

Key Elements of New Immigrant Benefit Restrictions

1996 Welfare Bill

Personal Responsibility & Work Opportunity Reconciliation Act of 1996 (P.L. 104-193)

1996 Immigration Law:

Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208)

Immigrants' eligibility for benefits . . . depends on their immigration status, whether they entered the U.S. before the welfare bill passed, whether they were receiving assistance when the welfare bill passed, and which state they live in.

- Naturalized citizens are eligible for all benefits as if they were citizens by birth.
- "Qualified" aliens are eligible for some, but not all, federal benefits.
- "Not qualified" aliens are ineligible for nearly all federal benefits.

Resource ID#: 3976

Key Elements of New Immigration Benefit Restrictions

Only certain aliens are "qualified"

- Legal permanent residents
- Refugees, asylees, and persons granted withholding of deportation
- Persons paroled into the country for at least one year, and
- Certain battered women and children (only those who have begun the process of becoming a legal permanent resident under the Violence Against Women Act)

All others are "not qualified," even if in the U.S. legally.

Most immigrants (qualified or not) . . . are ineligible for Supplemental Security Income (SSI) and food stamps.

- Some qualified aliens are exempt from the bar on SSI and food stamps . . .

Exempt aliens (eligible for SSI and Food Stamps) are:

- Refugees, asylees, and those granted withholding of deportation during their first 5 years after entering the U.S.
- Veterans and aliens on active duty, their spouses, and unmarried children under age 21.
- Immigrants who have worked 40 "qualifying quarters" (10 years), spouses and children under 18 get credit for the work of their spouse or parent.

- The SSI and food stamp bar already applies to new applicants for assistance.

- People who were receiving assistance on August 22, 1996 will begin to receive notices in March (for SSI) and April (for Food Stamps). All current recipients will be cut off by August 22, 1997.

States have the option . . . to make most immigrants (qualified or not) ineligible for TANF (the block grant replacing AFDC), non-emergency Medicaid, Title XX Social Services block grant programs, and state or local funds public benefits

- If states take the option to bar these programs to most immigrants, they must continue to provide assistance to the same classes of immigrants who are exempt from the SSI and food stamp bar.
- States may bar new applicants at any time, but they must wait until January 1, 1997 before cutting off people who were receiving assistance on August 22, 1996.

Qualified immigrants who came before August 22, 1996 . . . are not restricted from receiving any other kinds of assistance (other than the SSI/food stamp bar and, at state option, TANF, Non-emergency Medicaid Title XX and state or local programs).

Most qualified immigrants who entered after August 22, 1996 . . . are barred from "federal means-tested public benefits" for their first five years in the U.S.

- The law does not define this term. Legislative history suggests it should be limited to entitlement programs, but regulations have not yet been issued.
- Some programs are explicitly exempt from the 5-year bar:

Programs exempt from the five-year bar

- Emergency Medicaid
- Immunizations and testing and treatment of the symptoms of communicable diseases
- Short-term non-cash disaster relief
- School Lunch Act programs, WIC and other Child Nutrition Act programs
- Foster Care and Adoptive Assistance payments
- Higher education loans and grants, Elementary and Secondary Education Act programs, Head Start, and Job Training Partnership Act programs
- Programs the Attorney General determines (1) are delivered at the community level, (2) do not condition assistance on income or resources and (3) are necessary to protect life or safety

- The refugee and veterans exemptions also apply to the 5-year bar.
- Some Cuban-Haitian entrants (those who were paroled for at least a year) are also exempt from the 5-year bar.

Most family immigrants who enter after this year . . . will continue to be ineligible for "federal means-tested public benefits" even after 5 years in the U.S., because of deeming.

- "Deeming" means that all of the income and resources of the immigrant's sponsor and the immigrant's sponsor's spouse are added to those of the immigrant to determine whether the immigrant qualifies for a poverty program. (The "sponsor" is the person who signs an affidavit as part of the immigration process promising to support the immigrant.).
- Nearly all immigrants who enter because of family ties will have to fill out a newly designed legally enforceable affidavit of support starting sometime in January to March of 1997. Only immigrants who enter using these new affidavits of support are subject to deeming.
- Refugees, asylees, and persons granted withholding of deportation are not subject to deeming because they do not have sponsors.
- Some family-based immigrants who are exempt from deeming

Family-based immigrants that are exempt from deeming:

- Those who satisfy the 40 quarters exemption for the SSI and Food Stamp bar
- Some battered spouses and children are exempt for a up to a year if the need for assistance has a substantial connection to the battery (more if certain officials certify that the battery occurred)
- Persons who need assistance to avoid hunger or homeless may obtain help for up to a year.

- Deeming applies to the same list of programs as the 5 year bar.

Immigrants who are not qualified . . . are ineligible for most federal public benefits

- Federal public benefits include federal government contracts, loans, grants, and commercial or professional licenses.
- Federal public benefits also includes retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or benefits similar to the above categories, where the assistance is provided by a federal agency, or where federal funds were appropriated to pay the assistance.
- Federal regulators have not decided if child care, public health, maternal and child health, or legal services, among other kinds of assistance, fit within the definition.
- Certain programs are explicitly exempted from all new immigrant restrictions.

Exempt from all immigrant restrictions

- Emergency Medicaid
- Immunizations and testing and treatment of the symptoms of communicable diseases
- Short-term non-cash disaster relief
- School lunches and breakfasts
- Programs the Attorney General determines (1) are delivered at the community level, (2) do not condition assistance on income or resources and (3) are necessary to protect life or safety.

- Housing rules regarding ineligible aliens and mixed families have been tightened
- In addition, states have the option to bar nonqualified immigrants from the Women's Infants and Children's program (WIC) and certain other nutrition programs

Certain immigrants who are not qualified . . . may still receive Social Security and Medicare.

- People who have valid Social Security cards and file applications before December 1, 1996 remain eligible for Social Security and Medicare regardless of immigration status.
- Immigrants who are lawfully present, but not qualified, also remain eligible for Social Security and Medicare, regardless of when they apply.

Categories of immigrants who are not qualified but are lawfully present, and therefore eligible for Social Security

- Lawful temporary residents
- Aliens paroled into the U.S. for up to a year (other than those paroled for an exclusion hearing or prosecution)
- Nonimmigrants who have remained in lawful status
- Cuban-Haitian entrants
- Adjustment of status applicants who are the spouse or child of a citizen, and
- Aliens granted TPS, Family Unity, Deferred Enforced Departure, or deferred action status.

Most unqualified immigrants . . . may not be granted state or local assistance unless the state passes a new law.

- Certain categories of aliens who are not qualified may receive assistance despite this requirement

Example of immigrants who are not qualified, but that states must treat as qualified in their own programs.

- Nonimmigrants, and
- People granted humanitarian parole for less than a year.

- Many scholars who have looked at the requirement that states must pass a law to provide services have noted that it is likely both unconstitutional and difficult to enforce.

Several provisions affect the privacy and confidentiality of information gathered by government agencies.

- The state TANF agencies, public housing authorities and SSI must now report quarterly to the INS anyone the agency "knows is in the U.S. unlawfully."
- State and local government entities or officials may not restrict communication with the INS regarding immigration status

Almost all family immigrants . . . will now need "sponsors" who make a binding contract to support the immigrant financially.

- All immigrants coming to rejoin family members (with minor exceptions) will need an affidavit of support.
- If an affidavit of support is required, it must be provided by the "petitioner" (the relative who is bringing in the immigrant). Either the petitioner or a cosigner must earn enough to support both their own family and the immigrant at least 125 percent of the poverty level.
- Sponsors who sign affidavits of support can be sued to recover money spent on the immigrant in means-tested programs. The sponsors will be liable for all such benefits used by the immigrant until the immigrant becomes a citizen, or earns 40 quarters work credit, and can be sued by either the immigrant or government agencies until 10 years after the receipt of benefits.

Overview of Benefit Restrictions to Immigrants in 1996 Welfare and Immigration Laws

This table outlines the restrictions on public services for immigrants contained in the new welfare law (Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, signed Aug. 22, 1996). In the table, *italics* indicate provisions that were amended or added by the benefit provisions of the new immigration law (Illegal Immigration Reform and Immigrant Responsibility Act of 1996, signed Sept. 30, 1996, after being attached to the continuing budget resolution).

Issue	Prior Law	1996 Welfare and Immigration Laws
Federal programs barred to most legal immigrants, including current residents	None	<p>Denied until citizenship:</p> <ul style="list-style-type: none"> • Supplemental Security Income (SSI) • Food stamps <p>Current recipients: <i>Termination notices to current food stamp recipients will be issued no earlier than Apr. 1, 1997; redetermination in both programs phased in by Aug. 22, 1997</i></p> <p>Exempt categories of immigrants:</p> <ul style="list-style-type: none"> • Refugees, asylees, and those granted withholding of deportation (but exempt only during first 5 years in U.S.) • Veterans and aliens on active duty, their spouses, and unmarried children under age 21 • Immigrants who work 40 "qualifying quarters" (as defined for Title II Social Security); credit for quarters worked after Dec. 31, 1996, only if no federal means-tested benefit received in that quarter. Children under age 18 get Social Security credit for quarters worked by parents; spouses get credit if still married or if working spouse is deceased.
Federal five-year prospective bar (affects only future legal immigrants)	None	<p>Provision: For first 5 years after entry, bars Temporary Assistance to Needy Families ("TANF," which replaces Aid to Families with Dependent Children), Medicaid, Title XX block grant, and "federal means-tested" programs to qualified immigrants who enter U.S. after Aug. 22, 1996</p> <p>Exempt categories of immigrants:</p> <ul style="list-style-type: none"> • Refugees, asylees, and those granted withholding of deportation • Veterans and aliens on active duty, their spouses, and unmarried children under age 21 • Cuban-Haitian entrants <p>Exempt programs:</p> <ul style="list-style-type: none"> • Emergency Medicaid • Immunizations and testing and treatment of the symptoms of communicable diseases, whether or not such symptoms are caused by a communicable disease (This exemption does not apply to payment by Medicaid) • Short-term, noncash disaster relief • School Lunch Act programs • Child Nutrition Act programs • Title IV Parts B and E Foster Care and Adoption Assistance payments, but only if adoptive or foster parents are "qualified aliens" • Higher education loans and grants (including those under the Public Health Service Act) • Elementary and Secondary Education Act • Head Start • Job Training Partnership Act (JTPA) • At AG discretion, community programs (e.g., soup kitchens, assistance for victims of violence or abuse, health services, and short-term shelter) that (1) do not condition assistance on individual income or resources and (2) are necessary to protect life or safety

Issue	Prior Law	1996 Welfare and Immigration Laws
State option to bar or limit current legal residents and future legal immigrants	States may not discriminate against legal immigrants in the provision of assistance.	<p>Programs: State option to bar both current residents and new immigrants from</p> <ul style="list-style-type: none"> • (Nonemergency) Medicaid • TANF block grant • Title XX block grant programs • All entirely state-funded public benefits programs <p>Current recipients: Continue to receive benefits at least until Jan. 1, 1997</p>
Programs restricted by deeming (Impacts most immigrants with family-based visas)	TANF, food stamps, and SSI	<p>Provision: "Federal means-tested" public benefit programs must deem future immigrants whose sponsor signs affidavit of support (<i>form to be developed by Dec. 29, 1996; to be in use 60-90 days after it is developed</i>)</p> <p>Exempt programs: Same programs exempt from deeming as exempt from the 5-year prospective bar (see page 1)</p> <p>State and local programs: Entirely state-funded public benefit programs may deem future legal immigrants (the same or comparable exemptions apply as for federal deeming, except higher education loans/grants, elementary and secondary education means-tested programs, Head Start-type programs, and job training are not exempt)</p>
Length of deeming period	3 years (SSI - 5 years until Oct. 1, 1996)	<p>Current residents: Food stamps and SSI, same as prior law; TANF, no deeming period</p> <p>New legal immigrants (whose sponsors have signed one of the new affidavits of support): Until citizenship unless (for federal programs) qualify for 40-quarters work credit exemption</p>
Immigrants exempt from deeming	<ul style="list-style-type: none"> • Disabled after entry (SSI only) • Sponsor is receiving food stamps (food stamps only) 	<ul style="list-style-type: none"> • Immigrants who work 40 "qualifying quarters" (as defined for Title II Social Security); credit for quarters worked after Dec. 31, 1996, only if no federal means-tested public benefit received in that quarter • Children under 18 get credit for quarters worked by parents; spouses get credit if still married or if working spouse is deceased • Domestic violence victims (<i>if the need for benefits has a substantial connection to the battery</i>) • Up to 12 months' assistance if necessary to prevent homelessness or hunger
Affidavits of support	Not enforceable against the sponsor	<ul style="list-style-type: none"> • Enforceable to recover money spent on means-tested programs (except those exempt from deeming) • Sponsor liable for benefits used until citizenship or credited with 40 qualifying quarters • Enforceable against sponsor by sponsored immigrant or government agencies until 10 years after receipt of benefits; sponsor fined up to \$5,000 for failure to notify government when sponsor moves • Virtually all persons who immigrate based on family ties must provide affidavit of support • If affidavit of support is required, it must be signed by petitioner; if petitioner does not earn at least 125% of poverty, it must be co-signed by someone else who does

Issue	Prior Law	1996 Welfare and Immigration Laws
Treatment of "not qualified" immigrants	<ul style="list-style-type: none"> • Eligibility of classes of immigrants the INS does not plan to deport varies by program • Undocumented immigrants ineligible for cash assistance and all major federal programs. Exemptions include: <ul style="list-style-type: none"> - Emergency Medicaid - Public health - Child nutrition - Child care, child protection, and maternal care - Emergency services 	<p>Definition: "Not qualified" = all but LPR, refugee, granted asylum, deportation withheld, parolee for at least 1 year, and persons who have applied for or received protection under the Violence Against Women Act (VAWA) (if the need for benefits has a substantial connection to the battery)</p> <p>Prohibition: "Not qualified" barred from federal public benefits: retirement, welfare, health, disability, assisted housing, postsecondary education, food assistance, unemployment benefit, or "any other similar benefit" for which payments/assistance are provided to an individual/household by a U.S. agency or with U.S. funds. Includes governmental grant, contract, loan, or professional or commercial license (nonimmigrants may receive license or contract related to visa). New applicants for Social Security cannot receive benefits if they are not "lawfully present" (as defined by AG). <i>Housing and community development funds are subject to new, more restrictive, rules.</i> States have the option to bar children from Nutrition Act programs and certain other emergency food and commodity programs.</p> <p>Exceptions:</p> <ul style="list-style-type: none"> • Emergency Medicaid/emergency medical treatment • School lunch and school breakfast • Short-term, in-kind emergency disaster relief • Immunizations, testing and treatment of symptoms of communicable disease • At AG discretion, community programs (e.g., soup kitchens, health services, and short-term shelter) that (1) do not condition assistance on individual income or resources and (2) are necessary to protect life or safety <p>State and local programs: Immigrants who are not lawfully present may not participate in state- or locally funded programs unless the state passes a law after enactment affirmatively providing eligibility. <i>States may not treat unlawfully present immigrants as state residents for eligibility for higher education benefits.</i></p>
Verification and reporting	<p>Agencies such as battered women's shelters, hospitals, and law enforcement may keep immigration information confidential. E.g., police may assure a timid witness that he/she will not be deported as a result of coming forward to report a crime.</p>	<p>Confidentiality: No state or local government entity may be restricted from sending or receiving information to or from the INS</p> <p>Required verification: Immigrant eligibility for nonexempt federal programs must be verified "to the extent feasible" through a computerized data base, once regulations are in force. Federal government has 18 months to promulgate regulations; states must operate verification system within 24 months after AG issues regulations. <i>All applicants for federal benefits must verify citizenship per AG regulations. Public hospitals may receive reimbursement for emergency care to unlawful immigrants if status is verified through procedures established by HHS and the AG (subject to congressional appropriation).</i></p> <p>Required reporting: SSI, housing, and TANF agencies must make quarterly reports to the INS providing the name, address, and other identifying information of persons the state "knows" to be unlawfully in the U.S.</p> <p>Nonprofit organizations: <i>Nonprofit charitable organizations relieved of any immigration verification requirements to implement the welfare bill</i></p>

Welfare Reform Immigrant Provisions — Implementation Dates (H.R. 3734, Title IV)

(Note: Most federal agencies will have to issue policy instructions or regulations to implement the new provisions. In many instances, state law may require that state agencies issue regulations and/or that the state pass its own legislation to implement the changes.)

PROVISION OF LAW	IMPLEMENTATION DATE		
	RESIDENTS BEFORE 8/22/96		IMMIGRANTS ON OR AFTER 8/22/96
BARS TO LAWFUL IMMIGRANTS ("QUALIFIED IMMIGRANTS")	RECEIVED BENEFITS ON 8/22/86	DID NOT RECEIVE BENEFITS ON 8/22/86	
FEDERAL PROGRAMS <ul style="list-style-type: none"> Federal bar on SSI and food stamps until citizenship Federal bar for 5 years after entry on TANF, non-emergency Medicaid, Title XX block grants, and other federal means-tested programs State option to bar TANF, nonemergency Medicaid, and Title XX block grants until citizenship 	<ul style="list-style-type: none"> Notices will go out to recipients between 3/97 & 8/97 for SSI; 4/97 & 8/97 for food stamps No effect if entered as "qualified alien" before enactment Grandfathered until 1/1/97 if lawfully residing in state; effective thereafter if state passes law 	<ul style="list-style-type: none"> Effective on enactment No effect if entered as "qualified alien" before enactment Effective if state passes law 	<ul style="list-style-type: none"> Effective on enactment Bars "qualified aliens" who enter U.S. on or after enactment date, for their first 5 years after entry Effective if state passes law
STATE PROGRAMS <ul style="list-style-type: none"> State option to bar "qualified immigrants," nonimmigrants, and parolees in U.S. less than 1 year from state public benefits 	<ul style="list-style-type: none"> Grandfathered until 1/1/97 if lawfully residing in state; effective thereafter if state passes law 	<ul style="list-style-type: none"> Effective if state passes law 	<ul style="list-style-type: none"> Effective if state passes law
DEEMING OF SPONSOR'S INCOME TO LAWFUL IMMIGRANTS			
FEDERAL PROGRAMS <ul style="list-style-type: none"> SSI, AFDC, food stamps -- New deeming rules begin day after date of enactment (deeming lasts until citizenship or work 40 quarters) Other federal means-tested public benefits -- Deeming begins 180 days after date of enactment (lasts until citizenship or work 40 quarters) 	<ul style="list-style-type: none"> No effect if entered as "qualified alien" before enactment 	<ul style="list-style-type: none"> No effect if entered as "qualified alien" before enactment 	<ul style="list-style-type: none"> Deeming affects "qualified aliens" who have new INA 213A affidavits of support filed to overcome public charge Attorney General must (1) consult with Sec'y State & HHS & (2) issue forms for new affidavits by 12/29/96; forms must be in use 3/97
STATE PROGRAMS <ul style="list-style-type: none"> State public benefits -- State and local government option to deem until citizenship 	<ul style="list-style-type: none"> No effect if entered as "qualified alien" before enactment 	<ul style="list-style-type: none"> No effect if entered as "qualified alien" before enactment 	<ul style="list-style-type: none"> Effective if state passes law and person subject to federal deeming as outlined above

10/24/96

PROVISION OF LAW	IMPLEMENTATION DATE		
	RESIDENTS BEFORE 8/22/96		IMMIGRANTS ON OR AFTER 8/22/96
BARS TO LAWFUL IMMIGRANTS ("QUALIFIED IMMIGRANTS")	RECEIVED BENEFITS ON 8/22/86	DID NOT RECEIVE BENEFITS ON 8/22/86	
FEDERAL PROGRAMS • Bar on "federal public benefit" to "not qualified" immigrants	<ul style="list-style-type: none"> • Effective on enactment (eliminates PRUCOL eligibility for SSI, non-emergency Medicaid, TANF) • Social Security arguably applicants < 12/1/96 remain eligible • Accelerated termination for HUD recipients 	<ul style="list-style-type: none"> • Effective on enactment 	<ul style="list-style-type: none"> • Effective on enactment
STATE PROGRAMS • Bar on "state public benefit" to "not qualified" immigrants unless state passes new law	<ul style="list-style-type: none"> • Effective on enactment unless state passes law 	<ul style="list-style-type: none"> • Effective on enactment unless state passes law 	<ul style="list-style-type: none"> • Effective on enactment unless state passes law

10/24/96

VERIFICATION IN FEDERAL PROGRAMS

- Not later than 18 months after enactment, AG (in consultation with HHS) to issue regulations requiring verification in non-exempt federal programs
- Not later than 24 months after AG issues federal regulations, states administering non-exempt federal programs must operate verification system

DEFINITIONS & EXEMPTIONS**QUALIFIED IMMIGRANT —**

- Legal permanent residents
- Refugees and persons granted asylum, withholding of deportation, or conditional entry
- Parolees admitted for at least 1 year.
- Persons who have applied for or received protection under the Violence Against Women Act (VAWA) if need for benefits related to battery

QUALIFIED IMMIGRANTS EXEMPT FROM FEDERAL AND STATE BAR —

- Refugees and persons granted asylum or withholding of deportation, within 5 years of entry into U.S.
- Veterans & aliens on active duty, their spouses, and children under 21
- Persons who meet 40 quarters work credit exempt from state bar but not from federal five-year bar on means-tested benefits for newly entering immigrants
- Cuban-Haitian entrants exempt only from federal five-year prospective bar

QUALIFIED IMMIGRANTS EXEMPT FROM FEDERAL AND STATE DEEMING —

- *Federal deeming* -- Same as persons exempt from federal bar, except that veterans, aliens on active duty, and their family members are not exempted from deeming.
- *State deeming* -- Provisions list no exempted categories of immigrants.