Sponsors Completing a Traditional Affidavit of Support (I-134)

Sponsors may submit a traditional Affidavit of Support (Form I-134) when...

- an immigrant who is not required to submit an affidavit of support wants to submit an affidavit to help overcome public charge concerns; such immigrants include recipients of a diversity visa, widows/widowers of U.S. citizens and abused spouses/children who are eligible to petition for permanent residence.

To qualify as a sponsor, a person...

- must have a close relationship to the immigrant, or otherwise demonstrate a moral obligation to support the immigrant.
- should submit Form I-134, together with any supporting documentation required by the form's instructions.

To meet income requirements, a sponsor must...

- show that he or she has the ability to provide enough support so that the immigrant does not become a public charge.

By signing an affidavit of support, a sponsor agrees to...

- support the immigrant for at least three years. This is a moral obligation; the Form I-134 Affidavit is not a binding contract.

TABLE 13
2002 Federal Poverty Guidelines

2002 POVERTY INCOME GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA		
Size of Family Unit	100% of Poverty	125% of Poverty
1	\$ 8,860	\$11,075
2	\$11,940	\$14,925
3	\$15,020	\$18,775
4	\$18,100	\$22,625
5	\$21,180	\$26,475
6	\$24,260	\$30,325
7	\$27,340	\$34,175
8	\$30,420	\$38,025

For family units with more than 8 members, add \$3,080 for each additional member.

2002 POVERTY INCOME GUIDELINES FOR ALASKA		
Size of Family Unit	100% of Poverty	125% of Poverty
1	\$11,080	\$13,850
2	\$14,930	\$18,663
3	\$18,780	\$23,475
4	\$22,630	\$28,288
5	\$26,480	\$33,100
6	\$30,330	\$37,913
7	\$34,180	\$42,725
8	\$38,030	\$47,538

For family units with more than 8 members, add \$3,850 for each additional member.

2002 POVERTY INCOME GUIDELINES FOR HAWAII		
Size of Family Unit	100% of Poverty	125% of Poverty
1	\$10,200	\$12,750
2	\$13,740	\$17,175
3	\$17,280	\$21,600
4	\$20,820	\$26,025
5	\$24,360	\$30,450
6	\$27,900	\$34,875
7	\$31,440	\$39,300
8	\$34,980	\$43,725

For family units with more than 8 members, add \$3,540 for each additional member.

Source: U.S. Department of Health and Human Services,
Annual Update of the HHS Poverty Guidelines, 67 Fed. Reg. 6,931-33 (Feb. 14, 2002)

Immigrant Sponsor Deeming

When a sponsor's income affects an immigrant's financial eligibility for government programs

About "immigrant sponsor deeming"

- Under immigrant sponsor deeming, the income and resources of an immigrant's "sponsor" (and the sponsor's spouse) are considered, or "deemed," to be available to the sponsored immigrant when he or she applies for certain public benefits.
- A "sponsor" is a person who completed an affidavit of support to help the immigrant obtain lawful permanent resident (LPR) status.
- Deeming rules usually make the sponsored immigrant ineligible for the affected benefits, because adding the sponsor's income and resources renders the immigrant "over-income" for the benefit.
- Deeming generally does not apply to immigrants who are not required to have an affidavit of support on file (e.g., refugees, asylees, parolees, and abused spouses/children who file a "self-petition" for an immigrant visa).

Deeming may apply even if the sponsor's income is not actually available to help the immigrant

- To receive benefits, a sponsored immigrant must provide information and documentation on the sponsor's income and resources—even if the sponsor refuses to cooperate with the government's information requests.
- In determining an immigrant's eligibility for benefits, some of the sponsor's income and resources may not be counted; the rules vary by program.

NOTE: Deeming does not automatically make an immigrant ineligible for benefits. If the sponsor's current income is very low, the immigrant may still qualify for a particular program.

Deeming rules may depend on...

- whether the immigrant's sponsor signed the "traditional" Affidavit of Support (INS Form I-134) or the "enforceable" Affidavit of Support (INS Form I-864).
- the particular program for which the immigrant is applying.
- the immigrant's state of residence.

Deeming Rules for Immigrants Whose Sponsors Signed an Enforceable Affidavit of Support (I-864)

The only federal programs that may impose immigrant sponsor deeming are...

- Supplemental Security Income (SSI)
- food stamps
- Temporary Assistance for Needy Families (TANF)
- Full-scope Medicaid
- State Children's Health Insurance Program (SCHIP)

NOTE: Some states provide similar benefits without imposing deeming rules. Check your state's rules.

States have the option to deem or not to deem in state public benefit programs

NOTE: The imposition of deeming rules in state and local programs may be unconstitutional.

States cannot impose deeming rules in providing...

- emergency medical assistance.
- short-term, in-kind emergency disaster relief.
- programs comparable to school lunch, breakfast and Child Nutrition Act benefits, and other child nutrition programs.
- immunizations, testing, and treatment of communicable disease symptoms.
- payments for foster care and adoption assistance.
- programs specified by the U.S. attorney general as delivering in-kind services at the community level, and which do not condition assistance on the recipient's income or resources and are necessary to protect life or safety.

The deeming period...

- begins on the date the immigrant becomes an LPR.
- ends when the LPR becomes a citizen or secures credit for 40 quarters of work.

NOTE: Most immigrants who physically enter the U.S. on or after August 22, 1996, are ineligible for federal means-tested public benefits until they have been in "qualified" immigrant status for five years. Therefore, federal deeming rules do not affect most immigrants with enforceable affidavits of support until after the expiration of this five-year bar on their eligibility. (However, since veterans and active duty military personnel and their family members are not subject to the five-year bar, they may be subject to federal deeming rules earlier.)

Sponsored immigrants are exempt from deeming for at least 12 months if...

- the benefit agency determines that the immigrant would go hungry or homeless without assistance. In the Food Stamp Program, this exemption applies when the immigrant's household's income (including actual contributions from the sponsor or others, and in-kind assistance) is at or below 130 percent of the federal poverty level for the household's size. In the SSI program, the exemption applies when the income actually received by the immigrant is less than the federal SSI benefit rate (but does not apply if the immigrant receives free room and board). The indigence exemption is renewable for additional 12-month periods.
- the immigrant or his or her child has been subject to abuse or cruelty by a spouse, parent, or member of the spouse's or parent's family. This exemption can be extended for longer than 12 months if the abuser is the sponsor and the abuse or cruelty has been recognized by a court, an administrative law judge, or the Immigration and Naturalization Service.
- the immigrant's sponsor is participating in the same food stamp household. This exemption is not time-limited.

NOTE: An exemption from deeming does not release the sponsor from possible liability to repay benefits that the immigrant uses. However, states cannot seek reimbursement for food stamps received by a sponsored immigrant if the sponsor also is receiving food stamps.

ALSO NOTE: In the Food Stamp Program, if the immigrant is not eligible for benefits, his or her sponsor's income and resources are not deemed to the other household members. Effective October 1, 2003, children receiving food stamps will not be subject to deeming.

States that choose to apply deeming rules can add exemptions

- For example, states could exempt immigrants whose sponsor has abused, neglected, or refused to support the immigrant. (See, e.g., Calif. Welf. & Inst. Code § 17001.7.)

The law governing the deeming of income for immigrants with enforceable affidavits of support appears at:

8 U.S.C. §§ 1631, 1632, and 1624, 62 Fed Reg. 61,370-71 (Nov. 17, 1997), U.S. Dept. of Agriculture, "Food Stamp Program: Noncitizen Eligibility, and Certification Provisions of Public Law 104-193, as Amended by Public Laws 104-208, 105-33 and 105-185," 65 Fed Reg. 70,133-212 (Nov. 21, 2000)(food stamp deeming rules, amending 7 C.F.R. §273.4(c)), Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171 § 4401(b)(2)(B) (May 13, 2002), Social Security Administration Program Operations Manual System (POMS) SI.00502.240 (deeming rules), SI.00502.280 (indigence exemption).

Deeming Rules for Immigrants Whose Sponsors Signed a Traditional Affidavit of Support (I-134)

The only federal programs that may impose deeming for immigrants whose sponsor signed a "traditional" affidavit of support are...

- SSI
- TANF

States have the option to deem or not to deem in state cash public assistance.

NOTE: The imposition of deeming rules in state and local programs may be unconstitutional.

The deeming period...

- begins on the date that the immigrant becomes an LPR.
- ends three years after the immigrant becomes an LPR.

Exemptions from federal deeming rules vary depending on the program:

- SSI
 - Deeming does not apply: (1) to immigrants who become blind or disabled after admission to the U.S. as permanent residents; (2) to immigrants sponsored by a public or private agency; or (3) to refugees, conditional entrants, persons paroled as refugees under Immigration and Nationality Act section 212(d)(5), persons granted asylum, and certain other immigrants who are never required to have a sponsor.
 - *Law found at* 42 U.S.C. § 1382j; 20 C.F.R. § 416.1160(a)(3) and (d); 20 C.F.R. § 416.1166a; 20 C.F.R. § 416.1204; Social Security Administration Program Operations Manual System (POMS) SI. 01320.900-950; SI. 01330.500.
- TANF
 - Deeming is a state option.
 - If a sponsor is not actually supporting the sponsored immigrant, the sponsor's income and resources will not be counted when determining whether unsponsored members of the immigrant's family—such as U.S. citizen children—are eligible for TANF.
 - Deeming may apply to immigrants sponsored by a public or private agency, unless the agency no longer exists or is no longer able to meet the immigrant's needs.
 - Deeming does not apply: (1) to an immigrant who is the dependent child of the sponsor or the dependent child of the sponsor's spouse; or (2) to refugees and persons granted asylum or paroled into the U.S. for at least one year.
 - *Law found at* 42 U.S.C. § 608(f); 45 C.F.R. § 233.51.

- **Food Stamps**
 - Deeming no longer applies to immigrants whose sponsors filed a traditional affidavit of support.
 - *Law found at 65 Fed Reg. 70,133-212 (Nov. 21, 2000) (amending 7 C.F.R. §273.4(c) to replace the former 7 C.F.R. § 273.11(j)).*

Cases governing deeming of sponsor income for state general assistance programs:

Several cases decided prior to the enactment of the 1996 welfare and immigration laws held that state statutes imposing sponsor deeming requirements in state-funded programs violate the Equal Protection clause of the United States Constitution, or in New York, a state constitutional provision that requires aid for the needy. See, for example, *Barannikova v. Town of Greenwich*, 229 Conn. 664 (1994); *El Souri v. Dept. of Social Services*, 414 N.W.2d 679, 429 Mich. 203 (1987); *Minino v. Perales*, 79 N.Y.2d 883, 589 N.E.2d 385 (1992).

TABLE 14

Deeming of Sponsor Income

Under deeming, the income and resources of an immigrant's sponsor (and the sponsor's spouse) are added to the immigrant's income in determining eligibility for benefits. Deeming rules often render an immigrant "over income" for a benefit, but if the sponsor's income is very low, the immigrant may still qualify. Deeming rules may depend on:

- (1) whether the immigrant's sponsor signed the "traditional" Affidavit of Support (INS Form I-134), or the "enforceable" Affidavit of Support (INS Form I-864);
- (2) the program for which the immigrant is applying; and
- (3) the immigrant's state of residence.

PROGRAM	TRADITIONAL AFFIDAVITS (I-134)		ENFORCEABLE AFFIDAVITS (I-864)	
	DEEMING PERIOD	EXEMPTIONS	DEEMING PERIOD	EXEMPTIONS
Supplemental Security Income	3 years.	• Immigrant becomes blind or disabled after entry.	• Until citizenship, or • Credit for 40 quarters of work history.	• Would go hungry or homeless without benefits: 12-month exemption (renewable). • Domestic violence victim: 12 months, or longer if abuse recognized by INS, ALJ, or a court.
Food Stamps	No deeming.	N/A	• Until citizenship, or • Credit for 40 quarters of work history.	• Would go hungry or homeless without benefits: 12-month exemption (renewable). • Domestic violence victim: 12 months, or longer if abuse recognized by INS, ALJ, or a court. • Immigrant's sponsor is participating in the same food stamp household. • If immigrant is not eligible for food stamps, his or her sponsor's income/resources not deemed to other household members. • Effective Oct. 1, 2003, child under 18.
Temporary Assistance for Needy Families	State option. If state exercises option, then 3 years.	• Immigrant is the sponsor's child, or the child of the sponsor's spouse.	May be state option. ¹ • Until citizenship, or • Credit for 40 quarters of work history.	• Would go hungry or homeless without benefits: 12-month exemption. • Domestic violence victim: 12 months, or longer if abuse recognized by INS, ALJ, or a court.
Full-Scope Medicaid (no deeming in emergency Medicaid)	No deeming.	N/A	May be state option. ¹ • Until citizenship, or • Credit for 40 quarters of work history.	• Would go hungry or homeless without benefits: 12-month exemption. • Domestic violence victim: 12 months, or longer if abuse recognized by INS, ALJ, or a court.

table continued next page ►

¹ Federal agencies have not yet decided whether states have the option to provide federally funded Medicaid and TANF without imposing deeming for immigrants whose sponsors have signed "enforceable" affidavits of support. Deeming generally does not apply to immigrants who are not required to have an affidavit of support on file, e.g., refugees, asylees, parolees, and abused spouses/children who file a "self-petition" for an immigrant visa.

TABLE 14 (CONTINUED)
Deeming of Sponsor Income

PROGRAM	TRADITIONAL AFFIDAVITS (I-134)		ENFORCEABLE AFFIDAVITS (I-864)	
	DEEMING PERIOD	EXEMPTIONS	DEEMING PERIOD	EXEMPTIONS
State Children's Health Insurance Program	No deeming.	N/A	<ul style="list-style-type: none"> • Until citizenship, or • Credit for 40 quarters of work history. 	<ul style="list-style-type: none"> • Would go hungry or homeless without benefits: 12-month exemption. • Domestic violence victim: 12 months, or longer if abuse recognized by INS, ALJ, or a court.
State/Local General Assistance	State option. State deeming may be unconstitutional.	States may not be more restrictive than the rules in comparable federal programs. States can add exemptions.	State option. State deeming may be unconstitutional.	States may not be more restrictive than the rules in comparable federal programs. States can add exemptions.
Other State Public Benefits	No deeming.	N/A	State option. States are not authorized to deem in certain programs. State deeming may be unconstitutional.	States can create exemptions.

Confidentiality, Verification, and Reporting

What happens to information that immigrants give to the government

Immigrants often must divulge sensitive information about themselves or others as part of the process of applying for public benefits.

There are laws about...

- which questions benefit providers can or must ask.
- how the information may be verified.
- which types of information can or must be communicated outside of the benefit-granting agency, and to whom.
- whether shared information can be used for immigration law enforcement.

Laws governing which questions benefit providers may ask include...

- federal and state antidiscrimination statutes and regulations, which often prevent agencies from asking questions that are not necessary to determine eligibility or otherwise to carry out their mission.
- the welfare law's nonprofit protections, which prevent federal, state, or local agencies from forcing nonprofit charitable organizations to verify immigration status for purposes of determining immigrant eligibility under the 1996 welfare law.
- the Privacy Act, which prohibits federal, state, and local agencies from conditioning any legal right, benefit, or privilege on the provision of an individual's Social Security number, unless doing so is required by a federal law, or unless the Social Security number was already required by the agency before January 1, 1975. There are few exceptions to this rule.
- confidentiality laws, regulations, and policies in various benefit programs, including federal agency guidances, which advise states not to ask unnecessary questions regarding immigration status and/or Social Security numbers on benefit application forms.

NOTE: Many states also have their own privacy laws.

Major laws governing how information may be verified include...

- the 1996 welfare and immigration laws, which require the U.S. attorney general to regulate verification requirements for federal, state, and local public benefits.
- the Systematic Alien Verification for Entitlement (SAVE) statute, which provides procedures for verifying immigrant eligibility for the six federal benefits programs listed below, and which may also be used in many other federal, state, and local programs.

Basic information about SAVE

- Programs using SAVE verify immigration status by comparing Immigration and Naturalization Service (INS) documents provided by the applicant to an INS computerized database.
- When the computerized information is incomplete or challenged as inaccurate, the INS conducts a manual search of its records called "secondary SAVE verification."
- Following are some important safeguards protecting immigrants in the SAVE process:
 - Immigrants must be given a "reasonable opportunity" to provide the documents.
 - If an immigrant is otherwise eligible, benefits must not be delayed, denied, reduced, or terminated while documents are being gathered or while the INS is verifying status.
 - A benefit-granting agency may accept a receipt from the INS showing that the immigrant has applied for replacement of lost documents.

- The INS may not use information gained through SAVE to begin deportation proceedings, or for any purpose other than to verify immigration status.

NOTE: The INS or other officials are allowed to prosecute immigrants discovered through SAVE for criminal violations, such as use of counterfeit documents.

The federal benefits programs required to use SAVE are:

- Temporary Assistance for Needy Families (TANF)
- Unemployment Insurance
- Medicaid
- higher education grants and loans
- rental housing assistance
- food stamps (at state option)

NOTE: The 1996 welfare law requires the U.S. attorney general to establish SAVE or similar verification procedures for many other federal programs.

The laws governing communication of immigration information outside of a government agency...

- frequently conflict with one another and have not yet been fully interpreted by federal agencies and the courts.

NOTE: In various contexts, federal agencies have confirmed that privacy laws continue to protect certain information. In addition, special laws protect information provided by domestic violence victims.

Most government agencies and nonprofit agencies do not share sensitive information, and many are precluded from doing so by confidentiality laws, but...

- some agencies in some states have policies that compromise the confidentiality of immigration information provided to them.
- even in programs without a policy of sharing information with the INS or others, individual caseworkers sometimes take it upon themselves to release confidential information.

NOTE: Agencies or individuals unlawfully violating their clients' privacy rights may expose themselves to civil liability.

The government agencies that administer TANF, food stamps, Supplemental Security Income (SSI), public housing, and Section 8 housing assistance are required to report certain applicants to the INS. But this reporting requirement is extremely narrow. It applies only...

- to persons who apply to receive benefits on their own behalf. It does not apply to persons who apply for benefits on behalf of others (e.g., a mother who applies for food stamps on behalf of her eligible child should not be reported to the INS, regardless of her immigration status).
- to the benefit programs listed above. Applicants for other benefit programs are not affected by the reporting requirement, even when such programs are administered by the same agency that runs one of the five programs listed above. For example, the reporting provision does not require, or in any way authorize, confidential information provided as part of a Medicaid application to be reported to the INS.
- when the benefit-granting agency knows that the person is not lawfully present. This criteria is met only when the unlawful presence is (1) a finding of fact or conclusion of law made by the agency as part of a formal determination that is subject to administrative review; and (2) is supported by a determination by the INS or Executive Office of Immigration Review (EOIR), such as a final order of deportation.

NOTE: The reporting requirement is not triggered by an oral or written admission by the immigrant; an eligibility worker's suspicion, assumption, or firm conviction about the person's immigration status; a response from the INS to a SAVE inquiry indicating an applicant's immigration status; or a formal finding that the person is ineligible for a benefit.

ALSO NOTE: The agencies listed above are not required to submit reports to the INS unless they have "knowledge" that meets the above criteria.

Special considerations for immigrants and their families

- Immigrants generally are not required to provide incriminating information to qualify for government programs for which they or their children are otherwise eligible, and it is not advisable to do so.
- Benefits applications sometimes ask more questions than are necessary to determine eligibility, despite the questionable legality of this practice. In such cases, it may be possible to provide necessary information without directly responding to the specific questions asked. For example, instead of checking a box indicating that he or she is "undocumented," the applicant's parent may write "ineligible due to immigration status" or "not qualified." Where the application form asks for a Social Security number, the immigrant parent may answer "None." These answers are not an admission of unlawful status.

Some of the laws governing confidentiality and communication about immigration status appear at:

5 U.S.C. § 552a (Privacy Act), 7 U.S.C. § 2020(e)(8) (limits on disclosure of information in the Food Stamp Program), 8 U.S.C. § 1644 (Communication Between State and Local Government Agencies and the Immigration and Naturalization Service), 8 U.S.C. § 1373 (Communication Between Government Agencies and the Immigration and Naturalization Service), 42 U.S.C. § 1396a(a)(7) (Medicaid confidentiality), 42 U.S.C. § 1395w-22(h)(Medicare), 42 U.S.C. § 1306(a) (prohibits all programs administered by the U.S. Dept. of Health and Human Services or the Social Security Administration from disclosing any information in any person's record unless the disclosure is specifically authorized by law or regulation). *See also* Letter from Sally K. Richardson, U.S. Dept. of Health and Human Services, to State Medicaid Directors (Dec. 17, 1997); U.S. Dept. of Justice, Office of Legal Counsel, Memorandum from Andrew J. Pincus, General Counsel, Dept. of Commerce, from Randolph D. Moss, Acting Assistant Attorney General, "The Effect of 8 U.S.C.A. § 1373(a) on the Requirement Set Forth in 143 U.S.C. § 9(a) That Census Officials Keep Covered Census Information Confidential" (May 18, 1999). *Important case: City of New York v. United States*, 179 F.3d 29 (2d Cir.1999), cert. denied, 120 S. Ct. 932 (2000).

The law governing reporting requirements appears at:

7 U.S.C. § 2020(e)(16) (food stamps), 42 U.S.C. §§ 608(g), 611a (TANF), 42 U.S.C. § 1383(e) (SSI), 42 U.S.C. § 1437y (housing), Social Security Administration, U.S. Dept. of Health and Human Services, U.S. Dept. of Labor, U.S. Dept. of Housing and Urban Development, Immigration and Naturalization Service, "Responsibility of Certain Entities to Notify the Immigration and Naturalization Service of Any Alien Who the Entity 'Knows' is Not Lawfully Present in the United States, 65 Fed. Reg. 58,301-03 (Sept. 28, 2000). *See also* U.S. Dept. of Agriculture, "Food Stamp Program: Non-citizen Eligibility, and Certification Provisions of Pub. L. 104-193, as Amended by Public Laws 104-208, 105-33 and 105-185," 65 Fed. Reg. 70,201 (Nov. 21, 2000).

The law governing verification appears at:

Immigration Reform and Control Act of 1986, 99 Pub. L. 603 § 121 (Nov. 6, 1986) (verification), 42 U.S.C. § 1320b-7 (Income and Eligibility Verification System and Systematic Alien Verification System), Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,344 (Nov. 17, 1997), Verification of Eligibility for Public Benefits (proposed rule), 63 Fed. Reg. 41,662 (Aug. 4, 1998). *Important case: League of United Latin American Citizens v. Wilson*, 997 F. Supp. 1244 (C.D. Cal. 1997).

Guidance regarding questions on benefit application forms can be found at:

U.S. Dept. of Health and Human Services and U.S. Dept. of Agriculture guidance regarding inquiries into citizenship, immigration status, and Social Security numbers in state applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF) and Food Stamp Benefits (Sept. 21, 2000), available at www.hcfa.gov/medicaid/shw92100.htm. But see U.S. Dept. of Health and Human Services, Health Care Financing Administration, Interim Final Rule, "Revisions to the Regulations Implementing the State Children's Health Insurance Program," 66 Fed. Reg. 33,810, 33,823 (June 25, 2001) (states that provide separate SCHIP programs are authorized, but not obligated, to require Social Security numbers on their application forms).

Glossary

Glossary

This Glossary gives definitions for immigration statuses, immigration-related terms, and public benefits terms that appear repeatedly throughout the *Guide*. Words that appear in SMALL CAPS are defined elsewhere in the Glossary.

A

ABUSED IMMIGRANT. The short-hand term used throughout this *Guide* for an IMMIGRANT who is classified as a QUALIFIED IMMIGRANT based on the fact that she or he was BATTERED OR SUBJECTED TO EXTREME CRUELTY by a spouse or parent or another member of the household, or is the parent or child of an individual who has been so abused. In addition to this requirement, to be considered a qualified immigrant, an abused immigrant must have a pending or approved petition or application to immigrate, either as an IMMEDIATE RELATIVE of a U.S. CITIZEN, or as the spouse or unmarried son or daughter of a LAWFUL PERMANENT RESIDENT (LPR), or by means of a SELF-PETITION or application for SUSPENSION OF DEPORTATION or CANCELLATION OF REMOVAL for non-LPRs under the special provisions of the VIOLENCE AGAINST WOMEN ACT (VAWA). In addition, in order for the immigrant to receive benefits, the agency providing the benefit must determine that the immigrant's need for benefits has a SUBSTANTIAL CONNECTION to the battery or cruelty that occurred.

Under the VAWA, certain abused immigrants can file a self-petition with the IMMIGRATION AND NATURALIZATION SERVICE to obtain LPR status. To obtain LPR status in this manner, the individual must show that she or he is the spouse or child of a U.S. citizen or LPR who committed the abuse, or the parent or child of an individual who has been so abused. An individual may qualify as a "spouse" even if the marriage terminated (within the past two years, for reasons related to the abuse), or was never valid because of bigamy on the part of the citizen spouse (if there was an actual marriage ceremony and the immigrant believed the marriage was valid), or if the U.S. citizen spouse died within the past two years. Certain abused

immigrants also may obtain SUSPENSION OF DEPORTATION or CANCELLATION OF REMOVAL under special rules.

ACTIVE DUTY (IN THE U.S. ARMED FORCES). Current, full-time service in the Army, Navy, Air Force, Marine Corps, or Coast Guard.

ADJUSTMENT OF STATUS. A legal procedure whereby an IMMIGRANT may remain in the United States throughout the processing of his or her application for LAWFUL PERMANENT RESIDENT (LPR) status. In this procedure, the IMMIGRATION AND NATURALIZATION SERVICE rather than the U.S. State Department determines whether the immigrant is eligible for LPR status and makes the decision whether to grant that status.

ADMINISTRATIVE LAW JUDGE (ALJ). In general, ALJs are judges employed by agencies of the executive (rather than the judicial) branch of government. They hear cases involving civil (as opposed to criminal) laws and regulations that an administrative agency is charged with implementing or enforcing.

ADMISSIBILITY. Refers to an individual's eligibility for ADMISSION TO THE UNITED STATES. The statutes governing immigration law specify numerous categories of persons who are barred from being admitted into the U.S. because of prior misconduct or other characteristics that Congress considers undesirable. The reasons for barring admission to IMMIGRANTS are called "grounds of inadmissibility." A person to whom no grounds of inadmissibility apply is admissible. Some, but not all, grounds of inadmissibility can be overcome if an individual obtains a WAIVER.

ADMISSION NUMBER. See "A" NUMBER.

ADMISSION TO THE UNITED STATES. The decision by the IMMIGRATION AND NATURALIZATION SERVICE to allow an individual into the United States, after

determining his or her ADMISSIBILITY. The determination that a person will be admitted is made at the border, an airport, or other point of entry to the country, by a process known as INSPECTION.

ADMITTED TO THE UNITED STATES. See ADMISSION TO THE UNITED STATES.

ADOPTION ASSISTANCE. Program that provides federally funded benefits for prospective adoptive parents on behalf of children who cannot be safely returned to their families. It provides payments to adoptive families for one-time adoption expenses, regular payments to cover the needs of the child, and social services such as counseling or therapeutic day care, for or on behalf of the child. Children receiving adoption assistance are eligible for MEDICAID.

ADVANCE PAROLE. Permission given by the IMMIGRATION AND NATURALIZATION SERVICE to an immigrant prior to departure allowing the individual to return to the United States following the brief departure.

AFDC. See AID TO FAMILIES WITH DEPENDENT CHILDREN.

AFDC-LINKED. Some benefit programs tie eligibility requirements to those in the old AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC) program by requiring the applicant to have received, or have been eligible to receive, AFDC. Thus, eligibility for such programs is "AFDC-linked."

AFFIDAVIT OF SUPPORT. A form completed by a SPONSOR of a prospective IMMIGRANT as evidence that the immigrant is not "likely to become a PUBLIC CHARGE." There are three different "Affidavit of Support" forms, and each is governed by a different set of rules.

The "enforceable" Affidavit of Support (Form I-864) is mandatory for most family-based immigrants, and some employment-based immigrants, who applied for an IMMIGRANT VISA on or after December 19, 1997. It is a binding contract by the sponsor or sponsors for support of the immigrant, and for repayment of certain "MEANS-TESTED" PUBLIC BENEFITS received by the immigrant. When determining an immigrant's financial eligibility for certain public benefits, some agencies will "DEEM" the income of the sponsor to be the immigrant's income. This may preclude the immigrant from meeting income eligibility requirements for the public benefit.

The "traditional" Affidavit of Support (Form I-134) is optional, was the only form used before December 19, 1997, and is now used for only a few categories of immigrants. It is not an enforceable, binding contract to support the immigrant, but in certain public benefits programs, a sponsor's income may be deemed to be the immigrant's income. This may preclude the immigrant from meeting income eligibility requirements for certain public benefits.

Another type of "enforceable" Affidavit of Support (Form I-361) must be submitted with a petition for treatment as an Amerasian for certain nationals of Korea, Vietnam, Laos, Kampuchea (Cambodia), or Thailand born after 1950 and before October 22, 1982.

AGRICULTURE RESEARCH, EXTENSION AND EDUCATION REFORM ACT OF 1998. Federal law that restored eligibility for FOOD STAMPS to some IMMIGRANTS who had been made ineligible for food stamps by the PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996.

AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC). Program that provided cash assistance and social services to low-income families with children. The AFDC program has been replaced by the TEMPORARY ASSISTANCE FOR NEEDY FAMILIES program.

ALIEN. A person who is not a U.S. CITIZEN or a U.S. NATIONAL.

ALIEN NUMBER. See "A" NUMBER.

ALIEN REGISTRATION RECEIPT CARD. See PERMANENT RESIDENT CARD.

ALJ. See ADMINISTRATIVE LAW JUDGE.

AMERASIAN. In immigration law, this term is broadly used to refer to U.S. CITIZEN-fathered children born in Korea, Vietnam, Laos, Cambodia, or Thailand after 1950 and before October 22, 1982. These individuals may petition to become LAWFUL PERMANENT RESIDENTS (LPRs) if they prove there is "reason to believe" that they were fathered by a U.S. citizen. These individuals are required to submit with their petitions an enforceable affidavit of support, Form I-361. However, throughout this *Guide* "Amerasian" is used more narrowly to refer only to individuals granted LPR status under a special statute enacted in 1988 for *Vietnamese* Amerasians. Persons granted LPR status under this statute are eligible for refugee resettlement programs and are included within the REFUGEE EXEMPTION.

AMERICAN INDIAN BORN ABROAD. All American Indians born in the United States are U.S. CITIZENS. American Indians born outside the United States are eligible for SUPPLEMENTAL SECURITY INCOME (SSI), MEDICAID, and FOOD STAMPS without regard to immigration status restrictions if they are members of a federally recognized Indian tribe, or if they were born in Canada.

AMNESTY. The common term for programs created by the IMMIGRATION REFORM AND CONTROL ACT OF 1986 (IRCA) that granted lawful immigration status to certain UNDOCUMENTED IMMIGRANTS. The IRCA made it possible for two groups of undocumented persons to apply for lawful status. One group—GENERAL AMNESTY immigrants—consisted of persons who had lived in the United States without lawful status since before January 1, 1982. The other group was composed of farm workers who had performed agricultural work in the United States for at least 90 days between May 1, 1985, and May 1, 1986. Farm workers who applied for amnesty under IRCA are known as SPECIAL AGRICULTURAL WORKERS. The IRCA amnesty program established a two-step process by which eligible immigrants could obtain first LAWFUL TEMPORARY RESIDENT status and then LAWFUL PERMANENT RESIDENT status.

AMNESTY, GENERAL. See GENERAL AMNESTY IMMIGRANT.

"A" NUMBER. The unique file number assigned by the IMMIGRATION AND NATURALIZATION SERVICE to every ALIEN who is ADMITTED TO THE UNITED STATES or who otherwise comes into contact with the agency. This number begins with the letter "A," followed by eight digits.

ASYLEE. A person who has applied for and been granted ASYLUM. In the United States, asylees may apply for LAWFUL PERMANENT RESIDENT (LPR) status one year after they were granted asylum. With respect to eligibility for public benefits, asylees are included within the REFUGEE EXEMPTION even after they adjust to LPR status.

ASYLUM. A lawful status permitting individuals to remain in a country other than their own because they either have been persecuted or have a well-founded fear that they would be persecuted (on account of race, nationality, religion, political opinion, or membership in a particular social group) in their home country. Technically, an applicant for asylum in the United States must meet the same legal standard as a REFUGEE. The difference is that an asylum applicant applies for

this status while in the U.S., whereas a refugee is granted refugee status before arriving in the country. A person who has been granted asylum is an ASYLEE.

ATTORNEY GENERAL. The head of the U.S. Department of Justice (DOJ) and a member of the president's cabinet. A number of agencies within the DOJ deal with immigration matters, including the IMMIGRATION AND NATURALIZATION SERVICE and the EXECUTIVE OFFICE FOR IMMIGRATION REVIEW.

B

BALANCED BUDGET ACT OF 1997 (BBA). Federal statute addressing immigrant eligibility for PUBLIC BENEFITS. The BBA restored SUPPLEMENTAL SECURITY INCOME (SSI) eligibility to some immigrants who had been made ineligible for SSI by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). It also amended other immigrant benefits provisions of the PRWORA, and created the STATE CHILDREN'S HEALTH INSURANCE PROGRAM.

BATTERED. See BATTERED OR SUBJECTED TO EXTREME CRUELTY.

BATTERED IMMIGRANT. See ABUSED IMMIGRANT.

BATTERED OR SUBJECTED TO EXTREME CRUELTY. The standard of abuse that an ABUSED IMMIGRANT must meet to be considered a QUALIFIED IMMIGRANT. It includes, for example, being the victim of any act or threatened act of violence, such as any forceful detentions, which results in physical or mental injury. Psychological or sexual abuse or exploitation, including intimidation, threats, rape, or forced prostitution are considered acts of violence. Other abusive actions may also be acts of violence. Acts, or threatened acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence.

BENEFICIARY. A term commonly used in immigration law to refer to a person on whose behalf a relative or employer has filed a PETITION for the individual to be granted LAWFUL PERMANENT RESIDENT status. In cases where a beneficiary's spouse and/or minor children can also immigrate through the petition, the immigrant whose relation to the petitioning relative or employer is the basis of the petition is

known as the principal beneficiary and any spouse and/or minor child is known as a derivative beneficiary.

BIA. See BOARD OF IMMIGRATION APPEALS.

BLOCK GRANT. Lump sum funds allocated to states by the federal government to be spent on certain benefit programs including TEMPORARY ASSISTANCE FOR NEEDY FAMILIES, STATE CHILDREN'S HEALTH INSURANCE PROGRAM, and programs under the SOCIAL SERVICES BLOCK GRANT. States have discretion to spend the funds within broad parameters set by the federal government. As a result, the design of these programs varies among states.

BOARD OF IMMIGRATION APPEALS (BIA). The appellate body within the EXECUTIVE OFFICE FOR IMMIGRATION REVIEW that reviews appeals of decisions made by IMMIGRATION JUDGES and of certain decisions made by officials of the IMMIGRATION AND NATURALIZATION SERVICE.

C

CANCELLATION OF REMOVAL. A defense to REMOVAL available to certain NONCITIZENS. There are three basic and separate provisions under which relief is available: (1) cancellation for LAWFUL PERMANENT RESIDENTS (LPRs) who have resided for at least seven years in the U.S. following a lawful ADMISSION TO THE UNITED STATES, and who have had LPR status for at least five years; (2) cancellation for non-LPRs who have resided in the U.S. continuously for at least ten years and whose removal would cause EXCEPTIONAL AND EXTREMELY UNUSUAL HARDSHIP to a U.S. CITIZEN or LPR parent, spouse, or child; and (3) cancellation for spouses and/or children (or the child or parent of such an individual) who have been BATTERED OR SUBJECTED TO EXTREME CRUELTY by a U.S. citizen or LPR family member, if they have resided in the U.S. for at least three years and their deportation would cause EXTREME HARDSHIP. In addition, individuals in removal proceedings who are eligible for relief under the NICARAGUAN ADJUSTMENT AND CENTRAL AMERICAN RELIEF ACT OF 1997 must meet a less stringent standard for cancellation for non-LPRs, known as special rule cancellation.

CFR. See CODE OF FEDERAL REGULATIONS.

CHILD CITIZENSHIP ACT. A statute enacted by Congress in 2000 that allows foreign-born children of U.S. CITIZENS under 18 years of age, including adopted children and children of a parent who naturalizes, to automatically acquire U.S. citizenship on the date they are admitted to the U.S. as LAWFUL PERMANENT RESIDENTS.

CHILD NUTRITION PROGRAMS. Programs that provide free or reduced price snacks to children in schools, child care centers, family child care home, residential institutions, summer day camps and after school programs. See, for example, SCHOOL LUNCH AND BREAKFAST PROGRAMS.

CHILD OF A VETERAN OR ACTIVE DUTY SERVICE MEMBER. A QUALIFIED IMMIGRANT is eligible for the VETERAN EXEMPTION if he or she is the child of a VETERAN OR ACTIVE DUTY service member. The child must be: 1) the biological or legally adopted child of an active duty member of the U.S. armed forces or an honorably discharged (not on the basis of immigration status) veteran, or the legally adopted child of his or her spouse; 2) unmarried; 3) dependent on the veteran/active duty member; and 4) under 18 years of age (or under 22 if a student regularly attending school).

Also included in this category are children of a deceased veteran if they were dependent upon the veteran at the time of the veteran's death. A disabled child over 18 also qualifies for the exemption if, before his or her 18th birthday, the child was disabled and dependent on the veteran or active duty member.

CHILD PROTECTIVE SERVICES. Services available to children and their families to prevent child abuse and care for abused children.

CITIZEN. See U.S. CITIZEN.

CITIZENSHIP, DERIVATIVE. See DERIVATIVE NATURALIZATION.

CODE OF FEDERAL REGULATIONS (CFR). Contains the regulations written by the federal departments and agencies that are charged with interpreting and implementing statutes passed by Congress and signed by the president. A new edition of the Code of Federal Regulations is issued yearly, published by the U.S. Government Printing Office.

CONDITIONAL ENTRANT. An individual who was admitted to the United States under a provision of pre-1980 immigration law, because the individual was persecuted or feared persecution in his or her home country. Replaced by REFUGEE status upon

the passage of the Refugee Act of 1980, conditional entrant status was available only to nationals of communist or Middle Eastern countries.

CONDITIONAL RESIDENT. A LAWFUL PERMANENT RESIDENT (LPR) whose status was granted subject to a condition. After two years in this status, conditional residents must apply to the IMMIGRATION AND NATURALIZATION SERVICE to remove the condition. The agency is thereby given the opportunity to confirm that the basis for the grant of residence was genuine.

There are two circumstances in which applicants for LPR status obtain conditional, rather than unrestricted, LPR status. First, where an IMMIGRANT obtains LPR status based upon a marriage that occurred less than two years before his or her admission as a resident, the residence is conditional. The second situation in which residence is conditional pertains to immigrants admitted as resident-entrepreneurs, for the purpose of establishing a business in the United States. In both cases, immigrants who are unable to meet the requirements for petitioning to remove the condition may in some circumstances obtain a WAIVER of the requirement.

CONSUL. An official within the U.S. State Department who is stationed at a consulate in a foreign country and whose responsibility it is, among other things, to process applications for VISAS. IMMIGRANT VISA applicants already living in the United States who are not eligible for ADJUSTMENT OF STATUS must leave the U.S. to have an interview and receive their visa at a consulate.

CONSULAR OFFICER. See CONSUL.

CONVENTION AGAINST TORTURE (CAT). An international treaty that the United States has ratified that prohibits the involuntary return of any individual to a country where there are substantial grounds for believing that the person would be in danger of being subjected to torture. The IMMIGRATION AND NATURALIZATION SERVICE and EXECUTIVE OFFICE FOR IMMIGRATION REVIEW implement the CAT by granting eligible individuals either WITHHOLDING OF DEPORTATION or REMOVAL, or, if the individual is not eligible for that status because of criminal convictions or other disqualifying circumstances, deferral of removal.

CUBAN ADJUSTMENT ACT. A law enacted in 1966 that allows nationals of Cuba to apply for ADJUSTMENT OF STATUS to LAWFUL PERMANENT RESIDENT status if they were ADMITTED TO THE UNITED STATES or

PAROLED INTO THE U.S. after January 1, 1959, and have been physically present in the U.S. for at least one year.

CUBAN/HAITIAN ENTRANT. A national of Cuba or Haiti who (1) was PAROLED INTO THE U.S., whether the parole document expressly states "Cuban/Haitian entrant" or not (except those paroled solely for criminal prosecution or to give testimony), or was granted any other special status established by immigration law for nationals of Cuba or Haiti, or (2) was paroled for criminal prosecution or to give testimony, or has a pending EXCLUSION or DEPORTATION case, or applied for ASYLUM, provided that he or she is not subject to a final order of deportation or exclusion. The term is used in connection with eligibility for public benefits. Cuban/Haitian entrants are included within the REFUGEE EXEMPTION for benefits.

D

DED. See DEFERRED ENFORCED DEPARTURE.

DEEM(ED). See IMMIGRANT SPONSOR DEEMING.

DEFERRED ACTION STATUS. An immigration status afforded to NONCITIZENS in cases where the IMMIGRATION AND NATURALIZATION SERVICE has decided, for humanitarian reasons in the exercise of prosecutorial discretion, not to seek their removal from the United States. Persons granted deferred action may obtain EMPLOYMENT AUTHORIZATION and are considered for SOCIAL SECURITY purposes to be LAWFULLY PRESENT.

DEFERRED ENFORCED DEPARTURE (DED). An immigration status granted to nationals of a country when the ATTORNEY GENERAL decides to allow them to remain in the United States for a designated period of time. Persons granted DED may obtain EMPLOYMENT AUTHORIZATION and are considered for SOCIAL SECURITY purposes to be LAWFULLY PRESENT.

DEFERRED INSPECTION. A procedure used by an immigration inspector at the border or a port of entry that allows a NONCITIZEN to come into the United States while postponing until a later interview the determination of the individual's eligibility for ADMISSION TO THE UNITED STATES.

DEPENDENCY ORDER. An order issued by a court making a juvenile a dependent or ward of the court.

DEPORTABLE; DEPORTABILITY. *See* DEPORTATION.

DEPORTATION. The expulsion of a NONCITIZEN from the United States by legal process. The various forms of misconduct and other reasons for which individuals may be deported are known as the grounds of deportability. The administrative proceedings to determine whether an individual is deportable (i.e., whether one or more of the grounds of deportability apply to him or her), and if so, whether he or she should be granted any relief from deportation, are known as deportation proceedings. Due to a change in the law enacted as part of the ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996, all such proceedings initiated on or after April 1, 1997, are called REMOVAL PROCEEDINGS and are governed by rules different than those that apply to deportation proceedings.

DEPORTATION PROCEEDINGS. *See* DEPORTATION.

DEPORTATION, STAY OF. *See* STAY OF DEPORTATION.

DERIVATIVE BENEFICIARY. *See* BENEFICIARY.

DERIVATIVE CITIZENSHIP. *See* DERIVATIVE NATURALIZATION.

DERIVATIVE NATURALIZATION. The operation of law by which a child under 18 years of age may automatically become a U.S. CITIZEN as a result of the NATURALIZATION of one or both parents. This process has two basic requirements: the naturalization of one or both parents and the attainment of lawful permanent resident status by the child before a certain age. There is no required order for the two events. The specific requirements for derivative naturalization depend upon the law that was in effect at the time that the last of the requirements was met. In some cases a child does not automatically become a citizen if only one parent naturalizes, but in such cases the parent may be able to apply for the child to naturalize under special naturalization procedures.

DIVERSITY VISA. An IMMIGRANT VISA available to individuals from countries from which relatively few people have immigrated to the United States in recent years. Under the diversity process, applicants enter a VISA LOTTERY, and if they are selected they apply for their visas themselves rather than having to first have approval of VISA PETITIONS filed by third parties such as family members or employers. To obtain a visa, lottery winners must meet certain requirements, including being admissible (*see* ADMISSIBILITY) and having either a high school education or its equivalent, or

at least two years' work experience in an occupation that requires at least two years of training or experience.

DOMICILE. Term that is generally used to describe a person's primary place of residence combined with that person's intent to reside at that residence. The definition of domicile may vary by program, but it is generally used to determine whether an applicant meets residence requirements to be eligible for a given program.

E

EAD. *See* EMPLOYMENT AUTHORIZATION DOCUMENT.

EARLY HEAD START. Comprehensive early childhood education services for low-income, pre-school children and social services for their families.

EMERGENCY MEDICAID. Limited MEDICAID services that are available to individuals who do not meet the immigration requirements for "full-scope" MEDICAID. An emergency is defined as a medical condition (including labor and delivery) with acute symptoms that could place the individual's health in serious jeopardy, result in serious impairment to bodily functions, or cause serious dysfunction of any bodily organ or part. *See also* MEDICAID.

EMPLOYMENT-AUTHORIZED SOCIAL SECURITY NUMBER. *See* SOCIAL SECURITY CARD.

EMPLOYMENT AUTHORIZATION. Permission to accept employment in the United States. U.S. CITIZENS, U.S. NATIONALS, LAWFUL PERMANENT RESIDENTS, LAWFUL TEMPORARY RESIDENTS, REFUGEES, and ASYLEES are automatically authorized to be employed in the U.S. by virtue of their status. Other NONCITIZENS must receive permission to work—i.e., employment authorization—from the IMMIGRATION AND NATURALIZATION SERVICE. The INS issues documentation of employment authorization in a variety of forms, including an EMPLOYMENT AUTHORIZATION DOCUMENT, Forms I-688B and I-766, and an "employment authorized" stamp on Form I-94, "Arrival Departure Record."

EMPLOYMENT AUTHORIZATION DOCUMENT (EAD). An I-688B or I-766 form, both of which are cards issued by the IMMIGRATION AND NATURALIZATION SERVICE to document that a NONCITIZEN is authorized to work. A number of other INS documents also establish authorization to work in the United States.

EMPLOYMENT-AUTHORIZED. Adjective used in this *Guide* to describe an individual who has EMPLOYMENT AUTHORIZATION.

EMPLOYMENT-BASED VISA. An IMMIGRANT VISA available to an IMMIGRANT of either extraordinary professional ability or reputation, or whose employer in the United States obtains a certification from the U.S. Department of Labor that there are not sufficient U.S. workers able, willing, and available to do the immigrant's job and that admitting the person into the workforce would not adversely affect the wages or working conditions of U.S. workers.

EMPLOYMENT ELIGIBILITY VERIFICATION. *See* I-9 FORM.

ENGLISH AS A SECOND LANGUAGE (ESL). English courses provided to individuals whose primary language is not English.

ENTRANT, CONDITIONAL. *See* CONDITIONAL ENTRANT.

ENTRY WITHOUT INSPECTION (EWI). The act of coming into the United States by avoiding INSPECTION.

EOIR. *See* EXECUTIVE OFFICE FOR IMMIGRATION REVIEW.

ESL. *See* ENGLISH AS A SECOND LANGUAGE.

EVD. *See* EXTENDED VOLUNTARY DEPARTURE.

EWI. *See* ENTRY WITHOUT INSPECTION.

EXCEPTIONAL AND EXTREMELY UNUSUAL HARDSHIP. The degree of harm that non-LAWFUL PERMANENT RESIDENT (LPR) applicants for CANCELLATION OF REMOVAL must show would be suffered by his or her U.S. CITIZEN or LPR spouse, parent, or child were the applicant to be removed from the United States. Whether this standard is met requires a consideration of all relevant factors of possible hardship. The standard is somewhat more restrictive than the EXTREME HARDSHIP standard that must be met by applicants for SUSPENSION OF DEPORTATION.

EXCLUDABILITY. *See* EXCLUSION.

EXCLUSION. The denial of ADMISSION TO THE UNITED STATES to a NONCITIZEN following a hearing before an IMMIGRATION COURT. The various forms of misconduct and other reasons for which noncitizens may be excluded are known as the grounds of excludability. The administrative proceedings to determine whether an individual should be excluded are known as exclusion proceedings. Because of a change in the law

enacted as part of the ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996, all such proceedings initiated on or after April 1, 1997, are called REMOVAL PROCEEDINGS and are governed by rules that are somewhat different from those that apply to exclusion proceedings. Individuals who are excluded are barred from returning to the U.S. for a period of time, unless the ATTORNEY GENERAL grants them permission to return.

EXCLUSION PROCEEDINGS. *See* EXCLUSION.

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (EOIR). A branch of the U.S. Department of Justice that operates independently of the IMMIGRATION AND NATURALIZATION SERVICE. The EOIR includes the Office of the Chief IMMIGRATION JUDGE, the BOARD OF IMMIGRATION APPEALS, and the Office of the Chief Administrative Hearing Officer. The chief immigration judge supervises the immigration judges who hear REMOVAL, DEPORTATION, EXCLUSION, and rescission cases in IMMIGRATION COURTS. The BIA hears appeals of decisions made by immigration judges, as well as appeals of some decisions made by INS officers. The chief administrative hearing officer supervises the ADMINISTRATIVE LAW JUDGES who hear cases involving employer sanctions, immigration-related employment discrimination claims, and document fraud charges.

EXEMPT FEDERAL PUBLIC BENEFIT. Federal public benefits that are exempt from immigration status-related restrictions that were imposed by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). These include, but are not limited to: EMERGENCY MEDICAID; SCHOOL LUNCH AND SCHOOL BREAKFAST; immunizations, and testing and treatment of the symptoms of communicable diseases—whether or not the symptoms are caused by a communicable disease (but these cannot be paid for by MEDICAID); and short-term, noncash disaster relief.

Also exempt from the PRWORA's immigration-status related restrictions are programs or benefits specified by the ATTORNEY GENERAL that: (1) deliver in-kind services at the community level; (2) do not condition assistance on the recipient's income or resources; and (3) are necessary to protect life or safety. The attorney general has issued a list of the types of services that fall within

this exemption, including: crisis counseling and intervention; child and adult protective services; violence and abuse prevention; assistance for victims of domestic violence or other criminal activity; treatment of mental illness or substance abuse; short-term shelter or housing assistance for the homeless, victims of domestic violence, and runaway abused or abandoned children; programs or services to assist during heat, cold, or other adverse weather conditions; soup kitchens, food banks, senior nutrition programs, or other nutritional services for persons with special needs; medical and public health services, including treatment and prevention of diseases and injuries; mental health, disability, or substance abuse assistance; activities designed to protect the life and safety of workers, children, and youths; and any other programs, services, or assistance necessary for the protection of life or safety.

The same federal program may provide some benefits that are restricted (such as “full-scope” Medicaid) and some (such as emergency Medicaid) that are exempt. In addition, some federal programs are not subject to the PRWORA’s immigration status-related restrictions because they fall outside of the definition of FEDERAL PUBLIC BENEFIT. *See also* FEDERAL PUBLIC BENEFIT.

EXEMPTION, REFUGEE. *See* REFUGEE EXEMPTION.

EXTENDED VOLUNTARY DEPARTURE (EVD). A nationality-based immigration status historically granted by the ATTORNEY GENERAL at his or her discretion to avoid having to forcibly deport NONCITIZENS to countries that were experiencing unrest or turmoil. Persons granted EVD may not be deported and are entitled to EMPLOYMENT AUTHORIZATION.

EVD, which has no statutory basis, has effectively been replaced by TEMPORARY PROTECTED STATUS (TPS), which Congress created in 1990 to address the same kinds of situations for which EVD formerly had been used.

EXTREME HARDSHIP. The degree of harm that applicants for SUSPENSION OF DEPORTATION must show would be suffered by them or their U.S. CITIZEN or LAWFUL PERMANENT RESIDENT spouse, parent, or child were the applicants removed from the United States. Assessing whether this standard is met requires a consideration of all relevant factors of possible hardship.

F

FAMILY-BASED VISA. An IMMIGRANT VISA available to an individual because one or more members of his or her immediate family is either a U.S. CITIZEN (parent, adult child, spouse, or sibling) or a LAWFUL PERMANENT RESIDENT (parent or spouse). The citizen or LPR relative must file a VISA PETITION on behalf of the person seeking to immigrate, and once a visa is available the person seeking the visa must file a visa application.

FAMILY FAIRNESS. A discretionary status that the IMMIGRATION AND NATURALIZATION SERVICE developed to allow family members of individuals who obtained LAWFUL PERMANENT RESIDENT status through the AMNESTY program of the IMMIGRATION REFORM AND CONTROL ACT OF 1986 to reside in the U.S. and have EMPLOYMENT AUTHORIZATION. This status was replaced by FAMILY UNITY, which Congress created in 1990.

FAMILY UNITY. An immigration status that allows the spouses and unmarried children of IMMIGRANTS who obtained LAWFUL PERMANENT RESIDENT status through the AMNESTY program to remain in the United States and receive EMPLOYMENT AUTHORIZATION. To be eligible, the spouse and children must have entered the U.S. before May 5, 1988. Persons granted Family Unity status are considered, for SOCIAL SECURITY purposes, to be LAWFULLY PRESENT in the U.S. Due to a technical defect in the law, the spouses and children of immigrants who legalized through the SPECIAL AGRICULTURAL WORKER amnesty program but who applied for legalization between May 5, 1988, and November 30, 1988, do not qualify for Family Unity. However, if they otherwise meet the requirements for Family Unity, the IMMIGRATION AND NATURALIZATION SERVICE will grant them the same benefits—permission to stay in the U.S. in renewable, two-year increments, and employment authorization. A separate form of Family Unity status was created by the LEGAL IMMIGRATION AND FAMILY EQUITY ACT (LIFE). To qualify for LIFE Act Family Unity, individuals must have been present and residing in the U.S. on December 1, 1988, and they must currently be the spouse or minor child of an individual who is eligible for adjustment under the “late amnesty” legalization program of LIFE.

FARM SECURITY AND RURAL INVESTMENT ACT OF 2002. Federal law that restored food stamp benefits to a significant number of QUALIFIED

IMMIGRANTS, including: persons receiving disability-related assistance regardless of their date of entry to the U.S. (effective October 1, 2002); persons who have lived in the U.S. as qualified immigrants for at least five years (effective April 1, 2003); and children regardless of their date of entry (effective October 1, 2003).

FEDERAL MEANS-TESTED PUBLIC BENEFIT. Benefits provided under one of the following programs: SUPPLEMENTAL SECURITY INCOME, MEDICAID, TEMPORARY ASSISTANCE FOR NEEDY FAMILIES, FOOD STAMPS, and STATE CHILDREN’S HEALTH INSURANCE PROGRAM. This term arises in the context of the FIVE-YEAR BAR, deeming, and SPONSOR liability under the AFFIDAVIT OF SUPPORT.

FEDERAL POVERTY LEVEL. An income standard against which an individual or family’s income is measured to determine if they live in poverty. Many federal programs use the standard to determine whether an applicant meets the income requirements to establish eligibility for benefits or services. *See also* FEDERAL POVERTY INCOME GUIDELINES.

FEDERAL POVERTY INCOME GUIDELINES. Guidelines published in the Federal Register in February or March of each year by the U.S. Department of Health and Human Services. The guidelines provide the FEDERAL POVERTY LEVEL, the threshold annual income beneath which a family of a given size is considered poor for statistical purposes. Many federal programs use the guidelines to determine whether an applicant meets the income requirements to be eligible for benefits or services. The guidelines are adjusted annually for inflation.

FEDERAL PUBLIC BENEFIT. Federally funded benefits defined by statute to include: (1) grants, contracts, loans, and professional or commercial licenses provided by a federal agency or with appropriated federal funds; (2) retirement, welfare, health, disability, assisted housing, post-secondary education, food assistance, unemployment benefits, or “any other similar benefit” for which payments or assistance are provided to an individual, household, or family eligibility unit by a federal agency or with federal funds.

Federal agencies that administer benefits programs determine which, if any, of their programs meet the statutory definition of “federal public benefit.” Federal public benefits are generally available only to QUALIFIED IMMIGRANTS, unless an exemption

makes them available to NOT QUALIFIED IMMIGRANTS. *See also* EXEMPT FEDERAL PUBLIC BENEFIT.

FEDERAL REGISTER. A daily publication of the United States government containing, among other things, all proposed, interim, and final rules and regulations written by federal departments and agencies to interpret and implement federal statutes. Interim and final regulations that have been published in the Federal Register are codified in the CODE OF FEDERAL REGULATIONS.

FIANCÉ(E). A person engaged to be married. A NONCITIZEN who seeks to enter the U.S. solely in order to conclude a valid marriage with a U.S. CITIZEN within 90 days of his or her ADMISSION TO THE U.S. may be admitted to the U.S. with a “K” visa, and minor children of the fiancé(e) can be admitted with the fiancé(e). Although technically included in the list of NONIMMIGRANT VISA categories, K visas are processed as, and applicants for them must meet many of the requirements for, an IMMIGRANT VISA. If the fiancé(e) in fact marries the citizen within 90 days of being admitted to the U.S., he or she may apply for ADJUSTMENT OF STATUS to become a LAWFUL PERMANENT RESIDENT. If the fiancé(e) fails to marry the citizen within the 90-day period, he or she becomes DEPORTABLE.

FILING DATE, PROTECTED. *See* PROTECTED FILING DATE.

FIVE-YEAR BAR. A restriction that prohibits QUALIFIED IMMIGRANTS who physically entered the United States on or after August 22, 1996, from receiving FEDERAL MEANS-TESTED PUBLIC BENEFITS during their first five years in qualified immigrant status, unless they meet the VETERAN EXEMPTION or REFUGEE EXEMPTION.

FOOD STAMP PROGRAM. Supplemental food program for low-income individuals and households. Food coupons, or plastic cards similar to ATM cards, are issued to participants to buy food at participating stores.

FOOD STAMPS. Food coupons, or a plastic card similar to an ATM card, issued to participants in the FOOD STAMP PROGRAM to buy food at participating stores.

FORTY (40) QUARTERS EXEMPTION. An exemption that permits LAWFUL PERMANENT RESIDENTS (LPRs) with credit for 40 QUALIFYING QUARTERS of work history in the U.S. to be eligible for certain benefits.

Qualifying quarters may be credited to individuals based on the amount of their earnings up to a maximum of four qualifying quarters each year. Additionally, individuals may be credited with qualifying quarters earned by their parents while the individuals were under 18 years old, including quarters worked by the parents before the individuals' birth. Married persons may also be credited with any qualifying quarter earned by their spouse during the marriage (unless the marriage ended in divorce or annulment). Individuals cannot receive credit for work performed in a quarter after December 31, 1996, if they or the worker whose earnings are being claimed received MEDICAID, FOOD STAMPS, TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF), SUPPLEMENTAL SECURITY INCOME (SSI), or STATE CHILDREN'S HEALTH INSURANCE PROGRAM (SCHIP) benefits during that quarter.

FOSTER CARE. Program that provides emergency shelter and placement in an approved foster family home, group home, or child care institution for children who cannot live safely at home. It also provides payments to the foster care provider for the child's essential needs such as food, shelter, daily supervision, school supplies, personal incidentals, liability insurance, and some child care and transportation costs. Children who receive foster care are also eligible for MEDICAID.

FULL-SCOPE MEDICAID. See MEDICAID.

G

GENERAL AMNESTY IMMIGRANT. The "general amnesty" provision of the IMMIGRATION REFORM AND CONTROL ACT OF 1986 (IRCA) allowed IMMIGRANTS who had resided unlawfully in the United States since before January 1, 1982, to legalize their immigration status. A person who became a LAWFUL PERMANENT RESIDENT via the IRCA's "general amnesty" provision can be called a general amnesty immigrant. These immigrants are also referred to as "section 245A" immigrants (the section of the IMMIGRATION AND NATIONALITY ACT containing the general amnesty provision).

GENERAL ASSISTANCE (GA). A state or locally funded program, provided in some areas, with eligibility requirements and benefits that vary by locality. Commonly, GA provides minimal cash assistance and limited social services to individuals who are ineligible for other assistance programs. Work

requirements and time limits on assistance are also common. Localities may have other names for their General Assistance programs.

GREEN CARD. A term commonly used when referring to any PERMANENT RESIDENT CARD, despite the fact that it has been years since the IMMIGRATION AND NATURALIZATION SERVICE issued green versions of this card.

H

HAITIAN REFUGEE IMMIGRATION FAIRNESS ACT OF 1998 (HRIFA). A law that allows eligible Haitian nationals to obtain ADJUSTMENT OF STATUS and become LAWFUL PERMANENT RESIDENTS under special rules. To be eligible, Haitian nationals must have been residing in the U.S. prior to December 31, 1995, and must either have applied for ASYLUM or been PAROLED INTO THE U.S. prior to that date. Certain Haitians who came to the U.S. as minor children are also eligible under broader rules. Eligible Haitians must have applied for adjustment under the HRIFA prior to April 1, 2000. Dependents are also eligible.

HEAD START. Comprehensive early childhood education services for low-income, pre-school age children and social services for their families.

HIGHLAND LAOTIAN TRIBE MEMBER. See HMONG OR HIGHLAND LAOTIAN TRIBE MEMBER.

HMONG OR HIGHLAND LAOTIAN TRIBE MEMBER. Member of a Hmong or Highland Laotian tribe that rendered military assistance to the U.S. during the Vietnam era, beginning August 5, 1964, and ending May 7, 1975. Tribe members who are LAWFULLY PRESENT in the United States may be eligible for FOOD STAMPS. The spouse or unmarried dependent child of such tribe members, and the unremarried spouse of tribe members who are deceased, are also eligible for food stamps.

HOUSING PROGRAMS. See PUBLIC HOUSING.

HOUSING, PUBLIC. See PUBLIC HOUSING.

HRIFA. See HAITIAN REFUGEE IMMIGRATION FAIRNESS ACT OF 1998.

HUMANITARIAN PAROLE. A form of PAROLE granted to a NONCITIZEN when the IMMIGRATION AND NATURALIZATION SERVICE determines as a matter of discretion that he or she should be allowed into the United States for urgent humanitarian reasons or because allowing the person into the country will significantly benefit the public.

I

I-9 FORM. The "Employment Eligibility Verification" form used by United States employers to verify that their employees are eligible to be employed.

I-130 FORM. The form used by U.S. CITIZENS and LAWFUL PERMANENT RESIDENTS to petition for an IMMIGRANT VISA for a family member.

IIRIRA. See ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996.

ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996 (IIRIRA). An act of Congress that substantially revised the IMMIGRATION AND NATIONALITY ACT. Among other things, the IIRIRA replaced DEPORTATION and EXCLUSION proceedings with a new, single process, called REMOVAL.

IMMEDIATE RELATIVE. A legal term referring to those IMMIGRANTS who, by virtue of their familial relationship to U.S. CITIZENS, are eligible to obtain an IMMIGRANT VISA without being subject to the numerical limitations that apply to most other immigrants. An immediate relative must have one of the following relationships: (1) the minor, unmarried child of a U.S. citizen; (2) the spouse of a U.S. citizen; (3) the parent of a U.S. citizen who is over 21 years of age; and (4) the widow or widower of a U.S. citizen, and any minor child of the immigrant, if the marriage lasted at least two years before the citizen's death and the surviving spouse files a petition within two years of the death. Also for a two-year period, self-petitioning abused immigrants are considered immediate relatives of a U.S. citizen even if the citizen spouse or parent lost that status on account of the abuse, or if the marriage terminated on account of the abuse.

IMMIGRANT. A person who leaves his or her country to settle permanently in another country. In the context of United States immigration law, the term refers to any NONCITIZEN in the U.S. except any individual who was ADMITTED TO THE UNITED STATES as a NONIMMIGRANT and continues to maintain that status.

IMMIGRANT SPONSOR DEEMING. For a period of time, the income and resources of an immigrant's SPONSOR (and the sponsor's spouse) may be considered, or "deemed," to be available to the sponsored immigrant when he or she applies for certain benefits. A sponsor is a person who completed an AFFIDAVIT OF SUPPORT to help the sponsored immigrant enter the country. Deeming rules usually make the sponsored immigrant

ineligible for the affected benefits because adding the sponsor's income and resources renders the immigrant over-income for the benefit.

IMMIGRANT VISA. An official authorization appended to a passport that permits the bearer to enter and settle permanently within a particular country. A NONCITIZEN who has been granted an immigrant visa and ADMITTED TO THE UNITED STATES is a LAWFUL PERMANENT RESIDENT and may work, may travel within the U.S. without restriction, and is eligible to apply for U.S. citizenship after a requisite period of residence.

IMMIGRATION AND NATIONALITY ACT OF 1952 (INA). The basic law governing the immigration and nationality policy of the United States. Rather than writing a completely new law each time it changes immigration policy, since 1952 Congress generally has enacted amendments to the INA. However, some important laws are not codified in the INA, such as the laws providing for FAMILY UNITY status, relief under the NICARAGUAN ADJUSTMENT AND CENTRAL AMERICAN RELIEF ACT OF 1997, and ADJUSTMENT OF STATUS under the HAITIAN REFUGEE IMMIGRATION FAIRNESS ACT OF 1998.

IMMIGRATION AND NATURALIZATION SERVICE (INS). The largest agency within the U.S. Department of Justice, responsible for administering and enforcing United States immigration law (i.e., the IMMIGRATION AND NATIONALITY ACT). The INS is headed by the commissioner of the INS, whom the president appoints and who reports to the U.S. ATTORNEY GENERAL.

IMMIGRATION COURT. An administrative tribunal presided over by an IMMIGRATION JUDGE, who is charged with hearing cases involving questions of immigration law, such as whether or not a NONCITIZEN is admissible or removable, or whether he or she may be granted relief, such as ASYLUM or a WAIVER of INADMISSIBILITY or DEPORTABILITY.

The immigration courts are part of the executive branch of the federal government rather than the judicial branch; specifically, they are a part of the EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, which in turn is a branch of the U.S. Department of Justice. They are supervised by the Office of the Chief IMMIGRATION JUDGE.

IMMIGRATION JUDGE. An administrative agency official who hears and decides cases brought before an IMMIGRATION COURT.

IMMIGRATION REFORM AND CONTROL ACT OF 1986 (IRCA). An act of Congress that established sanctions against employers who fail to verify the EMPLOYMENT AUTHORIZATION status of their workers and that created an AMNESTY program to legalize UNDOCUMENTED IMMIGRANTS with long residence or agricultural work histories in the United States.

INA. *See* IMMIGRATION AND NATIONALITY ACT OF 1952.

INADMISSIBILITY. *See* ADMISSIBILITY.

INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER (ITIN). An identification number that persons not eligible for a SOCIAL SECURITY CARD may use to file a tax return or open a bank account. To obtain an ITIN, individuals must file a Form W-7 with the Internal Revenue Service. The ITIN may not be used to obtain SOCIAL SECURITY or other benefits, or to claim the Earned Income Tax Credit.

INS. *See* IMMIGRATION AND NATURALIZATION SERVICE.

INSPECTION. An examination by an officer of the IMMIGRATION AND NATURALIZATION SERVICE of a person seeking to enter the United States, whether at the border or a port of entry, such as an international airport. It may involve anything from a cursory visual examination of the person to an extensive interrogation. Persons who enter the U.S. by avoiding inspection have made an ENTRY WITHOUT INSPECTION.

IRCA. *See* IMMIGRATION REFORM AND CONTROL ACT OF 1986.

J

JOINT SPONSOR. An individual who completes an AFFIDAVIT OF SUPPORT (Form I-864) when a SPONSOR lacks sufficient income and assets to support a sponsored IMMIGRANT at 125 percent of the FEDERAL POVERTY LEVEL. The legal obligations imposed on joint sponsors and legal requirements that they must meet are the same as those that pertain to sponsors.

JUVENILE COURT DEPENDENT. A minor over whom a juvenile court has jurisdiction. *See also* SPECIAL IMMIGRANT JUVENILE.

L

LATE AMNESTY. A term referring to the efforts of certain IMMIGRANTS through class action litigation to legalize under the GENERAL AMNESTY provision of the IMMIGRATION REFORM AND CONTROL ACT OF 1986 (IRCA). Such individuals were unable to apply for legalization or prevented from doing so before the deadline of that program. The LEGAL IMMIGRATION FAMILY EQUITY ACT (LIFE) established a legalization program for individuals who filed written claims for class membership in one of three class action lawsuits that challenged the IMMIGRATION AND NATURALIZATION SERVICE's implementation of the 1986 legalization program.

LAUTENBERG PAROLEE. Certain nationals of Laos, Cambodia, Vietnam, and the former Soviet Union who, under special legislation, are eligible to adjust to LAWFUL PERMANENT RESIDENT status after one year of residence in the U.S. Such individuals must have applied for REFUGEE status abroad after August 15, 1988, been denied, and instead granted PAROLEE status.

LAWFUL PERMANENT RESIDENT (LPR). An IMMIGRANT who has been granted a status that allows him or her to reside and work permanently in the United States. LPRs can travel abroad and return to the U.S., as long as they have not abandoned their U.S. residence or committed acts that would make them inadmissible under immigration law. An LPR can apply for NATURALIZATION to U.S. citizenship after living in the U.S. for five years (three years if married to a U.S. CITIZEN, and one year for certain persons in the military and VETERANS). LPRs may lose permanent residence status only by abandoning it or by being stripped of it in rescission, EXCLUSION, DEPORTATION, or REMOVAL proceedings.

LAWFUL TEMPORARY RESIDENT (LTR). A person who applied for and was given AMNESTY under the provisions of the IMMIGRATION REFORM AND CONTROL ACT OF 1986. Congress intended temporary residency to be a middle step between UNDOCUMENTED IMMIGRANT and LAWFUL PERMANENT RESIDENT status. Persons who applied for and received temporary residency because they had lived in the United States without proper immigration papers since before January 1, 1982, had to file a second application for permanent residency. The first application process was known as Phase 1 of the amnesty program; the second

application is known as Phase 2. Until the Phase 2 applications are approved or denied, applicants remain LTRs.

People who applied for and received temporary residency under the SPECIAL AGRICULTURAL WORKER (SAW) amnesty program did *not* have to file a second application for permanent residency. On December 1, 1989, SAWs who had worked three years in agriculture before May 1986 ("Group 1" SAWs) became lawful permanent residents automatically. On December 1, 1990, SAWs who had worked one year in agriculture before May 1986 ("Group 2" SAWs) also became lawful permanent residents automatically.

LAWFULLY PRESENT. Considered to be in the United States legally. Solely for SOCIAL SECURITY purposes, the ATTORNEY GENERAL has established a definition of "lawfully present" that includes only certain specified categories of lawfully present NONCITIZENS. Under this definition, an individual who is not a U.S. CITIZEN or U.S. NATIONAL is lawfully present if he or she is in one of the following categories: QUALIFIED IMMIGRANT; PAROLEE (other than those paroled pending a determination of excludability or for prosecution); LAWFUL TEMPORARY RESIDENT; FAMILY UNITY beneficiary; person granted TEMPORARY PROTECTED STATUS; person granted DEFERRED ENFORCED DEPARTURE; person in DEFERRED ACTION STATUS; the spouse or child of a U.S. citizen whose immigrant VISA PETITION has been approved and who has a pending application for ADJUSTMENT OF STATUS; applicant for ASYLUM or WITHHOLDING OF DEPORTATION or WITHHOLDING OF REMOVAL or withholding of removal under the CONVENTION AGAINST TORTURE who has been granted EMPLOYMENT AUTHORIZATION or who is at least 14 years of age and has had an application pending for at least 180 days; and NONIMMIGRANTS who have been inspected and ADMITTED TO THE UNITED STATES and who have not violated the terms of that admission. This definition is also used by the federal SSI and FOOD STAMPS programs.

LAWFULLY RESIDING. For benefits purposes, an IMMIGRANT is lawfully residing in the U.S. if she or he is a resident of the U.S. and is LAWFULLY PRESENT. A U.S. resident is an individual who establishes residency in the U.S. with the intent to continue living in this country (including Puerto Rico, Guam, and the Virgin Islands of the United States). There is an exception for certain children of military parents stationed abroad. Temporary absences of less than six months from the U.S. do

not terminate or interrupt the period of U.S. residency provided they are made with no intention of abandoning U.S. residency. Persons who are absent from the U.S. for more than six months are presumed to have abandoned their residency unless the individual presents evidence of intent to resume U.S. residency.

LEGAL IMMIGRATION FAMILY EQUITY ACT (LIFE) AND LIFE ACT AMENDMENTS. A statute enacted on December 21, 2000, that made a number of changes to immigration law. Among other things, the act established a legalization program for class members in LATE AMNESTY litigation and a FAMILY UNITY program for their spouses and minor children; broadened immigrant eligibility for ADJUSTMENT OF STATUS; and created new NON-IMMIGRANT visa categories for certain beneficiaries of FAMILY-BASED IMMIGRANT PETITIONS.

LEGALIZATION. The technical term for the process of obtaining LAWFUL PERMANENT RESIDENT status through AMNESTY.

LEGAL SERVICES. Legal assistance provided to low-income individuals in noncriminal matters such as eligibility for public benefits, housing, consumer issues, employment, education, and domestic relations.

LIFE Act. *See* LEGAL IMMIGRATION FAMILY EQUITY ACT AND LIFE ACT AMENDMENTS.

LIMITED ENGLISH-PROFICIENT (LEP). Lack of fluency in English.

LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP). Program that provides states with BLOCK GRANTS to help low-income households weatherize and defray the cost of heating or cooling their residences. *See also* WEATHERIZATION ASSISTANCE.

M

MAINTENANCE OF EFFORT (MOE). A federal requirement that a state spend a specified minimum amount of state funds to provide benefits and services in order to qualify for federal funding. In the TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) program, the provision of a broad array of benefits and services for low-income families with children may count toward satisfying a state's MOE obligation.

MARSHALL ISLANDS. A group of islands formerly under U.S. administration in the Trust Territory of the Pacific Islands, and now an independent

nation. Under a Compact of Free Association with the United States, citizens of the Marshall Islands have special rights. Although they are technically NONIMMIGRANTS, they are allowed to enter, reside, and work in the United States.

MEANS-TESTED PUBLIC BENEFIT. *See* FEDERAL MEANS-TESTED PUBLIC BENEFIT.

MEDICAID. Program that offers reimbursement to participating providers for delivering medical care to certain low-income persons, including assistance in paying for doctor's services, hospital care, clinic services, family planning services, and depending upon the state, prescription drugs and other services.

MEDICARE. Medical insurance program for the elderly and disabled. It provides "Part A Hospital Insurance," which helps pay for inpatient and hospital care, skilled care in a nursing facility, home health care, and hospice care. "Part B Medical Insurance" helps pay for doctor care, some home health care, outpatient hospital services, medical equipment, and other services.

MICRONESIA, FEDERATED STATES OF. An independent nation composed of islands that formerly were under U.S. administration in the Trust Territory of the Pacific Islands. Under a Compact of Free Association with the United States, citizens of the Federated States of Micronesia have special rights. Although they are technically NONIMMIGRANTS, they are allowed to enter, reside, and work in the United States.

N

NACARA. *See* NICARAGUAN ADJUSTMENT AND CENTRAL AMERICAN RELIEF ACT OF 1997.

NATIONAL. *See* U.S. NATIONAL.

NATURALIZATION. The process by which IMMIGRANTS become U.S. CITIZENS. To be eligible to apply for naturalization, an individual must have lived in the United States as a LAWFUL PERMANENT RESIDENT for five years—or three years if married to a U.S. citizen, or one year for certain persons in the military and VETERANS.

NATURALIZATION, DERIVATIVE. *See* DERIVATIVE NATURALIZATION.

NICARAGUAN ADJUSTMENT AND CENTRAL AMERICAN RELIEF ACT OF 1997 (NACARA). An act of Congress that allowed eligible nationals of Cuba and Nicaragua to apply for ADJUSTMENT OF STATUS

under especially favorable rules, provided that they applied prior to April 1, 2000. The law also allows eligible nationals of Guatemala, El Salvador, and countries of the former Soviet Bloc, and their dependents, to apply for SUSPENSION OF DEPORTATION or CANCELLATION OF REMOVAL for non-LPRs under especially favorable rules and with no deadline for their applications.

NONCITIZEN. As used in this *Guide*, this term refers to a person who is not a U.S. CITIZEN or a U.S. NATIONAL.

NONIMMIGRANT. A NONCITIZEN who has been granted a nonimmigrant status that allows him or her to remain in the United States temporarily for a specific purpose. There are more than two dozen nonimmigrant categories, each of which has specific requirements concerning the purpose of the individual's stay in the U.S. Most nonimmigrant categories require as a condition of the status that the individual have the intent of returning to a residence abroad. Nonimmigrants who overstay or violate a condition of their status become UNDOCUMENTED IMMIGRANTS. *See also* NONIMMIGRANT VISA.

NONIMMIGRANT STUDENT. A NONIMMIGRANT who is ADMITTED TO THE UNITED STATES to pursue a course of study. The spouse and minor children of the student may also be admitted under this status.

NONIMMIGRANT VISA. An official authorization appended to a passport that permits the bearer to enter and travel or engage in a particular activity temporarily within a particular country. Legal aid and nonprofit agency staff are most likely to encounter NONIMMIGRANTS who came to the United States on one of the following kinds of nonimmigrant visas: B-2 (visitors for pleasure), F (students), H (temporary workers), or J (exchange students or trainees).

NOT QUALIFIED IMMIGRANT. As used in this *Guide*, this term refers to a person who is a NONCITIZEN and is not a QUALIFIED IMMIGRANT.

O

ORDER OF SUPERVISION. The status of an individual who has a final order of DEPORTATION or REMOVAL but who is allowed to remain in the United States because the IMMIGRATION AND NATURALIZATION SERVICE has been unable to remove him or her, usually because of strained diplomatic relations

with the individual's home country. Persons under an order of supervision may obtain EMPLOYMENT AUTHORIZATION from the INS.

P

PALAU. An island formerly under U.S. administration in the Trust Territory of the Pacific Islands, and now an independent nation. Under a Compact of Free Association with the United States, citizens of the Republic of Palau have special rights. Although they are technically NONIMMIGRANTS, they are allowed to enter, reside, and work in the United States.

PAROLE. The procedure by which the IMMIGRATION AND NATURALIZATION SERVICE allows a NONCITIZEN to come into the United States without granting him or her ADMISSION TO THE UNITED STATES. Persons who have been paroled into the U.S. for a period of at least one year are QUALIFIED IMMIGRANTS, unless the parole was granted for DEFERRED INSPECTION, for pending EXCLUSION or REMOVAL proceedings, or for the purpose of prosecution for a crime. Persons granted parole for a period of less than one year are considered for SOCIAL SECURITY purposes to be LAWFULLY PRESENT, subject to the same exceptions listed above. Parole is authorized under 8 U.S.C. § 1182(d)(5), which is section 212(d)(5) of the IMMIGRATION AND NATIONALITY ACT.

PAROLE, ADVANCE. *See* ADVANCE PAROLE.

PAROLED INTO THE U.S. *See* PAROLE.

PAROLEE. In the immigration context, a NONCITIZEN who has been granted PAROLE.

PAROLEE, LAUTENBERG. *See* LAUTENBERG PAROLEE.

PAROLE, HUMANITARIAN. *See* HUMANITARIAN PAROLE.

PERMANENT RESIDENT. *See* LAWFUL PERMANENT RESIDENT.

PERMANENT RESIDENT CARD. A document issued by the IMMIGRATION AND NATURALIZATION SERVICE as evidence that an individual has been granted LAWFUL PERMANENT RESIDENT status. The current version of the card is INS Form I-551, but cards of different design and color, and designated by other numbers, were used for this purpose in the past. Formerly, these documents were called "resident alien cards" or "alien registration receipt cards." This card is also commonly known as a GREEN CARD, even though it has been many years since the INS issued green versions of this card.

PERMANENTLY RESIDING UNDER COLOR OF LAW (PRUCOL). A NONCITIZEN whose presence in the United States is known to the IMMIGRATION AND NATURALIZATION SERVICE, but whom the INS does not currently intend to remove or deport. PRUCOL is not an immigration law term, but rather is a public benefits category that encompasses a number of immigration statuses. The categories of IMMIGRANTS who are considered PRUCOL vary depending on the particular benefit program.

PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 (PRWORA). A landmark law, enacted August 22, 1996, that dramatically restructured the welfare system in the United States and significantly restricted immigrant eligibility for public benefits.

PETITION. *See* VISA PETITION.

PETITIONER. *See* VISA PETITION.

POVERTY LEVEL. *See* FEDERAL POVERTY LEVEL and FEDERAL POVERTY INCOME GUIDELINES.

PRIMA FACIE. As used in this *Guide*, this term refers to an application for an immigration benefit that, on its face, appears to establish eligibility for the relief sought.

PRINCIPAL BENEFICIARY. *See* BENEFICIARY.

PRIVATE BILL. Legislation on behalf of an individual that may be introduced in Congress and enacted into law to afford LAWFUL PERMANENT RESIDENT status to that individual.

PROGRAM OPERATIONS MANUAL SYSTEM (POMS). Internal guidelines used by the Social Security Administration to implement policy within the agency.

PROJECT-BASED SECTION 8 HOUSING. Apartments owned by private landlords who receive subsidies from the U.S. Department of Housing and Urban Development on behalf of eligible tenants. Tenants typically pay 30 percent of their income for rent.

PRORATE. *See* PRORATION.

PRORATION. A method of calculating the amount of benefits that an eligible individual may receive in shared living arrangements in which ineligible individuals also reside. Generally, the calculation of the benefit amount turns on the proportion of eligible recipients to ineligible individuals. For example, in the context of rental assistance, the prorated benefit for a family of four that includes

three eligible members would be three-fourths of the subsidy that they would have received had all four family members been eligible.

PROTECTED FILING DATE. The date an oral or written inquiry about a claimant's eligibility for SUPPLEMENTAL SECURITY INCOME (SSI) is made to the Social Security Administration (SSA) or another agency or individual designated by SSA for that purpose. If the claimant subsequently files an application for SSI, the protected filing date may be considered the date the claimant applied for benefits. SSI benefits are provided to eligible individuals retroactive to the first of the month following the filing date.

PRUCOL. See PERMANENTLY RESIDING UNDER COLOR OF LAW.

PRWORA. See PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996.

PUBLIC ASSISTANCE. Term that refers to public benefits provided by, or funded through, a federal, state, or local governmental agency.

PUBLIC BENEFIT, FEDERAL. See FEDERAL PUBLIC BENEFIT.

PUBLIC BENEFIT, MEANS-TESTED. See FEDERAL MEANS-TESTED PUBLIC BENEFIT.

PUBLIC BENEFIT, STATE. See STATE PUBLIC BENEFIT.

PUBLIC CHARGE. A term used by the IMMIGRATION AND NATURALIZATION SERVICE, the IMMIGRATION COURT, and the U.S. State Department to refer to a person who is considered primarily dependent on the government for subsistence, as demonstrated by either receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense. Where this consideration is applicable, an IMMIGRANT who is found "likely at any time to become a public charge" can be denied ADMISSION TO THE U.S. or denied status as a LAWFUL PERMANENT RESIDENT. In very specific and rare circumstances, an immigrant who is found to have become a public charge may be removed from the United States.

PUBLIC HOUSING. Residential rental properties owned by local public housing authorities for which tenants typically pay a maximum of 30 percent of their household income. Local housing authorities administer this program under rules established by the U.S. Department of Housing and Urban Development.

Q

QUALIFIED ALIEN. A legal term used in the PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 to designate a person whom this *Guide* refers to as a QUALIFIED IMMIGRANT.

QUALIFIED IMMIGRANT. For public benefits purposes, a person who has one of the following immigration statuses: (1) LAWFUL PERMANENT RESIDENT; (2) REFUGEE; (3) ASYLEE; (4) granted WITHHOLDING OF DEPORTATION/REMOVAL; (5) CONDITIONAL ENTRANT; (6) granted PAROLE for a period of at least one year; (7) CUBAN/HAITIAN ENTRANT; or (8) ABUSED IMMIGRANT, and children and parents of abused immigrants. NONCITIZENS who do not have one of the above-listed statuses are NOT QUALIFIED IMMIGRANTS for benefits purposes.

QUALIFYING QUARTER. A quarter of work history that may be credited to an IMMIGRANT and used to meet the "FORTY (40) QUARTERS EXEMPTION" to end the period of immigrant SPONSOR DEEMING or to terminate a sponsor's liability under an enforceable AFFIDAVIT OF SUPPORT.

Qualifying quarters are credited to workers based on the amount of their earnings. Prior to 1978, qualifying quarters were considered earned and credited differently than they have been since 1978.

R

REFUGEE. A NONCITIZEN given permission to come to the United States because he or she was persecuted, or has a well-founded fear of being persecuted (on account of race, nationality, religion, political opinion, or membership in a particular social group), in his or her home country. Refugees are given this status before coming to the U.S., usually when they are temporarily located in a third country. A refugee is granted the right to live and work in the U.S. and, after a one-year period, may apply to become a LAWFUL PERMANENT RESIDENT (LPR). Refugees remain eligible for the REFUGEE EXEMPTION even after they adjust to LPR status.

REFUGEE EXEMPTION. An exemption from the FIVE-YEAR BAR that is available to REFUGEES, ASYLEES, persons granted WITHHOLDING OF DEPORTATION/REMOVAL, CUBAN/HAITIAN ENTRANTS, and AMERASIANS.

REGISTRY. A process whereby LAWFUL PERMANENT RESIDENT status may be granted to a NONCITIZEN, whether or not he or she is an UNDOCUMENTED IMMIGRANT, who has resided in the United States since before January 1, 1972. To be eligible for registry, the person must have maintained continuous residence in the U.S. However, some absences—even extended ones—will not break the continuity of residence, provided the person never intended to abandon his or her residence.

REMOVAL. The expulsion of a NONCITIZEN from the United States by legal process. The administrative proceedings held to determine whether an individual should be removed are known as removal proceedings. Removal proceedings were created as part of the ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996, and starting on April 1, 1997, removal proceedings prospectively replaced both DEPORTATION and EXCLUSION proceedings. Generally, removal proceedings include a removal hearing, which is held before an IMMIGRATION JUDGE. At the hearing, the judge may determine whether a noncitizen who has not been ADMITTED TO THE UNITED STATES is admissible; whether a noncitizen who was previously admitted is DEPORTABLE; and whether the individual qualifies for any relief from removal, such as ADJUSTMENT OF STATUS, CANCELLATION OF REMOVAL, ASYLUM, or WITHHOLDING OF REMOVAL.

REMOVAL HEARING. See REMOVAL.

REMOVAL PROCEEDINGS. See REMOVAL; see also DEPORTATION.

REPRESENTATIVE PAYEE. Person or organization designated by the Social Security Administration to receive payments on behalf of an individual who is unable to manage his or her own funds or who is prohibited by law from directly receiving benefits.

RESIDENT ALIEN CARD. See PERMANENT RESIDENT CARD.

RESIDENT, CONDITIONAL. See CONDITIONAL RESIDENT.

S

SCHOOL LUNCH AND BREAKFAST PROGRAMS.

Programs that provide meals to children in public or private nonprofit schools, including parochial schools and residential child care institutions, and that provide snacks for after-school programs.

SAVE. See SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS.

SAW. See SPECIAL AGRICULTURAL WORKER.

SCHIP. See STATE CHILDREN'S HEALTH INSURANCE PROGRAM.

SELF-PETITION. A petition for an IMMIGRANT VISA filed by an individual who is also the BENEFICIARY of the petition. Individuals who are permitted to self-petition include certain ABUSED IMMIGRANTS filing under the VIOLENCE AGAINST WOMEN ACT and widows or widowers of U.S. CITIZENS who qualify as IMMEDIATE RELATIVES.

SEVERE FORM OF TRAFFICKING IN PERSONS. A serious form of exploitation or abuse under the VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000. Severe forms of trafficking include sex trafficking and the forced or fraudulent recruitment, harboring, transport or provision of a person for labor or services that subject an individual to involuntary servitude, peonage, debt bondage, or slavery. Sex trafficking is defined as a commercial sex act induced by force, fraud, or coercion, or any such act compelled of a minor. Debt bondage is defined as a debt arising from an individual's pledge of personal services as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not limited and defined. The debt may also include services by a person under another's charge, such as the debt pledged by a parent for services to be rendered by a child. Involuntary servitude is a condition of servitude induced by any scheme intended to cause a person to believe that, if the person did not enter or continue in such condition, that person or another person would suffer serious harm or physical restraint. The definition also includes conditions of servitude brought about by the abuse or threatened abuse of the legal process.

SHORT-TERM, NONCASH, IN-KIND EMERGENCY DISASTER RELIEF. Food, water, shelter, medical care, emergency shelter, search and rescue, and other services to minimize threats to life, property, and public health and safety that are made available following disasters such as earthquakes, storms, or civil unrest. These benefits are available to IMMIGRANTS regardless of status.

SOCIAL SECURITY. A program, funded by worker contributions, that provides payments to seniors and persons with disabilities who have worked a sufficient number of years to become "insured."

Social Security also pays benefits to the insured person's dependents, or death benefits to the insured person's surviving spouse and children.

SOCIAL SECURITY CARD. Card issued by the Social Security Administration to identify individuals for SOCIAL SECURITY purposes. **LAWFUL PERMANENT RESIDENTS** and other **IMMIGRANTS** permitted to work indefinitely in the United States qualify for an unrestricted card, which is the same as the one provided to **U.S. CITIZENS**. Other **WORK-AUTHORIZED** immigrants receive a card that states "valid for work only with INS authorization." Persons who are not entitled to work in the U.S. may, under certain limited circumstances, obtain a card marked "not valid for employment."

SOCIAL SERVICES BLOCK GRANT. BLOCK GRANT authorized by Title XX of the Social Security Act to provide a wide variety of social services including child care, in-home care for disabled persons, programs to combat domestic violence, programs for abused and neglected children, and similar social services programs.

SPECIAL AGRICULTURAL WORKER (SAW). An **IMMIGRANT** who was granted **LAWFUL TEMPORARY RESIDENT (LTR)** or **LAWFUL PERMANENT RESIDENT (LPR)** status under the farm worker **AMNESTY** program of the **IMMIGRATION REFORM AND CONTROL ACT OF 1986**.

Two categories of farm workers were eligible to apply for SAW amnesty. Group 1 SAWs are individuals who showed that they had performed at least 90 days of qualifying agricultural work in each of the three years between May 1, 1983, and May 1, 1986. They also had to prove they had lived in the U.S. for six months during each of those years. Group 2 SAWs are individuals who showed that they had performed at least 90 days of qualifying work between May 1, 1985, and May 1, 1986.

Group 1 SAWs with LTR status who had not become **DEPORTABLE** adjusted automatically to LPR status on December 1, 1989. Group 2 SAWs with LTR status adjusted automatically to LPR status on December 1, 1990.

SPECIAL IMMIGRANT JUVENILE. An individual who may apply for **LAWFUL PERMANENT RESIDENT** status because he or she has been declared dependent on a juvenile court or a state, and has been determined eligible for long-term foster care due to abuse, neglect, or abandonment. There must also have been an administrative or judicial finding

that it would not be in the juvenile's best interest to be returned to his or her country of nationality or last residence.

SPECIAL SUPPLEMENTAL NUTRITIONAL PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC).

Program that provides nutritious foods, nutrition education, and access to health care for low-income pregnant women, new mothers, infants, and children under five years old who are at nutritional risk. Vouchers may be used to obtain supplemental food items such as milk, infant formula, juice, cereal, cheese, and eggs that are specifically tailored to the special dietary needs of program participants.

SPONSOR. An individual who completes an **AFFIDAVIT OF SUPPORT** to help a sponsored **IMMIGRANT** enter the United States.

SPONSOR DEEMING. See **IMMIGRANT SPONSOR DEEMING**.

SPOUSE OF A VETERAN OR ACTIVE DUTY SERVICE MEMBER. A **QUALIFIED IMMIGRANT** who is eligible for the **VETERAN EXEMPTION** because he or she is the spouse of a **VETERAN** or **ACTIVE DUTY** service member. An individual is considered a veteran's or active duty member's spouse if the couple has been determined married either under relevant state law, or under section 216(h)(1) of the Social Security Act, or are "holding themselves out to the community" as husband and wife.

SSI. See **SUPPLEMENTAL SECURITY INCOME**.

SSN CARD. See **SOCIAL SECURITY CARD**.

STATE CHILDREN'S HEALTH INSURANCE PROGRAM (SCHIP). A program that provides federal-state funding for children's health insurance to low-income working families. The program is funded through federal **BLOCK GRANTS**, with state matching funds. States choose a program name and decide, within federal guidelines, what percentage of low-income children are served, which services are offered, and whether to make services available through **MEDICAID** or a separate program. **SCHIP** offers reimbursement to participating providers for medical care to enrolled children and coverage for doctor's services, immunizations, hospital care, laboratory and x-ray services, and (depending on the state) prescription drugs, eyeglasses, hearing aids, and other services.

STATE PUBLIC BENEFIT. Benefits that are exclusively state or locally funded and defined by statute as: (1) grants, contracts, loans, professional or commercial licenses provided by a state or local

agency or with state or local funds; and (2) retirement, welfare, health, disability, assisted housing, post-secondary education, food assistance, unemployment benefit, or "any other similar benefit" for which payments or assistance are provided to an individual, household, or family eligibility unit by a state or local agency or with state or local funds.

STAY OF DEPORTATION OR REMOVAL. An order issued by the **IMMIGRATION AND NATURALIZATION SERVICE**, an **IMMIGRATION COURT**, the **BOARD OF IMMIGRATION APPEALS**, or a federal court temporarily halting the execution of a **DEPORTATION** or **REMOVAL** order. A stay of deportation or removal is most commonly issued in conjunction with an appeal or a motion to reopen a case.

SUBSTANTIAL CONNECTION. One requirement that an **ABUSED IMMIGRANT** must meet to be considered a **QUALIFIED IMMIGRANT** is showing that there is a "substantial connection" between the violence suffered by the victim and the need for benefits. A substantial connection exists where benefits are needed, among other things: to become self-sufficient; to escape the abuser and/or community in which the abuser lives; to ensure the victim's safety; because of lost financial support due to separation from the abuser; because of a job loss relating to the abuse, separation from the abuser, work absences or lower job performance related to the abuse or legal proceedings, or the need to leave a job for safety reasons; for medical attention, mental health counseling, or because of a disability that resulted from the abuse; to alleviate nutritional risk or needs resulting from the abuse or following separation from the abuser; because of lost housing or income; because fear of the abuser jeopardizes the victim's ability to care for her or his children; or to replace medical coverage available to the applicant when she or he was living with the abuse.

SUPPLEMENTAL SECURITY INCOME (SSI). Program that provides cash assistance, in the form of a monthly check, to low-income seniors, persons with disabilities, and persons who are blind. Some states supplement the basic federal SSI grant. Unlike **SOCIAL SECURITY** benefits, these are needs-based benefits which are not based on past earnings.

SUSPENSION OF DEPORTATION. A form of relief from **DEPORTATION** that is available to individuals who have been in the United States for at least seven years and who show that their deportation would

cause **EXTREME HARDSHIP**, either to themselves or to a **U.S. CITIZEN** or **LAWFUL PERMANENT RESIDENT (LPR)** parent, spouse, or child. Persons who are granted suspension of deportation thereby become **LPRs**. A special form of suspension of deportation is available to certain **ABUSED IMMIGRANTS** if they have been in the U.S. for at least three years and their deportation would cause extreme hardship.

SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS (SAVE). A system utilized by some agencies, in conjunction with the **IMMIGRATION AND NATURALIZATION SERVICE**, to verify an applicant's immigration status. Under the system, an agency forwards copies of an applicant's immigration documents to the **INS**, which uses primary or secondary processes to verify the immigrant's status. Under primary **VERIFICATION**, the **INS** utilizes its computer database to verify an immigrant's status. If primary verification yields inconclusive results, the **INS** uses secondary or manual procedures to locate an immigrant's file and verify status.

T

TANF. See **TEMPORARY ASSISTANCE FOR NEEDY FAMILIES**.

TANF MAINTENANCE OF EFFORT FUNDS. Money spent by a state on its **TANF** program as part of its **MAINTENANCE OF EFFORT** obligation. See **MAINTENANCE OF EFFORT**.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF). A federal **BLOCK GRANT** that states can use to provide cash and/or services to low-income families with dependent children. States have broad discretion to develop and implement their own programs, which may vary by name and practice. The amount of cash assistance and/or scope of services provided is set by each state. Some of the services that states may provide include job training, child care, mental health services, drug and alcohol-related counseling, domestic violence counseling, and transportation assistance. Most states limit the amount of time that families are eligible to receive assistance, and time limits vary among states.

TEMPORARY PROTECTED STATUS (TPS). A temporary grant of permission to remain in the United States and to work that is granted to nationals of a particular country when the **ATTORNEY GENERAL** determines that unstable or dangerous conditions

in that country warrant such relief. Once a TPS designation has been made for a country, its eligible nationals who are in the U.S. may apply for TPS status and EMPLOYMENT AUTHORIZATION. Since the creation of this status by the Immigration Act of 1990, it has been designated for over a dozen countries. The attorney general has most commonly designated TPS for a country for either one-year or eighteen-month periods, but it is also common for TPS designations to be extended if unstable conditions persist in the country. Persons granted TPS are considered for SOCIAL SECURITY purposes as LAWFULLY PRESENT.

TEMPORARY RESIDENT. *See* LAWFUL TEMPORARY RESIDENT.

TIME LIMITS, TANF-RELATED. Limits on the period of time a family can receive cash benefits under a TEMPORARY ASSISTANCE FOR NEEDY FAMILIES program.

TITLE XX BLOCK GRANT. *See* SOCIAL SERVICES BLOCK GRANT.

TPS. *See* TEMPORARY PROTECTED STATUS.

TRAFFICKING. *See* VICTIM OF TRAFFICKING.

T STATUS. A NONIMMIGRANT status that permits a VICTIM OF TRAFFICKING to remain in the United States and to work. After three years in this status, a T status holder can apply to adjust to LAWFUL PERMANENT RESIDENT status.

U

UNACCOMPANIED MINORS PROGRAM. Program that provides unaccompanied REFUGEE children and other eligible IMMIGRANTS with culturally and linguistically appropriate supplemental services while they receive FOSTER CARE.

UNDOCUMENTED IMMIGRANT. A NONCITIZEN who does not have lawful immigration status. Most undocumented immigrants either entered the United States without INSPECTION, or were lawfully admitted as NONIMMIGRANTS but violated the terms of that status.

UNEMPLOYMENT INSURANCE (UI). Program that provides periodic payments to eligible workers who are unemployed and looking for work. It is funded by payments made by employers through state and federal unemployment taxes and pays benefits as a matter of right and not based on need or income. UI pays a benefit amount that is based

on the wages earned by the worker during a "base period," usually the 12- to 18-month period before the worker became unemployed.

UNREARRIED SURVIVING SPOUSE OF A VETERAN OR ACTIVE DUTY MEMBER OF THE MILITARY. A QUALIFIED IMMIGRANT who is eligible for the VETERAN EXEMPTION as an unremarried surviving spouse of a VETERAN or ACTIVE DUTY member because he or she meets the following requirements: 1) is unremarried; and 2) was married to the veteran or active duty service member for at least one year; or 3) had a child with the veteran or active duty service member; or 4) the veteran's or active duty service member's death resulted from an injury or disease incurred or aggravated during military service, and the marriage existed within 15 years after the period of service in which the injury or disease occurred.

U.S. CITIZEN. Any person, with the exception of the children of certain diplomats, who was born in the United States or its territories, certain persons born abroad whose parents are U.S. citizens who qualify for acquisition of citizenship, and NONCITIZENS who become citizens through NATURALIZATION.

U.S. NATIONAL. All U.S. CITIZENS and certain NONCITIZENS who owe permanent allegiance to the U.S. and may enter and work in the U.S. without restriction. At present, the only U.S. noncitizen nationals are: (1) persons born in American Samoa and Swain's Island after December 24, 1952; and (2) residents of the Northern Mariana Islands who did not elect to become U.S. citizens.

U STATUS. A NONIMMIGRANT status that permits victims and witnesses of certain crimes who are assisting an investigation or prosecution to remain in the United States and to work. After three years in this status, a U status holder can apply to adjust to LAWFUL PERMANENT RESIDENT status.

V

VERIFICATION. Process of corroborating an individual's citizenship or immigration status.

VETERAN. For purposes of the PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT, a veteran is a person who served in the active military, naval, or air service of the United States, who fulfilled the minimum active duty service requirements, and was honorably discharged or released, not on account of immigration status. (Such discharges are those

(1) granted to a NONCITIZEN member of the U.S. armed forces because the person asked to be discharged on the basis that noncitizens are not required to serve in the U.S. military, or (2) based on a finding that the enlistment violated the regulations restricting noncitizens from such service.)

For public benefits purposes, "veteran" includes men and women who died while serving in ACTIVE DUTY in the U.S. armed forces, as well as Filipino veterans of World War II who fought under U.S. command. For purposes of determining a surviving spouse's eligibility for benefits, a person who died after being honorably discharged or released from active duty in the U.S. armed forces is also a veteran.

VETERAN EXEMPTION. NONCITIZEN VETERANS and ACTIVE DUTY military personnel and their spouses and children are exempt from most of the immigration status-related restrictions under the PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT (PRWORA). For example, they are eligible for SUPPLEMENTAL SECURITY INCOME and FOOD STAMPS and are exempt from the FIVE-YEAR BAR.

QUALIFIED IMMIGRANTS meet the veteran exemption if they: (1) are on active duty in the U.S. armed forces (serving either the full period for which they were ordered to active duty or 24 months of continuous active duty, whichever is less); (2) were honorably discharged, not based on immigration status, and have fulfilled the minimum active duty service requirement; or (3) are the spouse, unremarried surviving spouse, or unmarried dependent child of a veteran or active-duty service member.

Filipino war veterans who fought under U.S. command in World War II are considered veterans for purposes of the PRWORA.

VETERANS AND ACTIVE DUTY MILITARY PERSONNEL. *See* VETERAN EXEMPTION.

VICTIM OF DOMESTIC VIOLENCE. *See* ABUSED IMMIGRANT.

VICTIM OF TRAFFICKING. An individual who has been subjected to a SEVERE FORM OF TRAFFICKING IN PERSONS. Under the VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000, a victim of trafficking may obtain a NONIMMIGRANT status permitting him or her to remain in the U.S. and to work, if the individual is in the U.S. as a result of trafficking, has not unreasonably refused to cooperate in any investigation of the trafficking (if

15 years old or older), and if the individual would suffer extreme hardship involving unusual and severe harm if deported. Individuals who have been continuously present in the United States for at least three years following a grant of T status may adjust to LAWFUL PERMANENT RESIDENCE status.

VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000. An act of Congress that broadened eligibility for ABUSED IMMIGRANTS to obtain LAWFUL PERMANENT RESIDENCE status under the VIOLENCE AGAINST WOMEN ACT OF 1994. The act also created two new NONIMMIGRANT statuses: the T STATUS for VICTIMS OF TRAFFICKING, and the U STATUS for victims and witnesses of certain crimes.

VIOLENCE AGAINST WOMEN ACT OF 1994 (VAWA). An act of Congress that established a procedure by which ABUSED IMMIGRANTS can SELF-PETITION to obtain LAWFUL PERMANENT RESIDENT (LPR) status. The VAWA also established special and more relaxed eligibility rules that eligible non-LPRs who are abused immigrants must meet to qualify for SUSPENSION OF DEPORTATION and CANCELLATION OF REMOVAL.

VISA. An official authorization appended to a passport that permits the person to whom it is issued to enter and travel or settle within a particular country. NONIMMIGRANT VISAS allow only temporary stays in the United States, whereas IMMIGRANT VISAS provide for permanent residence.

VISA, DIVERSITY. *See* DIVERSITY VISA.

VISA, EMPLOYMENT-BASED. *See* EMPLOYMENT-BASED VISA.

VISA, FAMILY-BASED. *See* FAMILY-BASED VISA.

VISA, IMMIGRANT. *See* IMMIGRANT VISA.

VISA LOTTERY. The U.S. State Department-administered process whereby DIVERSITY VISAS are assigned at random to eligible applicants seeking to immigrate to the United States. Persons from qualifying countries enter the lottery by submitting specific, required information to the proper address at the National Visa Center. Application procedures change from year to year.

VISA, NONIMMIGRANT. *See* NONIMMIGRANT VISA.

VISA PETITION. An application that must be filed by a petitioner and approved by the IMMIGRATION AND NATURALIZATION SERVICE before an IMMIGRANT BENEFICIARY can apply for a FAMILY-BASED VISA or an EMPLOYMENT-BASED VISA. In family-based cases, the petition is filed by a U.S. CITIZEN or LAWFUL PERMANENT RESIDENT relative, and the INS

approves the petition if the agency is satisfied that the petitioner has either status and the appropriate relation to the beneficiary. In employment-based cases, the petition is filed by an employer.

VOLUNTARY DEPARTURE. A form of relief that the IMMIGRATION AND NATURALIZATION SERVICE offers to some deportable NONCITIZENS prior to the commencement of DEPORTATION or REMOVAL proceedings, and also a form of relief available to eligible individuals in those proceedings. An individual granted voluntary departure agrees to leave the United States by a designated date. Individuals who comply with this agreement and depart the country prior to the designated date avoid having an order of deportation or removal entered against them.

W

WAIVER. A discretionary determination to excuse a ground of INADMISSIBILITY or DEPORTABILITY that would otherwise apply to a NONCITIZEN. A waiver may be granted by the IMMIGRATION AND NATURALIZATION SERVICE or an IMMIGRATION JUDGE, but only where the waiver is authorized by statute.

WEATHERIZATION ASSISTANCE. Insulation, weather sealants, and other energy-related home repair, provided through the LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM or the U.S. Department of Energy's Weatherization Assistance program.

WITHHOLDING OF DEPORTATION. *See* WITHHOLDING OF REMOVAL.

WITHHOLDING OF REMOVAL/DEPORTATION. A shorthand term used throughout this *Guide* to refer simultaneously to WITHHOLDING OF REMOVAL and WITHHOLDING OF DEPORTATION.

WITHHOLDING OF REMOVAL. Status available in REMOVAL PROCEEDINGS that prohibits the IMMIGRATION AND NATURALIZATION SERVICE from returning an individual to a country where his or her life or freedom would be endangered. This status is similar to, but separate from, ASYLUM. The same defense in DEPORTATION PROCEEDINGS is known as withholding of deportation. To obtain withholding, individuals must meet a higher evidentiary standard than applies in asylum, but if they meet this standard they must be granted withholding—i.e., unlike asylum, the status is not discretionary. Persons granted withholding may be deported to a third country if one will accept them,

but they cannot be returned to their home country. The CONVENTION AGAINST TORTURE (CAT), an international treaty that the U.S. Senate has ratified, provides a separate basis for withholding of deportation or removal, for individuals for whom there are substantial grounds for believing that the person would be in danger of being subjected to torture.

Unlike the status of REFUGEE or ASYLEE, withholding does *not* provide a basis on which individuals may subsequently obtain LAWFUL PERMANENT RESIDENT status. Nevertheless, persons who are granted withholding may apply for, and be granted, EMPLOYMENT AUTHORIZATION. A person who has been granted withholding is eligible for the REFUGEE EXEMPTION.

WORK CREDIT EXEMPTION. *See* 40 QUARTERS EXEMPTION.

WORK AUTHORIZATION. *See* EMPLOYMENT AUTHORIZATION.

WORK-AUTHORIZED. Adjective used in this *Guide* to describe an individual who has EMPLOYMENT AUTHORIZATION.

WORKFARE. Employment that is created through a benefits program, such as TEMPORARY ASSISTANCE FOR NEEDY FAMILIES or FOOD STAMPS, to employ workers who must meet work requirements to be eligible for benefits.

WOMEN, INFANTS, AND CHILDREN (WIC). *See* SPECIAL SUPPLEMENTAL NUTRITIONAL PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC).