

# Immigrants' Eligibility for Federal Benefits

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Before August 22, 1996, lawful permanent residents were eligible for most safety net programs on the same basis as citizens. However, the 1996 welfare and immigration laws restricted access to many public benefit programs for low-income immigrants.<sup>1</sup> The harsh restrictions were imposed despite the fact that at the time immigrants were paying an average of approximately \$1,800 more in taxes over the course of a lifetime than they used in services.<sup>2</sup> Hundreds of thousands of lawfully present immigrants lost eligibility for benefits. And, even where immigrant eligibility for services was preserved or restored, the 1996 policies have had a “chilling effect” on immigrant enrollment in benefits programs.

The 1996 laws also transferred authority to offer or deny certain federal and state benefits to immigrants from the federal government to the states. At least one court has found that a state's denial of benefits to lawfully present immigrants is unconstitutional, even if “authorized” by the 1996 welfare law.<sup>3</sup> Contrary to initial

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<sup>1</sup>Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (Aug. 22, 1996); Illegal Immigration Reform and Immigrant Responsibility Act of 1996, enacted as Division C of the Defense Department Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3008 (Sept. 30, 1996).

<sup>2</sup>NAT'L ACAD. OF SCI., *THE NEW AMERICANS: ECONOMIC, DEMOGRAPHIC, AND FISCAL EFFECTS OF IMMIGRATION* (1997).

<sup>3</sup>See *Aliessa v. Novello*, 96 N.Y.2d 418 (N.Y.2d. 2001)(New York law denying state-funded medical services to a subgroup of immigrants violates the equal protection clause of the U.S. and N.Y. Constitutions and Article 17 of the N.Y. Constitution) (Clearinghouse No. 52,429). See also *Graham v. Richardson*, 403

expectations, nearly every state chose to provide benefits to immigrants wherever federal funding was available, and more than have use state funds to cover at least some immigrants for whom federal funding is not available. However, state replacement programs often cover more limited groups or provide a lower benefit level, and funding for many of these programs has been threatened by state budget deficits.<sup>4</sup>

In response to the 1996 laws, immigrants organized to an unprecedented degree, voted in record numbers after becoming naturalized citizens, and forged coalitions to advocate restoring equal treatment. These efforts have succeeded in reversing some of the restrictions and reflect a growing recognition by Congress that the 1996 laws went too far. However, immigrants are still subject to a broad range of eligibility restrictions as well as significant access barriers.

## Summary of 1996 Changes

The 1996 welfare law was enacted in part to reduce the federal deficit, and 44 percent of the projected federal savings (\$25 billion over five years) stemmed from the immigrant eligibility restrictions.<sup>5</sup> But many in Congress and the general public did not realize that lawfully present immigrants (and their citizen family members) would bear the brunt of these budget cuts.<sup>6</sup> Undocumented immigrants were already ineligible for most federal assistance programs.

**“Qualified” and “Not Qualified” Immigrants.** The 1996 welfare law

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U.S. 365 (1971). But see *Soskin v. Reinertson*, 353 F.3d 1242 (10<sup>th</sup> Cir. 2004)(upholding Colorado’s law terminating Medicaid to immigrants whose benefits are not mandated by federal law, but finding that the state failed to provide pre-termination hearings to some recipients, as required by the Medicaid Act).

<sup>4</sup>For a quick reference on immigrants’ eligibility for benefits and state replacement programs, see the tables that follow this article.

<sup>5</sup>National Council of State Legislatures, Immigrant Policy Project, based on Congressional Budget Office estimates of August 9, 1996, and Congressional Research Service Report 95-276EPW, cited in CARNEGIE ENDOWMENT FOR INT’L PEACE & URBAN INST., RESEARCH PERSPECTIVES ON MIGRATION (1996).

<sup>6</sup>Throughout this article, the terms “immigrant” or “noncitizen” are used in lieu of the more technical immigration law term “alien.”

created two categories of immigrants for benefit-eligibility purposes: “qualified” and “not qualified.” Despite the labels, the law excluded most people in *both* groups from eligibility for many benefits.

“Qualified” immigrants are

- lawful permanent residents (holders of “green cards”);
- refugees;
- asylees;
- persons granted withholding of deportation or removal;
- conditional entrants;
- persons granted parole by the Immigration and Naturalization Service (INS) for a period of at least one year;
- Cuban or Haitian entrants; and
- certain abused immigrants and their children or parents.

All other immigrants—those who are undocumented as well as many who do not have green cards but nonetheless are lawfully present in the United States—are “not qualified.”<sup>7</sup> The law prohibits “not qualified” immigrants from enrolling in most “federal public benefit” programs.<sup>8</sup> They may be eligible for state and local public benefits only if a state law passed after August 22, 1996, so provides.<sup>9</sup> However, there are important exceptions to these bars.

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<sup>7</sup>Before 1996 some of these immigrants received benefits under an eligibility category called “Permanently Residing Under Color of Law,” or PRUCOL. This is not an immigration status, but a benefit eligibility category that has been interpreted differently depending on the benefit program and the region. Generally it means that the Immigration and Naturalization Service (INS) or Department of Homeland Security (DHS) is aware of a person’s presence but has no plans to deport or remove the person.

<sup>8</sup>8 U.S.C. § 1611 (2002).

<sup>9</sup>*Id.* § 1621. Such micromanagement of state affairs by the federal government, however, is potentially unconstitutional under the Tenth Amendment.

The welfare law does not identify the specific “federal public benefits” for which “not qualified” immigrants are ineligible; it leaves that clarification to each federal benefit-granting agency.<sup>10</sup> In 1998 the U.S. Department of Health and Human Services (HHS) published a notice listing thirty-one programs that fall under the definition; the list includes Medicaid, the State Children’s Health Insurance Program (SCHIP), Medicare, Temporary Assistance for Needy Families (TANF), foster care, adoption assistance, the Child Care and Development Fund, and the Low-Income Home Energy Assistance Program.<sup>11</sup>

The notice clarifies, however, that not every benefit or service that these programs offer is a federal public benefit. For example, in some cases a program’s benefits or services may extend beyond an individual or household to a community of people—as in the weatherization of an entire apartment building.<sup>12</sup>

**New Verification Rules.** Once a federal agency designates a benefits program as one for which “not qualified” immigrants are ineligible, the law requires the state or local agency that administers the program to verify all applicants’ immigration and citizenship status. But many federal agencies have still not specified which of their programs provide federal public benefits. Until they do so, state and local agencies are under no obligation to verify immigration status. Also, under an important exception in the 1996 immigration law, nonprofit charitable organizations need not “determine, verify, or otherwise require proof of

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<sup>10</sup>*Id.* § 1611(c) defines “federal public benefit” as “(A) any grant, contract, loan, professional license, or commercial license provided by an agency of the [United States] or by appropriated funds of the [United States]; and (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary 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 an agency of the [United States] or appropriated funds of the [United States].”

<sup>11</sup>HHS (U.S. Department of Health and Human Services), Personal Responsibility Work Opportunity Reconciliation Act of 1996 (PRWORA: Interpretation of “Federal Public Benefit,” 63 Fed. Reg. 41658–61 (Aug. 4, 1998).

<sup>12</sup>HHS, Div. of Energy Assistance, Office of Cmty. Servs., Memorandum from Janet M. Fox, Director, 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).

eligibility of any applicant for such benefits.”<sup>13</sup>

**SSI and Food Stamps: A Partial Restoration.** The 1996 welfare law imposed the most severe eligibility restrictions for immigrants in the Supplemental Security Income (SSI) and food stamp programs.<sup>14</sup> However, in 1997 and 1998, after being barraged with stories of the despair and suffering of seniors and immigrants who had disabilities and faced losing their SSI and related Medicaid coverage, Congress restored eligibility to some “qualified” immigrants.

Lawmakers restored SSI eligibility to both “qualified” and “not qualified” immigrants who had been receiving these benefits when the welfare law was enacted on August 22, 1996, to “qualified” immigrants with disabilities who were lawfully in the United States on that date, and to others.<sup>15</sup> “Not qualified” immigrants who were not already receiving the benefits, most “qualified” immigrants who entered the country after that date, and immigrant seniors without disabilities who were in the United States before that date continue to be ineligible.

In 1998, Congress restored federal food stamp eligibility to three main categories of immigrants who were already in the United States on August 22, 1996: immigrants with disabilities, children under 18, and immigrants who were at least 65 on that date.<sup>16</sup> Certain Hmong and Laotian tribe members and other groups also regained food stamp eligibility. This restoration benefited only one-fifth of the immigrants whom the 1996 law cut off, or about 175,000 of the 838,000 who lost their federal food stamps.<sup>17</sup> In 2002, Congress passed the Farm

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<sup>13</sup>8 U.S.C. § 1642(d) (2002).

<sup>14</sup>*Id.* § 1612(a).

<sup>15</sup>Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 552, § 5301 (Aug. 5, 1997) (amending 8 U.S.C. § 1612); Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998, Pub. L. No. 105-306, 112 Stat. 2926, § 2.

<sup>16</sup>The Agriculture Research, Extension, and Education Reform Act of 1998, Pub. L. No. 105-185, 112 Stat. 523, §§ 503–510.

<sup>17</sup>USDA (U.S. Department of Agriculture), Food Stamp Program: Noncitizen Eligibility, and Certification Provisions of Pub. L. 104-193, as Amended by Public Laws 104-208, 105-33 and 105-185, 65 Fed. Reg. 70133, 70139–40 (Nov. 21, 2001).

Security and Rural Investment, which reauthorized the Food Stamp Program and restored food stamp eligibility to three additional groups of “qualified” immigrants: (1) those who have lived in the United States as qualified immigrants for at least five years (effective April 1, 2003); (2) children regardless of their date of entry (effective October 1, 2003); and (3) persons receiving disability-related assistance regardless of their date of entry (effective October 1, 2002).<sup>18</sup> The U.S. Department of Agriculture estimated that the Farm Bill’s provisions would restore eligibility to approximately 400,000 immigrants.<sup>19</sup>

**New Entrants and the Five-Year Bar.** In addition to restricting SSI and food stamps, the 1996 immigration law barred most “qualified” immigrants who entered the United States on or after August 22, 1996, from “federal means-tested public benefits” during the five years after they secure “qualified” immigrant status.<sup>20</sup> Federal agencies later clarified that “federal means-tested public benefits” are SSI, food stamps, Medicaid (except emergency care), TANF, and SCHIP.<sup>21</sup> States may receive federal funding for TANF, Medicaid, and SCHIP to

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<sup>18</sup>Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 116 Stat. 134.

<sup>19</sup>USDA, “The Non-Citizen Requirements in the Food Stamp Program” (January 2003) at [www.fns.usda.gov/fsp/rulesLegislation/pdfs/Non\\_Citizen\\_Guidance.pdf](http://www.fns.usda.gov/fsp/rulesLegislation/pdfs/Non_Citizen_Guidance.pdf).

<sup>20</sup>8 U.S.C. § 1613 (2002). States have the option to provide federal Temporary Assistance for Needy Families (TANF) and Medicaid benefits to most “qualified” immigrants who were in the United States before August 22, 1996, and to those who enter the United States on or after that date once they have completed the federal five-year bar. *Id.* § 1612. Only Wyoming chose to deny Medicaid to immigrants who were in the country when the welfare law was passed. A handful of states have yet to authorize federal TANF or Medicaid for “qualified” immigrants who complete the five-year bar. The first such immigrants became eligible for these federally funded services in August 2001.

<sup>21</sup>HHS, Personal Responsibility & Work Opportunity Reconciliation Act of 1996 (PRWORA): Interpretation of “Federal Means-Tested Public Benefit,” 62 Fed. Reg. 45256 (Aug. 26, 1997); USDA, Federal Means-Tested Public Benefits, 63 Fed. Reg. 36653 (July 7, 1998). The State Children’s Health Insurance Program (SCHIP), created after the passage of the 1996 welfare law, was added later. See Ctrs. For Medicare & Medicaid Servs., State Children’s Health Insurance Program (response to questions about the State Children’s Health Insurance Program: Question 19(a)), at <http://cms.hhs.gov/schip/qanda/qanda9-11.asp>.

serve immigrants who have completed this “five-year bar” period, but, as noted above, the SSI program imposes additional restrictions. Most new entrants, for example, may not receive these benefits until they become a citizen or secure credit for forty quarters (ten years) of work history. With the implementation of the Farm Bill’s immigrant restorations, the food stamp program has become the least restrictive of the federal means-tested public benefit programs, and includes additional exemptions from the five-year bar.

**Deeming.** The welfare law made harsher the “deeming” requirement that benefit-granting agencies may impose. In some cases, when a lawful permanent resident applies for benefits, the law requires the agency to “deem” the income of the applicant’s sponsor and the sponsor’s spouse as available to the immigrant applicant when it calculates financial eligibility. This “deeming” virtually always disqualifies the immigrant from receiving benefits.

Previously, fewer programs imposed deeming, and those that did so applied it for only three years. By contrast, the 1996 laws impose deeming for approximately ten years (or longer) after entry on certain immigrants applying for food stamps, SSI, TANF, non-emergency Medicaid and SCHIP.<sup>22</sup> Domestic violence survivors and immigrants who would go hungry and homeless without assistance may get benefits without deeming for at least twelve months.<sup>23</sup> And, under the 2002 Farm Bill, sponsored immigrant children are exempt from deeming in the food stamp program.

## Exceptions to the Restrictions

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<sup>22</sup>8 U.S.C. § 1631 (2002).

<sup>23</sup>*Id.* § 1631(e) and (f). The domestic violence exemption may be extended if the INS/DHS, a court, or an administrative law judge recognizes the abuse. The indigence exemption may be renewed for additional twelve-month periods. For federal agency guidance on deeming, see 7 CFR §273.4(c)(food stamps); The “Non-Citizen Requirements in the Food Stamp Program” (January 2003) at [www.fns.usda.gov/fsp/rulesLegislation/pdfs/Non\\_Citizen\\_Guidance.pdf](http://www.fns.usda.gov/fsp/rulesLegislation/pdfs/Non_Citizen_Guidance.pdf); SSA Program Operations Manual System (POMS) SI 00502.280 (SSI); Dept. of Health and Human Services, “Deeming of Sponsor’s Income and Resources to a Non-Citizen,” TANF-ACF-PI-2003-03 (April 17, 2003) at [www.acf.dhhs.gov/programs/ofa/pi2003-3.htm](http://www.acf.dhhs.gov/programs/ofa/pi2003-3.htm).

Despite the sweeping nature of the new restrictions, the law created important exceptions for certain categories of immigrants and types of services.

**Services Still Open to All.** The most important exception to restrictions on eligibility for health care is that *all* immigrants, regardless of status, remain eligible for Medicaid-reimbursed emergency health care and for public health programs (outside of Medicaid) that provide immunizations or treatment of communicable disease symptoms (whether or not those symptoms are caused by such a disease).<sup>24</sup> School breakfast and lunch programs also remain open to all children.<sup>25</sup>

In-kind services necessary to protect life or safety are also universally available, as long as no individual income qualification is required. In January 2001 the U.S. attorney general published a final order specifying the types of benefits that meet these criteria. The list includes child and adult protective services; programs addressing weather emergencies and homelessness; shelters, soup kitchens, and meals-on-wheels; medical, public health, and mental health services necessary to protect life or safety; disability or substance abuse services necessary to protect life or safety; and programs to protect the life or safety of workers, children and youths, or community residents.<sup>26</sup>

**Special Populations Exempt from Most Restrictions.** Congress also exempted three special populations of immigrants from most restrictions:

- refugees and others fleeing persecution during their first seven years in the United States even if they adjust their status to lawful permanent residence;
- lawful permanent residents whose U.S. work history, or whose spouse's or parent's work history, added to theirs, totals forty qualifying quarters; and
- immigrants who have served or whose family members have served in the U.S. military (“veterans’ exception”).

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<sup>24</sup>*Id.* § 1611(b)(1)(A).

<sup>25</sup>*Id.* § 1615.

<sup>26</sup> U.S. Dep’t of Justice, Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 Fed. Reg. 3613–16 (Jan. 16, 2001) (A.G. Order No. 2353-2001).

In 2000, Congress established a new category of noncitizens whom it labeled “victims of trafficking.” People in this group are not listed among “qualified” immigrants, but federal agencies must provide benefits and services regardless of immigration status to those who have been subjected to a “severe form of trafficking in persons.”<sup>27</sup> Eligible victims must be either under 18 years of age or certified by HHS as willing to assist in the investigation and prosecution of severe forms of trafficking in persons. The certification must confirm that the victim either has made a bona fide application for a “T” visa that has not been denied or is a person whose continued presence in the United States as being ensured by the attorney general in order to prosecute traffickers.<sup>28</sup> In 2003, Congress ensured that derivative beneficiaries of T visa applications (spouses and children of adult victims; spouses, children, parents and minor siblings of child victims) also can secure federal benefits.<sup>29</sup>

### **Overview of Access Barriers**

The 1996 policies left a legacy of changed norms and institutional barriers that deter eligible immigrants and their citizen family members from applying for services, as data from Los Angeles County illustrate. From January 1996 through January 1998, the two-year period surrounding the welfare law’s enactment, the county saw a 71 percent decline in monthly approvals of Medicaid and TANF applications for families headed by eligible immigrants. The approval rate for citizen families during the same period was unchanged.<sup>30</sup> Similarly, between 1994 and 1999, the food stamp caseload among U.S. citizen children living with immigrant parents declined by 42 percent, or 800,000 children.<sup>31</sup>

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<sup>27</sup>The Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 107.

<sup>28</sup>8 U.S.C. § 1101(a)(15)(T) (2002).

<sup>29</sup> The Trafficking Victims Protection Reauthorization Act of 2003. Pub. L. No. 108-193, §4(a)(2)(Dec. 19, 2003).

<sup>30</sup> MICHAEL E. FIX & WENDY ZIMMERMANN, URBAN INST., DECLINING IMMIGRANT APPLICATIONS FOR MEDI-CAL AND WELFARE BENEFITS IN LOS ANGELES COUNTY (1998).

<sup>31</sup>USDA, THE DECLINE IN FOOD STAMP PARTICIPATION: A REPORT TO CONGRESS (2001).

The access barriers that immigrant families face vary depending on the benefits they need, their immigration status, and the immigration status of family members. Some agencies erroneously screen for immigration status, and some immigrants refrain from applying for benefits because they mistakenly believe that they are ineligible. Confusion is compounded for the many “mixed-status” families that include immigrants of various statuses as well as citizens.

**Fear of Becoming a Public Charge.** Some immigrants decline to apply for benefits in part because policymakers sent a message in 1996 that only completely self-sufficient immigrants were welcome in the United States. The misapplication of the “public charge” ground of inadmissibility, for example, contributed significantly to the chilling effect on the willingness of immigrant families to use services.

The “public charge” provision permits denial of an immigrant’s application for permanent residence if officials determine the immigrant is “likely to become a public charge.” In making this determination, officials consider the “totality of the circumstances,” including the immigrant’s health, age, income, education and skills, and affidavits of support signed by the immigrant’s sponsor. The law on public charge did not change in 1996, and the use of programs such as Medicaid or food stamps had never weighed heavily in “public charge” determinations. Yet, shortly after enactment of the welfare law, immigration officials and judges began to prevent immigrants from reentering the United States or obtaining lawful permanent residence and unlawfully demanded that they repay benefits such as Medicaid or withdraw from programs such as WIC (Supplemental Nutrition Program for Women, Infants and Children).<sup>32</sup>

Advocates organized to persuade federal agencies to clarify the laws for adjudicators, administrators, and policymakers whose overly expansive interpretations caused immigrants to refrain from seeking needed services. In May 1999, the INS issued a guidance document and proposed regulation on the “public charge” doctrine.<sup>33</sup> The guidance clarifies that receiving health care and other

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<sup>32</sup>CLAUDIA SCHLOSBERG & DINAH WILEY, NAT’L HEALTH LAW PROGRAM & NAT’L IMMIGRATION LAW CTR., *THE IMPACT OF INS PUBLIC CHARGE DETERMINATIONS ON IMMIGRANT ACCESS TO HEALTH CARE* (1998).

<sup>33</sup>U.S. Dep’t of Justice, *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds*, 64 Fed. Reg. 28689–93 (May 26, 1999); see also U.S. Dep’t of Justice, *Inadmissibility and Deportability on Public Charge Grounds*, 64 Fed. Reg. 28,676–88 (May 26, 1999); U.S. Dep’t of State, INA 212(A)(4) Public

non-cash benefits does not jeopardize immigration status by putting recipients or their family members at risk of being considered a public charge.<sup>34</sup> Advocates have been working to assure those who are worried about “public charge” consequences that applying for non-cash benefits is safe for eligible immigrants. However, most immigrants, immigration officials, and people who advise immigrants remain inadequately educated on the details and implications of this helpful policy clarification.

**Affidavit of Support.** The 1996 laws imposed new rules that make it more difficult to immigrate to the United States to reunite with family members. Effective December 19, 1997, relatives (and some employers) must meet strict income requirements and sign a long-term contract—an “affidavit of support”—promising to maintain the immigrant at 125 percent of the federal poverty level and repay any means-tested public benefits that the immigrant receives.<sup>35</sup> Although agencies generally have not attempted to enforce these affidavits, this provision has deterred eligible immigrants from applying for benefits, due to concerns about exposing their sponsors to government collection efforts.

**Language Policies.** Immigrants with limited proficiency in English often require language assistance in order to receive meaningful access to services and benefit programs. The design and structure of the TANF program, particularly the emphasis on job placement over income assistance, created special language-access issues for eligible immigrants who need English classes and appropriate job training. Advocates are urging states to take language and cultural needs into account in implementing welfare-to-work programs and to count classes in English as a second language as a work activity.

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal funds from discriminating on the basis of national origin; such recipients are obligated to provide reasonable language assistance to limited-English-proficient persons. Recipients’ compliance with this requirement has been limited. In August 2000 the White House ordered federal agencies to submit, by December 11, 2000, to the U.S. Department of Justice plans to improve language access to federal programs

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Charge: Policy Guidance, 9 FAM 40.

<sup>34</sup>The use of all health care programs except long-term institutionalization is irrelevant to “public charge” determinations. U.S. Dep’t of Justice, *supra* note 33.

<sup>35</sup>8 U.S.C. § 1183a (2002).

and activities.<sup>36</sup> The Justice Department emphasized that agencies, programs, and services receiving federal funds must ensure that persons with limited English proficiency can participate effectively and explained that failure to do so might constitute national-origin discrimination prohibited by Title VI.<sup>37</sup> The Justice Department's guidance reviews "reasonable steps" that agencies should include in their plans for providing "meaningful" language access. Several agencies, including HHS, developed and published guidance for public comment, but many remained delinquent.

The Justice Department published final guidance to its recipients on June 18, 2002.<sup>38</sup> The final Guidance noted the Department's unique responsibility for ensuring consistency among federal agencies' guidance. A subsequent letter from Assistant Attorney General Ralph Boyd directed federal agency heads and civil rights officers to conform their agencies' guidance to that published by the Justice Department.<sup>39</sup> HHS revised its guidance to conform to the DOJ standards and published the revised guidance on August 4, 2003.<sup>40</sup>

**Verification and Reporting.** Some policymakers and benefit administrators have misinterpreted new requirements that benefit agencies verify

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<sup>36</sup>Exec. Order No. 13,166: Improving Access to Services for Persons with Limited English Proficiency, 65 Fed. Reg. 50121 (Aug. 16, 2000).

<sup>37</sup>U.S. Dept. of Justice, Civil Rights Div., Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency: Policy Guidance, 65 Fed. Reg. 50123 (Aug. 16, 2000).

<sup>38</sup>Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (June 18, 2002).

<sup>39</sup>Letter from Assistant Attorney General Ralph Boyd to Heads of Federal Agencies, General Counsels and Civil Rights Directors (July 8, 2002), *available at* [www.doj.gov/crt/cor/13166.htm](http://www.doj.gov/crt/cor/13166.htm).

<sup>40</sup> U.S. Department of Health and Human Services, "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," 68 Fed. Reg. 47311-23 (Aug. 8, 2003).

immigration and citizenship status to allow agency personnel to act as INS enforcers.<sup>41</sup> Because some federal agencies still have not determined which of their programs provide federal public benefits and thus trigger the verification requirement, many institutions are confused about their duty to screen applicants.

Some agencies demand, as a condition of eligibility, immigration documents or social security numbers even when the law does not require applicants to submit such information. Lack of federal clarification has led some state and local agencies to ask unnecessary questions on application forms and even to issue unnecessary warnings to immigrants in notices on the walls of agency waiting rooms. Consequently many immigrants and their family members feel threatened and avoid applying for services.

In 1997, pending final regulations governing verification of immigration status, the Justice Department issued an interim guidance for federal benefit providers to use.<sup>42</sup> The guidance directs benefit agencies that already use the department's computerized Systematic Alien Verification for Entitlements (SAVE) program to continue to do so. It recommends that agencies make financial and other eligibility decisions before asking applicants about their immigration status. The guidance also states that agencies may seek information only about the person applying for benefits, not about the person's family members.

In September 2000 the U.S. Department of Agriculture (USDA) and HHS issued guidance recommending that states delete from benefits application forms unnecessary questions that could deter immigrant families' participation.<sup>43</sup> The

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<sup>41</sup>On verifying immigration and citizenship status see 8 U.S.C. § 1642 (2002).

<sup>42</sup>U.S. Dep't of Justice, 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. 61344-416 (Nov. 17, 1997). In August 1998 the agency issued proposed regulations that draw heavily on the interim guidance and the Systematic Alien Verification for Entitlements (SAVE) program; see U.S. Dep't of Justice, Verification of Eligibility for Public Benefits, 63 Fed. Reg. 41662-86 (Aug. 4, 1998). Once the agency issues final regulations, states will have two years to implement a conforming system for the federal programs that they administer.

<sup>43</sup>HHS & USDA, Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, [SCHIP], [TANF], and Food Stamp Benefits (Sept. 21, 2000) (letter and

guidance confirms that the only relevant immigration status is that of the applicant and encourages states to allow family or household members who are not seeking benefits to be designated as “non-applicants” early in the application process. Similarly, under Medicaid, TANF, and the Food Stamp Program, only the applicant must have a social security number. A social security number is not required of persons seeking only emergency Medicaid. In June 2001 HHS indicated that states providing SCHIP through separate programs rather than through Medicaid expansions may, but need not, require social security numbers on SCHIP applications.<sup>44</sup>

Another source of fear in immigrant communities is the occasional misapplication of a narrow 1996 INS reporting provision, applicable only to SSI, public housing, and TANF, that requires the administering agency to report persons whom the agency *knows* are present in the United States unlawfully.<sup>45</sup> In September 2000 federal agencies issued a joint guidance outlining the limited circumstances that may trigger the reporting requirement.<sup>46</sup> The guidance clarifies that the requirement applies only to persons who actually seek benefits, not to relatives or household members who apply on their behalf. Agencies need not report such applicants unless there has been a formal eligibility determination that is subject to administrative review. A determination, such as a “Final Order of Deportation,” by the INS (now Department of Homeland Security, or DHS) or the

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accompanying materials to state health and welfare officials).

<sup>44</sup>HHS & Health Care Fin. Admin., Interim Final Rule: Revisions to the Regulations Implementing the State Children’s Health Insurance Program, 66 Fed. Reg. 33810, 33823 (June 25, 2001).

<sup>45</sup>42 U.S.C. §§ 608(g), 611a, 1383(e), 1437y (2002). See also H.R. Rep. No. 104-725 at 382 (1996). In other contexts, the “knowledge” requirement has been interpreted to apply only where an agency discovers that a person is “under an order of deportation.” See Memorandum of Legal Services Corporation General Counsel to Legal Services Corporation Project Directors (Dec. 5, 1979) (knowledge of unlawful presence includes only instances involving an “immigrant against whom a final order of deportation is outstanding”). See also Cal. Dep’t of Soc. Servs., Manual-FS, sec. 63-405.8; Ohio Dep’t of Pub. Welfare, Food Stamp Certification Handbook, sec. 3360 (1996).

<sup>46</sup>Soc. Sec. Admin. et al., 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 (Sept. 28, 2000).

Executive Office of Immigration Review must also support the conclusion of unlawful presence.<sup>47</sup> Findings that do not meet these criteria (e.g., an INS/DHS response to a SAVE computer inquiry indicating an immigrant's status, an oral or written admission by applicants, or suspicions of agency workers) are insufficient to trigger the reporting requirement.<sup>48</sup> The guidance stresses that agencies need not make determinations about immigration status that are not necessary to determine eligibility for benefits, and agencies need not submit reports to the INS/DHS unless they have "knowledge" that meets the above requirements. The USDA confirms that this "knowledge" standard is consistent with a preexisting reporting requirement in the Food Stamp Program.<sup>49</sup> Although this guidance helps clarify agencies' obligations, advocates continue to develop strategies to prevent state and local benefit agencies from acting as immigration agents.<sup>50</sup>

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<sup>47</sup>*Id.*

<sup>48</sup>The INS (now Department of Homeland Security or DHS) process uses SAVE to verify eligibility for several major benefit programs. See 42 U.S.C. § 1320b-7. The DHS verifies an applicant's immigration status through a computer database or through a manual search of its records or both. This information may be used only to verify eligibility for benefits, not to initiate deportation or removal proceedings (with exceptions for criminal violations). See Immigration Reform and Control Act of 1986, 99 Pub. L. No. 603, § 121; U.S. Dep't of Justice, Verification of Eligibility for Public Benefits, 63 Fed. Reg. 41662, 41672, 41684 (Aug. 4, 1998).

<sup>49</sup>USDA, 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. 70166 (Nov. 21, 2000).

<sup>50</sup>After hearing vigorous opposition from health care providers, Congress resoundingly defeated H.R. 3722 (Rohrabacher), which would have required hospitals, as a condition of receiving reimbursement under Section 1011 of the 2003 Medicare law, to report undocumented patients to the Department of Homeland Security. In July 2004, the Centers for Medicare and Medicaid Services (CMS) issued a proposed policy that would require emergency health care providers to question patients about their immigration status in order to receive Section 1011 reimbursement for uncompensated services to undocumented persons. This proposal currently is under consideration.

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## Table 1.—Immigrant Eligibility for Federal Programs

**Source:** Adapted from NATIONAL IMMIGRATION LAW CENTER, GUIDE TO IMMIGRANT ELIGIBILITY FOR FEDERAL PROGRAMS (revised ed. 2004).

**Note:** This overview accounts for immigrant eligibility for the major federal public assistance programs. Some states provide assistance to immigrants who are not eligible for federally funded services.

PROGRAM	"QUALIFIED" IMMIGRANTS Who Entered the United States Before August 22, 1996	"QUALIFIED" IMMIGRANTS Who Entered the United States on or After August 22, 1996	"NOT QUALIFIED" IMMIGRANTS
<b>Supplemental Security Income (SSI)</b>	<p><b>Eligible only if:</b></p> <ul style="list-style-type: none"> <li>■ Receiving SSI (or application pending) on August 22, 1996</li> <li>■ Qualify as disabled and were lawfully residing in the United States on August 22, 1996<sup>1</sup></li> <li>■ Lawful permanent resident with credit for forty quarters of work<sup>1,2</sup></li> <li>■ Were granted refugee or asylum status or withholding of deportation or removal, Cuban or Haitian entrant, or Amerasian immigrant, but only <i>during first seven years after getting status</i></li> <li>■ Veteran, active-duty military; spouse, unremarried surviving spouse, or child<sup>1</sup></li> <li>■ Certain American Indians born abroad</li> </ul>	<p><b>Eligible only if:</b></p> <ul style="list-style-type: none"> <li>■ Lawful permanent resident with credit for forty quarters of work (but must wait until five years after entry before applying)<sup>2</sup></li> <li>■ Were granted refugee or asylum status or withholding of deportation or removal, Cuban or Haitian entrant, or Amerasian immigrant, but only <i>during first seven years after getting status</i></li> <li>■ Veteran, active-duty military; spouse, unremarried surviving spouse, or child<sup>1</sup></li> <li>■ Certain American Indians born abroad</li> </ul>	<p><b>Eligible only if:</b></p> <ul style="list-style-type: none"> <li>■ Receiving SSI (or application pending) on August 22, 1996</li> <li>■ Certain American Indians born abroad</li> <li>■ Victims of trafficking and their derivative beneficiaries</li> </ul>
<b>Food Stamps<sup>3</sup></b>	<p><b>Eligible only if:</b></p> <ul style="list-style-type: none"> <li>■ Are under 18<sup>3</sup></li> <li>■ Were granted refugee or asylum status or withholding of deportation or removal, Cuban or Haitian entrant, or Amerasian immigrant</li> <li>■ Have been in "qualified" immigrant status for five years<sup>1</sup></li> <li>■ Are receiving disability-related assistance<sup>1,4</sup></li> <li>■ Lawful permanent resident with credit for forty quarters of work</li> <li>■ Were 65 years or older and were lawfully residing in the United States on August 22, 1996<sup>1</sup></li> <li>■ Veteran, active-duty military; spouse, unremarried surviving spouse, or child<sup>1</sup></li> <li>■ Member of Hmong or Laotian tribe during the Vietnam era, when the tribe militarily assisted the United States; spouse, surviving spouse, or child of tribe member<sup>1</sup></li> <li>■ Certain American Indians born abroad</li> </ul>	<p><b>Eligible only if:</b></p> <ul style="list-style-type: none"> <li>■ Are under 18<sup>3</sup></li> <li>■ Were granted refugee or asylum status or withholding of deportation or removal, Cuban or Haitian entrant, or Amerasian immigrant</li> <li>■ Have been in "qualified" immigrant status for five years<sup>1</sup></li> <li>■ Are receiving disability-related assistance<sup>1,4</sup></li> <li>■ Lawful permanent resident with credit for forty quarters of work</li> <li>■ Veteran, active-duty military; spouse, unremarried surviving spouse, or child<sup>1</sup></li> <li>■ Member of Hmong or Laotian tribe during the Vietnam era, when the tribe militarily assisted the United States; spouse, surviving spouse, or child of tribe member<sup>1</sup></li> <li>■ Certain American Indians born abroad</li> </ul>	<p><b>Eligible only if:</b></p> <ul style="list-style-type: none"> <li>■ Member of Hmong or Laotian tribe during the Vietnam era, when the tribe militarily assisted the United States, spouse, surviving spouse, or child of tribe member, <i>who is lawfully present in the United States</i></li> <li>■ Certain American Indians born abroad</li> <li>■ Victims of trafficking and their derivative beneficiaries</li> </ul>

**Table 1.—Immigrant Eligibility for Federal Programs (Continued)**

PROGRAM	"QUALIFIED" IMMIGRANTS Who Entered the United States Before August 22, 1996	"QUALIFIED" IMMIGRANTS Who Entered the United States on or After August 22, 1996	"NOT QUALIFIED" IMMIGRANTS
<b>Temporary Assistance for Needy Families (TANF)</b>	<b>Eligible<sup>1</sup></b>	<b>Eligible only if:</b> <ul style="list-style-type: none"> <li>■ Were granted refugee or asylum status or withholding of deportation or removal, Cuban or Haitian entrant, or Amerasian immigrant<sup>5</sup></li> <li>■ Veteran, active-duty military; spouse, unremarried surviving spouse, or child<sup>1</sup></li> <li>■ Have been in "qualified" immigrant status for five years or more<sup>1,5</sup></li> </ul>	<b>Eligible only if</b> victims of trafficking and their derivative beneficiaries
<b>Emergency Medicaid</b> (includes labor and delivery)	<b>Eligible</b>	<b>Eligible</b>	<b>Eligible</b>
<b>Full-Scope Medicaid</b>	<b>Eligible<sup>6</sup></b>	<b>Eligible only if:</b> <ul style="list-style-type: none"> <li>■ Were granted refugee or asylum status or withholding of deportation or removal, Cuban or Haitian entrant, or Amerasian immigrant<sup>7</sup></li> <li>■ Veteran, active-duty military; spouse, unremarried surviving spouse, or child<sup>1</sup></li> <li>■ Have been in "qualified" immigrant status for five years or more<sup>1,7</sup></li> </ul>	<b>Eligible only if:</b> <ul style="list-style-type: none"> <li>■ Were receiving SSI on August 22, 1996 (in states that link Medicaid to SSI eligibility)</li> <li>■ Certain American Indians born abroad</li> <li>■ Victims of trafficking and their derivative beneficiaries</li> </ul>
<b>State Children's Health Insurance Program (SCHIP)<sup>8</sup></b>	<b>Eligible</b>	<b>Eligible only if:</b> <ul style="list-style-type: none"> <li>■ Were granted refugee or asylum status or withholding of deportation or removal, Cuban or Haitian entrant, or Amerasian immigrant</li> <li>■ Veteran, active-duty military; spouse, unremarried surviving spouse, or child<sup>1</sup></li> <li>■ Have been in "qualified" immigrant status for five years or more<sup>1</sup></li> </ul>	<b>Eligible only if</b> victims of trafficking and their derivative beneficiaries
<b>Medicare "Premium Free" Part A (hospitalization)</b> (eligibility based on work history)	<b>Eligible</b>	<b>Eligible</b>	<b>Eligible only if</b> lawfully present, and eligibility for assistance is based on authorized employment
<b>Premium "Buy-in" Medicare</b>	<b>Eligible only if</b> lawful permanent resident who has resided continuously in the United States for at least five years	<b>Eligible only if</b> lawful permanent resident who has resided continuously in the United States for at least five years	<b>Not eligible</b>

**Table 1.—Immigrant Eligibility for Federal Programs (Continued)**

PROGRAM	"QUALIFIED" IMMIGRANTS Who Entered the United States Before August 22, 1996	"QUALIFIED" IMMIGRANTS Who Entered the United States on or After August 22, 1996	"NOT QUALIFIED" IMMIGRANTS
<b>HUD Public Housing and Section 8 Programs</b>	<p><b>Eligible except</b> certain Cuban or Haitian entrants and "qualified" abused spouses and children</p> <p>Note: If at least one member of the household is eligible based on immigration status, the family may reside in the housing, but the subsidy is prorated</p>	<p><b>Eligible except</b> certain Cuban or Haitian entrants and "qualified" abused spouses and children</p> <p>Note: If at least one member of the household is eligible based on immigration status, the family may reside in the housing, but the subsidy will be prorated</p>	<p><b>Eligible only if:</b></p> <ul style="list-style-type: none"> <li>■ Temporary resident under Immigration Reform and Control Act general amnesty or paroled into the United States for less than one year</li> <li>■ Victims of trafficking and their derivative beneficiaries</li> <li>■ Citizens of Micronesia, the Marshall Islands, and Palau</li> </ul> <p>Note: For other immigrants, eligibility may depend on the date the family began receiving housing assistance, the immigration status of other household members, and the household composition</p> <p>Also note: If at least one member of the household is eligible based on immigration status, the family may reside in the housing, but the subsidy is prorated</p>
<b>Title XX Block Grants</b>	<b>Eligible</b>	<b>Eligible</b>	<p><b>Eligible only if:</b></p> <ul style="list-style-type: none"> <li>■ Victims of trafficking and their derivative beneficiaries</li> <li>■ Program or service funded by the block grant is exempt from the welfare law's restrictions</li> </ul>
<b>Social Security</b>	<b>Eligible<sup>9</sup></b>	<b>Eligible<sup>9</sup></b>	<p><b>Eligible only if:</b></p> <ul style="list-style-type: none"> <li>■ Lawfully present<sup>9</sup></li> <li>■ Were receiving assistance based on an application filed before December 1, 1996</li> <li>■ Eligibility required by certain international agreements</li> </ul>
<b>Other Federal Public Benefits</b> (subject to welfare law's restrictions)	<b>Eligible</b>	<b>Eligible</b>	<b>Eligible only if</b> victims of trafficking and their derivative beneficiaries
<b>Benefits</b> (exempt from welfare law's restrictions)	<b>Eligible</b>	<b>Eligible</b>	<b>Eligible</b>

**Table 1.—Immigrant Eligibility for Federal Programs (Continued)****Key Terms**

*“Qualified” immigrants* are (1) lawful permanent residents; (2) refugees, asylees, persons granted withholding of deportation or removal, conditional entry (in effect before April 1, 1980), or paroled into the United States for at least one year; (3) Cuban or Haitian entrants; and (4) battered spouses and children who have 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 lawful permanent resident, or (c) application for cancellation of removal or suspension of deportation, and whose need for benefits has a substantial connection to the battery or cruelty. The parent or child of such battered child or spouse is also “qualified.” Victims of trafficking (who are not included in the “qualified” immigrant definition) and their derivative beneficiaries are eligible for benefits funded or administered by federal agencies, without regard to their immigration status.

*“Not qualified” immigrants* include all noncitizens who do not fall under the “qualified” immigrant categories.

**Notes**

1. Eligibility may be affected by deeming: a sponsor’s income or resources may be added to the immigrant’s in determining eligibility. Exemptions from deeming may apply.
2. Lawful permanent residents are eligible if they have worked forty qualifying quarters in the United States. Immigrants also get credit toward their forty quarters for work performed (1) by parents when the immigrant was under 18 and (2) by spouse during the marriage (unless the marriage ended in divorce or annulment). No credit is given for a quarter worked after December 31, 1996, if a federal means-tested public benefit (Supplemental Security Income (SSI), food stamps, Temporary Assistance for Needy Families (TANF), Medicaid, or State Children’s Health Insurance Program (SCHIP)) was received in that quarter.
3. Children are not subject to sponsor deeming in the Food Stamp Program.
4. Disability-related benefits include SSI, social security disability, state disability or retirement pension, railroad retirement disability, veteran’s disability, disability-based Medicaid, and disability-related General Assistance if the disability determination uses criteria as stringent as those used by federal SSI.
5. In Indiana, Mississippi, Ohio, South Carolina, and Texas, TANF is available only to immigrants who entered the United States on or after August 22, 1996, and who are (1) lawful permanent residents credited with forty quarters of work; (2) veterans, active-duty military (and their spouse, unremarried surviving spouse, or child); or (3) refugees, asylees, persons granted withholding of deportation or removal, Cuban or Haitian entrants, and Amerasian immigrants during the five years after obtaining this status. Indiana provides TANF to “refugees” listed in item 3 regardless of the date they obtained that status. Mississippi does not address eligibility for Cuban or Haitian entrants or Amerasian immigrants.
6. In Wyoming only lawful permanent residents with forty quarters of work credit, abused immigrants, parolees, veterans, active-duty military (and their spouse, unremarried surviving spouse, or child), refugees, asylees, persons granted withholding of deportation or removal, Cuban or Haitian entrants, and Amerasian immigrants who entered the United States before August 22, 1996, are eligible for full-scope Medicaid. Similar restrictions in Colorado are under litigation.
7. In Alabama, Mississippi, North Dakota, Ohio, Texas, Virginia, and Wyoming full-scope Medicaid is available only to immigrants who entered the United States on or after August 22, 1996, and who are (1) lawful permanent residents credited with forty quarters of work; (2) veterans, active-duty military (and their spouse, unremarried surviving spouse, or child); or (3) refugees, asylees, persons granted withholding of deportation or removal, Cuban or Haitian entrants, and Amerasian immigrants during the seven years after obtaining this status. Similar restrictions in Colorado are under litigation. Wyoming provides full-scope Medicaid to “qualified” abused immigrants and persons paroled into the United States regardless of their date of entry. In Texas Amerasian immigrants are eligible only during the five years after obtaining this status; Mississippi and North Dakota do not address eligibility for Cuban or Haitian entrants or Amerasian immigrants.
8. In states that opt to cover fetuses, SCHIP provides prenatal care regardless of the mother’s immigration status. The scope of coverage depends in part on how the option is implemented.
9. For applications based on social security numbers issued on or after January 1, 2004, applicants must have been assigned a social security number that was, at the time assigned or at any later time, valid for work purposes. Alternatively they must have been admitted to the United States temporarily for business or as a crewman when the relevant work quarters were earned.