

Welfare Reform & Immigrants

(P.L. 104-193, signed 8/22/96)

Q&A

Summary of Changes

- Most noncitizens are no longer eligible for SSI and Food Stamp benefits.
- *New* immigrants (arriving after 8/22/96) are barred from federal means-tested benefits for 5 years.
- After the 5-year bar, new immigrants that have sponsors must include their sponsors' income when applying for federal means-tested benefits (until the immigrant attains citizenship or 10 years of work).
- After January 1, 1997, states have the option to determine current immigrants' eligibility for TANF, Medicaid and SSBG (for new immigrants, after the 5-year bar).
- States have the option to provide or bar state funded programs for current and new immigrants. State and local-funded programs may deem for new immigrants (March 1997).
- Undocumented immigrants are ineligible for federal, state, and local public benefits.

Q. When do legal immigrants lose **SSI** benefits?

Legal immigrants who are currently receiving SSI must be re-evaluated by 8/22/97. The immigrant will lose benefits in the month after the evaluation, with the following exceptions:

1. Refugees, asylees, and those whose deportation is withheld (only for their first five years in the U.S.; if they have already been in the U.S. for more than five years, they lose benefits.).
2. Veterans, those on active duty, and their spouses and unmarried dependent children.
3. Immigrants who have worked in the U.S. for 10 years. The immigrant's spouse and minor children can be credited with qualifying work quarters. (To count as a "qualifying quarter" after December 31, 1996, the individual must not receive any public benefits during the quarter.)

Q. When do legal immigrants lose **Food Stamp** benefits?

The immigration reform bill delayed implementation until 4/1/97 for current food stamp recipients who are legal immigrants. Legal immigrants who are currently receiving food stamps must be recertified by 8/22/97. Certification periods will be extended to 1 year (2 years if elderly or disabled) if the recertification period is currently less than 1 year. Legal immigrants will then no longer be eligible for food stamps. Same exceptions as above.

Q. When does the **5-year bar** on federal means-tested benefits take effect?

The 5-year bar is prospective: only new immigrants (arriving on or after 8/22/96) are affected.

Individual exceptions from the 5-year bar:

- 1) refugees, asylees, those granted withholding of deportation;
- 2) veterans, active duty military, their spouses and dependents; and,
- 3) refugee and entrant assistance for Cuban-Haitian Entrants.

Programs exempt from the 5-year bar:

1. emergency medical assistance;
2. emergency disaster relief;
3. national school lunch benefits
4. child nutrition act benefits (including WIC)
5. public health assistance (not including Medicaid) for immunizations, testing and treatment of symptoms of communicable diseases;
6. foster care and adoption assistance (foster/adoptive parent must be qualified alien);
7. programs specified by the Attorney General;
8. higher education;
9. means-tested programs under Elementary and Secondary Education Act;
10. Head Start; and,
11. Job Training Partnership Act.

“Federal means-tested program” was defined in H.R. 3734 as cash, medical, housing, food assistance, and social services of the federal government in which eligibility of the individual, household, or family is based on income, resources, or financial need. The definition was deleted from the conference agreement due to the Byrd rule. HHS will need to issue a definition.

Q. What about school meals?

School lunch and school breakfast is available to all immigrants regardless of status; states may provide certain other nutrition programs to undocumented immigrants.

Q. Explain **deeming**.

Deeming means that the income and resources of the sponsor and his/her spouse count as the immigrant's income in determining program eligibility. Previously, deeming applied only to AFDC, SSI and Food Stamps. Deeming now applies to all federal means-tested programs until the sponsored immigrant naturalizes or has worked for 10 years. (An immigrant needs a sponsor to enter the U.S. if the State Department or the INS determines that the immigrant may become a “public charge”, dependent on public assistance. Sponsors must now be citizens, nationals, or lawful permanent residents; 18 years or over; resident of the 50 states or D.C., and the petitioner for admission of the immigrant.) The immigration bill requires sponsors to have an income 125% of the federal poverty level, and to maintain the immigrant at that level. Active duty personnel must have an income of 100% of federal poverty.

Q. How many immigrants have sponsors?

Family immigrants are often, but not always, sponsored. Refugees are not sponsored immigrants. Employment-based immigrants are generally not sponsored.

Q. When do the new **deeming** rules take effect?

In 5-6 months for state option to deem state programs; in 5 years for federal programs. Deeming for all federal and state means-tested programs applies only to the newly executed affidavits of support, and thus does not affect immigrants currently living in the U.S. (However, new immigrants are subject first to the 5-year bar on federal benefits. Then deeming applies for federal benefits until citizenship or 10 years work). The INS will have regs issued by December

29; the new forms will go in effect 60-90 days thereafter. States have the option to deem for state-funded programs after 1/1/97 except for emergency health, disaster, school lunch/child nutrition, immunizations and testing/treatment of symptoms of communicable diseases, foster care/adoption assistance, A.G. discretion programs (programs that are in-kind, not conditioned on income, and necessary for the protection of life or safety, such as soup kitchens, child protection, and short-term shelter).

Note: Veterans/active duty military are not exempted from deeming as they are from the SSI and Food Stamps bar, the 5-year bar, and the AFDC, Medicaid, SSBG state option. The immigration bill added an exception to deeming for battered spouses/children (if substantially connected to need for benefits) and for indigence (to avoid hunger or homelessness).

State Option re AFDC, Medicaid and SSBG

Q. What is the eligibility for immigrants under AFDC (now Temporary Assistance for Needy Families, or TANF), Medicaid and SSBG (Social Services Block Grant)?

The legislation offers states the authority to determine the eligibility of "qualified" immigrants for these 3 programs. After 1/1/97, states may choose to provide, deny, deem, or otherwise limit these programs for current immigrant residents. New immigrants are subject first to the 5-year bar on federal means-tested benefits. After the 5-year bar, states have the option to bar until citizenship. Legislative intent is unclear whether states can waive deeming after 5 years for TANF, Medicaid and SSBG.

Individual exceptions:

1. refugees, asylees, and those whose deportation is withheld (only for their first five years in the U.S.)
2. Veterans, those on active duty, and their spouses and unmarried dependent children.
3. Immigrants who have worked in the U.S. for 10 years.

Q. What are some of the legal challenges regarding state authority to deny benefits to aliens?

Equal Protection. The offer by the federal government to grant states the authority to discriminate against aliens is constitutionally suspect at both federal and state levels. The 1971 U.S. Supreme Court decision in *Graham v. Richardson* ruled that state welfare benefits cannot be denied to immigrants under the Fourteenth Amendment (which prohibits a state from denying equal protection to any person within its jurisdiction). At the state level, in the 1987 decision *El Souri v. Department of Social Services*, the Michigan State Supreme Court ruled that Michigan could not impose a deeming requirement on legal immigrants because it was an infringement upon a suspect classification: lawful alienage.

Obligations to the Poor: State constitutions and statutes may also require public assistance be provided to any needy residents.

MEDICAID

Q. If current recipients receive Medicaid by virtue of SSI, do they lose categorical eligibility for Medicaid when the SSI bar goes into effect?

Because SSI eligibility automatically qualified immigrants for Medicaid, the loss of SSI benefits will drop immigrants from Medicaid benefits. (CBO assumes most disabled and 1/2 of elderly will retain eligibility under state medically needy programs.) However, many immigrants may retain-eligibility under medically needy programs, if the state has a medically needy program.

Q. Do states have to deem for current immigrant residents for Medicaid? No deeming for current residents. Deeming applies only to the new affidavits of support, effective spring 1997.

Q. Can Medicaid funds be used for immunizations, testing and treatment of communicable disease? No, only non-Medicaid funds can be used for "non-qualified" aliens and for new arrivals subject to the 5-year bar.

State Option for State-Funded Programs

States are given the authority to determine eligibility for state public benefits of qualified aliens, nonimmigrants, or parolees during their first year in the U.S.

Exceptions:

1. Qualified aliens shall be eligible for state public benefits
2. Refugees, asylees, and those whose deportation is withheld for first 5 years in the U.S.
3. Veterans, those on active duty, and their spouses and unmarried dependent children.
4. Immigrants who have worked in the U.S. for 10 years.
5. Current recipients are eligible until 1/1/97.

States and localities are given the authority to apply deeming for state and local programs (new immigrants with new affidavits of support only.) Exceptions for: assistance for health care items and services necessary for treatment of an emergency medical condition (not organ transplants); emergency disaster relief, programs comparable to School Lunch Act; programs comparable to Child Nutrition Act; public health assistance for immunizations and testing/treatment of symptoms of communicable diseases; payments for foster care/adoption assistance; A.G. discretion programs. The definition of state public benefit was dropped from the bill. It is unclear who defines state public benefit.

Illegal/Undocumented Immigrants

Q. Who is ineligible for public benefits?

Only "qualified aliens" (lawful permanent residents, refugees, asylees, parolees after 1 year, those whose deportation withheld, conditional entrants before 1980) are eligible for federal public benefits. The immigration reform bill added battered spouses and children to the definition of qualified aliens, if there is a substantial connection to the abuse and the need for benefits. Only "qualified aliens", nonimmigrants, or parolees during their first year in the U.S. are eligible for state or local public benefits. HHS will need to issue a definition of federal public benefits.

States may provide benefits to ineligible immigrants only by enacting state law after enactment of the welfare reform law affirmatively providing for such eligibility.

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