Order Code RL31114

Noncitizen Eligibility for Major Federal Public Assistance Programs: Policies and Legislation

Updated March 17, 2004

Ruth Ellen Wasem
Specialist in Social Legislation
Domestic Social Policy Division

Noncitizen Eligibility for Major Federal Public Assistance Programs: Policies and Legislation

Summary

The eligibility of noncitizens for major public assistance programs remains an issue in the 108th Congress. The original law authorizing the Temporary Assistance for Needy Families (TANF) program expired October 31, 2002, and TANF and its related programs have been operating on temporary spending authority due to expire March 31, 2004. H.R. 4 that would reauthorize TANF passed the House in February 2003, and the Senate Committee on Finance reported its version of H.R. 4 in October 2003. Provisions on the eligibility of noncitizens for other major programs (e.g., Medicaid and the Supplemental Security Income (SSI) program) as well as TANF are possible amendments to H.R. 4. The issues are what classes of legal permanent residents (LPRs) should be eligible and what types of assistance or programs should be available to them.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) dramatically changed noncitizen eligibility for public assistance. It restricted the eligibility of LPRs, refugees, asylees, and other noncitizens for means-tested public aid. These ranged from categorical eligibility bars to new rules governing aliens with sponsors and their sponsors' responsibilities. Noncitizens' eligibility for major federal means-tested benefits largely depends on their *immigration status*, whether they arrived (or were on a program's rolls) before *August 22, 1996*, the enactment date of P.L. 104-193, and how long they have lived and worked in the United States.

Refugees and asylees are eligible for SSI benefits, and Medicaid for seven years after arrival (five years for TANF). After this, they are ineligible for SSI, and may be eligible, at state option, for Medicaid and TANF. LPRs with a substantial (10-year) work history or a military connection are eligible for the full range of programs. LPRs entering after August 1996 are barred from TANF, Medicaid, and food stamps for five years, after which TANF and Medicaid coverage becomes a state option. LPRs who are children are eligible for food stamps; food stamps also are available to LPRs who were elderly and resident as of August 1996. There are also special eligibility provisions for disabled LPRs and those on SSI. Finally, in the case of LPRs sponsored for admission after 1997, the income and resources of their sponsor are "deemed" available to them when judging their income eligibility.

In the 107th Congress, noncitizen eligibility for food stamps was a key issue in the comprehensive legislation reauthorizing Agriculture Department programs (P.L. 107-171, H.R. 2646). Known as the "farm bill," it opened up food stamp eligibility to LPRs who meet a five-year (rather than10-year) residence test and all LPR children. In the 108th Congress, one set of concerns is focused whether eligibility should be extended to refugees and asylees who have exhausted their time-limited benefit eligibility for all major programs except food stamps. Another concern that continues to arise is whether to give states the option of extending Medicaid and SCHIP coverage to lower-income LPRs and pregnant and postpartum LPR women and their children. The later provision was included in the Senate's prescription drug bill (S. 1) and may come up when the Senate considers H.R. 4.

Contents

List of Tables

Noncitizen Eligibility for Major Federal Public Assistance Programs: Policies and Legislation

Latest Legislative Developments

There are two competing versions of H.R. 4 that would reauthorize Temporary Assistance for Needy Families (TANF) program; one passed the House in February 2003, and the other was reported by the Senate Committee on Finance in October 2003. Although both versions are silent on noncitizen eligibility, provisions related to other major programs affected by restrictions on the eligibility of noncitizens Provisions on the eligibility of noncitizens for other major programs (e.g., Medicaid and the Supplemental Security Income (SSI) program) as well as TANF are possible amendments to H.R. 4 when it comes before the Senate. One set of concerns is focused whether eligibility should be extended to refugees and asylees who have exhausted their time-limited benefit eligibility for all major programs except food stamps. Another concern that continues to arise is whether to give states the option of extending Medicaid and SCHIP coverage to lower-income LPRs (to the extent they are not already covered) and pregnant and postpartum LPR women and their children.

Introduction

The extent to which residents of the United States who are not U.S. citizens should be eligible for federally funded public aid has been a contentious issue for the past decade. This debate occurs at the intersection of two major policy areas: immigration policy and welfare policy.[1] The 107th Congress enacted significant changes in U.S. immigration policy. It also took up reauthorization of changes made by the 1996 welfare reform law (the Personal Responsibility and Work Opportunity Reconciliation Act, P.L. 104-193) — including revision of the rules governing noncitizen eligibility for public assistance that it established — and legislation covering programs with major restrictions on noncitizens' eligibility (e.g., food stamps, Medicaid). The question of how immigrants in the United States are treated arose in all of these contexts and is now an issue in the 108th Congress.

---

[1] For basic background on these policies generally, see CRS Report RS20916, *Immigration and Naturalization Fundamentals*, by Ruth Wasem; and CRS Issue Brief IB93034, *Welfare Reform: An Issue Overview*, by Vee Burke.

This report deals with the four major federal means-tested benefit programs: the Food Stamp program, the Supplemental Security Income (SSI) program, Temporary Assistance for Needy Families (TANF) block grant programs, and Medicaid. It is organized into three main parts: a brief overview of existing eligibility law for the four programs and the policies that preceded it, a summary of related immigrant policies affecting eligibility (specifically, the treatment of sponsored aliens), and a discussion of current issues and legislation. Appendices at the conclusion elaborate on the specifics of current eligibility rules for the four programs.

Overview of Existing Eligibility Law

Pre-1996 Program Policies

Prior to the major amendments made in 1996, there was no uniform rule governing which categories of noncitizens were eligible for which government-provided benefits and services, and no single statute where the rules were described. Alien eligibility requirements, if any, were set forth in the laws and regulations governing the individual federal assistance programs.

Summarizing briefly, lawful permanent residents (i.e., immigrants) and other noncitizens who were legally present (e.g., refugees) were generally eligible for federal benefits on the same basis as citizens in programs where rules were established by law or regulation. These included major public assistance programs like Aid to Families with Dependent Children (AFDC, the predecessor of TANF), the SSI program, food stamps, and Medicaid. With the single exception of emergency Medicaid, unauthorized (illegally present) aliens were barred from participation in all the major federal assistance programs that had statutory provisions for noncitizens, as were aliens here legally in a temporary status (i.e., nonimmigrants such as persons admitted for tourism, education, or employment).

However, many health, education, nutrition, income support, and social service programs did not include specific provisions regarding alien eligibility — and unauthorized aliens were potential participants.[2] These programs included, for example, the Special Supplemental Nutrition Program for Women, Infants, and Children (the WIC program), child nutrition programs, initiatives funded through the Elementary and Secondary Education Act, the Earned Income Tax Credit (EITC), community and migrant health centers, and the Social Services Block Grant (SSBG) program.

---

[2] Changes made by the 1996 welfare reform law potentially affecting eligibility for these programs are not covered in this report.

The 1996 Welfare Reform Law

Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) established comprehensive new restrictions on the eligibility of noncitizens for means-tested public assistance[3] — with significant exceptions for those with a substantial U.S. work history or military connection. For legal permanent residents (LPRs) resident as of enactment of the law (August 22, 1996), they generally barred eligibility (food stamps and SSI) or allowed it at state option (Medicaid and TANF). For food stamps and SSI benefits, LPRs entering after August 22, 1996 (new entrants) also were denied eligibility, with no time constraint. On the other hand, new entrants applying for Medicaid and the newly established Temporary Assistance for Needy Families (TANF) program were barred for five years after their entry, and then allowed eligibility at state option. Refugees and asylees were *allowed* eligibility for five years after entry/grant of status, then made ineligible (unless they became citizens or qualified under another status). And nonimmigrants and undocumented aliens were barred.

Post-1996 Revisions

The 1996 changes made in the alien eligibility rules proved controversial, particularly the termination of benefits for recipients who were receiving benefits or legally resident as of the date the new welfare law was enacted, August 22, 1996.

The SSI termination date for these recipients was extended from August 22, 1996, to September 30, 1997, by P.L. 105-18, signed June 12, 1997. More extensive modifications to the new alienage rules were then included in P.L. 105-33, the 1997 Balanced Budget Act, signed into law on August 5, 1997. It amended the welfare reform law to provide that legal immigrants who were receiving SSI as of August 22, 1996, continue to be eligible, regardless of whether their claim was based on disability or age. Additionally, those who were here by August 22, 1996, and subsequently become disabled were made eligible for SSI.

Food stamp eligibility was expanded by provisions of P.L. 105-185, the Agricultural Research, Extension, and Education Reform Act of 1998. Eligibility was extended to several groups of LPRs who were here as of August 22, 1996: elderly (65+) persons (not including those who become 65 after August 22, 1996), individuals receiving government disability benefits (including those who become disabled after August 22, 1996), and children (persons who were under 18 as of August 22, 1996, until they become adults).

Amendments in P.L. 105-33 and P.L. 105-185 extended the period of food stamp/SSI/Medicaid (but not TANF) eligibility for refugees and asylees from five to seven years.

---

[3] In this report, federal means-tested benefits are: Temporary Assistance for Needy Families (TANF), Medicaid, Supplemental Security Income (SSI), and food stamps. These are the four programs designated as such under the terms of the 1996 welfare reform law.

Finally, P.L. 107-171, the "farm bill" contained substantial changes to food stamp eligibility rules for noncitizens, expanding food stamp eligibility to include:

- all LPR children, regardless of date of entry (it also ends requirements to deem sponsors' income and resources to these children);
- LPRs receiving government disability payments, so long as they pass any noncitizen eligibility test established by the disability program (e.g., SSI recipients would have to meet SSI noncitizen requirements in order to get food stamps);[4] and
- all individuals who have resided in the U.S. for 5 or more years as "qualified aliens" — i.e., LPRs, refugees/asylees, and other non-temporary legal residents (such as Cuban/Haitian entrants).[5]

The changes to rules for the disabled became effective October 1, 2002; new rules for children were effective October 1, 2003; and the five-year residence rule went into effect April 1, 2003. The Congressional Budget Office estimated that these expansions will cost $2.53 billion over 10 years and, when fully implemented, affect some 390,000 persons.

Current Eligibility Policy

Under current law, noncitizens' eligibility for the major federal means-tested benefit programs largely depends on their immigration status and whether they arrived (or were on a program's rolls) before August 22, 1996, the enactment date of P.L. 104-193.[6] The eligibility policies laid out by the 1996 welfare reform act remain essentially unchanged for noncitizens entering after its enactment, but were significantly revised for those legally resident prior to enactment by the 1997,1998, and 2002 amendments noted above. The *basic* rules now are as follows:[7]

- Refugees and asylees are eligible for SSI benefits and Medicaid for seven years after arrival, and for five years under TANF.[8] After this

---

[4] Because most potential disabled food stamp recipients also are SSI recipients and must pass the generally more stringent SSI noncitizen test, this amendment would affect few noncitizens.

[5] Although the conference agreement does not explicitly adopt the Senate proposal to lift the current seven-year limit on eligibility for refugees and asylees, adoption of a five-year legal residence rule would effectively eliminate it. Also see **Appendix B**: "Qualified Aliens."

[6] In addition, "deeming" rules (discussed later in this report) may affect eligibility.

[7] **Appendix A** lays out these rules in more detail — including special rules that apply to several limited noncitizen categories: certain "cross-border" American Indians, Hmong/ Highland Laotians, parolees and conditional entrants, and cases of abuse. **Appendix B** presents the basic eligibility rules from a different perspective, using a new term/category — "qualified alien" — established by the 1996 welfare reform law but not otherwise used in immigration or welfare law.

[8] Refugee/asylee treatment is accorded to Cuban/Haitian entrants, certain aliens whose (continued...)

term, they generally are ineligible SSI, but may be eligible, at state option, for Medicaid and TANF.

- LPRs with a substantial work history — generally 10 years (40 quarters) of work documented by Social Security or other employment records — or a military connection (active duty military personnel, veterans, and their families) are eligible for the full range of programs.
- LPRs receiving SSI as of August 22, 1996, continue to be eligible.
- Medicaid coverage is required for all otherwise qualified SSI recipients (they must meet SSI noncitizen eligibility tests).
- Disabled LPRs who were legally resident as of August 22, 1996, are eligible for SSI.
- Disabled LPRs are eligible for food stamps.[9]
- LPRs who were elderly (65+) and legally resident as of August 22, 1996, are eligible for food stamps.
- LPRs who are children (under 18) are eligible for food stamps.
- LPRs entering after August 22, 1996, are barred from TANF and Medicaid for five years, after which their coverage becomes a state option.[10] For SSI, the five-year bar for new entrants is irrelevant because they generally are denied eligibility (without a time limit).

Appendix A, *Noncitizen Eligibility for Selected Major Federal Programs* provides a detailed description of the current eligibility policies for food stamps, SSI, TANF, and Medicaid — organized by class of alien and program.

Related Immigrant Policies Affecting Eligibility: Sponsorship and Deeming

"Public Charge"

Historical Development. Opposition to the entry of foreign paupers and aliens "likely at any time to become a public charge" — language found in the Immigration and Nationality Act (INA) today — dates from colonial times. A bar against the admission of "any person unable to take care of himself or herself without becoming a public charge" was included in the Act of August 3, 1882, the first

---

[8] (...continued)
deportation/removal is withheld for humanitarian purposes, Vietnam-born Amerasians fathered by U.S. citizens, and victims of human trafficking. For those aliens who arrive in the United States without one of these forms of humanitarian relief, the seven- or five-year period begins after the date the aliens receive the status.

[9] For SSI eligibility, disabled LPRs must meet SSI permanent and total disability standards. For food stamp eligibility, disabled LPRs must be receiving governmental benefits for disability (e.g., SSI, Social Security disability payments, certain veterans disability benefits).

[10] This five-year ban on eligibility for new entrants also applies to a program closely related to the Medicaid program — the State Children's Health Insurance Program (SCHIP). It is the only categorical noncitizen eligibility rule affecting SCHIP.

general federal immigration law. Over time, a policy developed in which applicants for immigrant status can overcome the public charge ground for exclusion based on their own funds, prearranged or prospective employment, or an *affidavit of support* from someone in the United States.

An affidavit of support, thus on behalf of a prospective immigrant had to be submitted as necessary by one or more residents of the United States in order to provide assurance that the applicant for entry would be supported in this country. Starting in the 1930s and continuing until the 1980s, affidavits of support were administratively required by INS but had no specific basis in statute or regulation. Court decisions beginning in the 1950s generally held that affidavits of support were not legally binding on the U.S. resident sponsors.[11] The unenforceability of affidavits of support led to the adoption of legislation in the late 1970s and early 1980s intended to make them more effective (see the discussion of "deeming" of income and financial resources below).

1996 Immigration Law Reforms. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Division C of P.L. 104-208), coupled with the 1996 welfare reform law altered the obligations of persons who sponsor immigrants arriving or adjusting to LPR status in the United States. The new standards, which are now part of the INA, cover requirements for sponsors, mandatory affidavits for family immigrants, and sponsorship liability, as follows:

- The person petitioning for the immigrant's admission must be the sponsor signing the affidavit of support.
- Sponsors must demonstrate the ability to maintain an annual income of at least 125% of the federal poverty line (100% for sponsors who are on active duty in U.S. Armed Forces); *or* share liability with one or more joint sponsors, each of whom must independently meet the income requirement.
- All family-based immigrants as well as employment-based immigrants who are coming to work for relatives must have affidavits of support filed for them.
- Sponsors who fail to support sponsored aliens are legally liable to the sponsored aliens and to any government agency that provides sponsored aliens needs-based assistance. As modified by the new immigration law, a sponsor's liability ends when the sponsored alien is no longer subject to deeming, either through naturalization or meeting a work test.[12]

---

[11] *Department of Mental Hygiene v. Renal*, 6 N.Y. 2d 791 (1959); *State v. Binder*, 356 Mich. 73 (1959).

[12] This work test is similar to the one applied in determining noncitizens eligibility for public assistance — attaining a substantial work history of 10 years (40 quarters of work documented work).

"Deeming" of Income and Resources

Pre-1996 Policy. In response to concerns about the unenforceability of affidavits of support and the perceived abuse of the welfare system by some newly arrived immigrants, legislation was enacted in the late 1970s and early 1980s limiting the availability of SSI, food stamps, and Aid to Families with Dependent Children (AFDC) to sponsored immigrants. The enabling legislation for these programs was amended to provide that — for the purpose of determining financial eligibility — immigrants who had used an affidavit of support to meet the public charge requirement would be deemed to have a portion of their immigration sponsors' income and resources available to them.

Post-1996 Requirements. The 1996 welfare reform law and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996[13] significantly expanded the use of sponsor-to-alien deeming as a means of restricting the participation of new immigrants in federal means-tested programs. Both deeming, and the affidavits of support upon which deeming is based, are intended to implement the provision of the INA that excludes aliens who appear "likely at any time to become a public charge."

The new deeming rules (primarily set out in the 1996 welfare reform act) are designed to make it more difficult for sponsored aliens to meet financial tests for benefits — even if they pass the "categorical" eligibility test by being in an eligible class of noncitizen. They apply to aliens who enter after December 19, 1997 (the effective date of the new affidavit of support) and who apply for TANF, Medicaid, SSI, or food stamps. Under these rules, all of the income and resources of a sponsor (and a sponsor's spouse) may be deemed available to the sponsored applicant for assistance until the noncitizen becomes naturalized or meets a work test.[14] Previous law contained specific deeming requirements only for SSI, food stamps, and AFDC (TANF's predecessor); only a portion of a sponsor's income and resources was deemed to the sponsored applicant; and deeming lasted for 3 years after entry (with a brief five-year rule for SSI).[15] Since it is §213A of the INA that makes the affidavits of support legally binding, some policy makers use "213A" as shorthand to identify who is covered by the deeming rules.

---

[13] Enacted as Division C of the Omnibus Consolidated Appropriations Act for 1997 (P.L. 104-208), signed into law on September 30, 1996.

[14] See footnote 12.

[15] The deeming period under SSI was five years for the period January 1994 through September 1996.

Current Issues and Legislation

Background: State Policies and Program Participation

Thus far, most states have not exercised their option to bar LPRs from TANF or Medicaid.[16] Two dozen states report that they are using their own funds to cover the costs of providing TANF to those LPRs who are not eligible for federal assistance and to get credit under TANF "maintenance of effort" requirements. Forty states reported that they exercising the option to provide TANF to LPRs after the five-year bar ends, and 39 states reported they opted to provide Medicaid after the five-year bar.[17]

As a percentage of total adult TANF recipients, noncitizens legally in the United States who receive TANF (earlier AFDC) increased from 7.0% in FY1989 to 12.3% in FY1996, then slightly dropped to 11.7% in 1999 and ultimately fell to 8.0% in 2001. California tops the list of states, with 16.9% of its 278,069 TANF recipients who were noncitizens in 2001. Calculated in terms of percentage of all adult noncitizens receiving TANF, Californians comprised 41.8% of adult noncitizens in the United States on TANF in 2001. New York followed California with 12.3% of its 189,299 recipients who were adult noncitizens or 20.7% of noncitizens in the United States on TANF. Texas and Minnesota were distant third and fourth places with 7.4% and 5.2% respectively of adult noncitizens in the United States on TANF, with 8.9% and 16.8% of their states' caseload respectively who were noncitizens.

The percentage of the SSI caseload represented by noncitizens has held steady in recent years, after rising steadily in the 1980s and early 1990s. It stood at 10.4% or 695,650 participants in 2001 after peaking at 12.1% or 785,410 participants in 1995. In 2001, noncitizens accounted for about 28.9% of all aged SSI recipients, down from a high of 32.0% in 1995. Noncitizens accounted for 6.1% of disabled (or blind) recipients in 2001. The largest concentration of noncitizens who received SSI benefits lived in California, 260,520 recipients in 2001. New York was second with 110,340 noncitizen SSI recipients. Florida and Texas followed with 65,400 and 54,800 noncitizen beneficiaries respectively.

The 10-year pattern for noncitizens receiving food stamps resembles that of SSI and AFDC/TANF. Specifically, food stamp participation by noncitizens crept upward during the early 1990s, then dropped off by 1998, at which time there were approximately 616,000 noncitizens receiving food stamps. After enactment of welfare reform in 1996, the percentage of food stamp recipients who were noncitizens fell to a 10-year low of 3.1% in 1998. It stood at 3.7% in 2001. The peak

---

[16] States may bar TANF and Medicaid eligibility to noncitizens resident before Aug. 22, 1996, and new entrants who pass the five-year bar to eligibility.

[17] Data are from the CRS State Noncitizen Eligibility Survey (SNES) requested of all 50 states in 2003. CRS collected data from the states on their policies toward noncitizens as of December 2000 and December 2002. Five states and territories did not respond to the TANF and food assistance surveys, and nine states and territories did not respond to the Medicaid survey.

had occurred in 1996 when 1,847,000 noncitizens comprised 7.1% of the 25,926,000 food stamp recipients.

California is the state with the largest number of noncitizens receiving food stamps, 138,000 in 2001. Its share of all noncitizens receiving food stamps was 21.6%. New York, Florida, and Texas followed with 16.7, 12.3, and 10.6% respectively of all noncitizens receiving food stamps in 2001.

The level of noncitizen enrollment in assistance programs is affected by the restrictions imposed under the 1996 welfare reform law (as revised in 1997-1998), by states' choices to extend or deny coverage when given the option, and, to some degree, by individuals' perception of their eligibility status and their election to participate or not. Among the public at large, confusion remains over what classes of noncitizens are eligible for which programs, in part because the 1996 welfare law used the phrase "qualified alien" — not a term in immigration law — that encompasses a variety of classes of noncitizens who must meet additional specified conditions.[18] Moreover, despite narrowly drawn regulations from the former Immigration and Naturalization Service (now the U.S. Citizenship and Immigration Services in the Department of Homeland Security) on what constitutes "public charge," many believe that receiving public benefits may adversely affect a noncitizen's immigration status or potential to sponsor immigration petitions for family members. These factors may be inhibiting participation among eligible noncitizens.

Summary of the Debate

The restrictions placed on noncitizens' eligibility for major federal means-tested public assistance have been controversial since they were put in place by the 1996 welfare reform law. And, despite the significant revisions enacted in 1997, 1998, and 2002 calls for total or partial restoration of noncitizens' eligibility for federal benefits continue.

Proponents of restored eligibility for noncitizens make several arguments. Foremost, advocates note that LPRs (many of whom are now denied eligibility) are *legal* residents who work and pay taxes; as a result, they contend, they should be able to draw on the federal public assistance "safety net" if need arises or misfortunes occur. In this regard, some also assert that the 40-quarter substantial work history test for LPR eligibility is too stringent. A second important argument relates to the perceived complexity of the current eligibility rules for noncitizens. Advocates maintain that the rules are so complex (varying as they do among programs and classes of noncitizens) that many *eligible* noncitizens are discouraged from applying or believe themselves ineligible. In addition, they point out that many of the children in LPR-headed households are U.S. citizens and are concerned that the ineligibility of their parents/caretakers is keeping children's participation low in the assistance programs that are important to their health and well-being. Finally, proponents of change contend that continued ineligibility for some noncitizens who were here

---

[18] **Appendix B** contains an explanation of the term "qualified alien" and its use in determining eligibility for public assistance programs.

before the 1996 law is unfair and that the sponsorship/deeming rules are sufficient to control substantial abuse of access to public assistance.

Supporters of current law often reference the public charge ground for exclusion of immigrants and argue that the United States should not admit immigrants if they do not have the financial means, employment skills, or the family resources to support themselves. They maintain that LPRs and their sponsors should take responsibility for the LPR's support and not expect the federal government to do so. They point out that citizen children are eligible for federal assistance, even if their parents are not, and that low participation is not the fault of the law itself. Lastly, they note that adjustments for the most compelling cases (the elderly, the disabled, children, and many of those resident and on programs' rolls before welfare reform) were made in the 1997-2002 revisions to the original provisions of welfare reform law.

A critical component of the debate is the cost of revising the existing noncitizen eligibility rules. Although the costs would vary markedly depending on the particular provision, there are concerns that restoring public assistance programs to noncitizens will deepen the federal deficits. States that are not able to have deficit budgets argue that the cost burden merely shifts to them; while others point out that the states have the option of denying the benefits.

Legislation in 107th Congress

Several significant legislative proposals expanding noncitizens' eligibility for TANF, SSI, and Medicaid/SCHIP were before the 107th Congress. This subject also was a key issue in the comprehensive legislation reauthorizing Agriculture Department programs (H.R. 2646, the "farm bill") because the bill includes changes to the Food Stamp program.

The Farm Bill (Food Stamps). While the House-passed version of the farm bill did not alter noncitizen eligibility for food stamps, the Senate version had several provisions that did. The Senate bill proposed to:

- reduce the work history requirement for food stamps from 40 to 16 quarters;
- open food stamp eligibility to all LPR children and all LPRs receiving government disability payments, regardless of date of entry (and end deeming of sponsors' income and resources to noncitizen children);
- remove the seven-year limit on refugees and asylees; and
- allow eligibility for food stamps for all LPRs after five years of legal residence (except for those aliens who arrived without immigration authorization and remained illegally for at least a year or who arrived with immigration authorization but resided illegally for at least a year).

The Congressional Budget Office estimated that the noncitizen provisions of the Senate measure would cost $2.5 billion over 10 years and affect over 360,000 persons. A non-binding motion approved in the House on April 23, 2002, instructed

House conferees to adopt the first three items noted above in the Senate proposal, although supporters also indicated their intention of backing the five-year residence proposal (without the Senate's illegal resident limitations).

During the House-Senate conference on the farm bill, a Senate proposal for a simple expansion of eligibility to all LPRs who meet a five-year legal residence test (with no special provisions for children, the disabled, refugees/asylees, or those with a work history) was not adopted by conferees. Conferees also did not adopt a House proposal for a limited eligibility expansion that accepted the Senate's proposals for children, the disabled, and refugees/asylees but limited the five-year residence rule by requiring that it be coupled with a work history requirement and the bar against those who arrived/stayed illegally.

Earlier, the Bush Administration advanced a proposal to eventually expand food stamp eligibility to more than 350,000 noncitizens by allowing eligibility for all immigrants after five years' continuous legal residence. This initiative, similar to the Senate position noted above and the conference agreement noted below, was included in its FY2003 budget request (at an estimated 10-year cost of $2.1 billion). Other bills offering proposing to change food stamp eligibility for noncitizens include The Leave No Child Behind Act (S. 940/H.R. 1990) and S. 583/H.R. 2142; they would reinstitute the food stamp eligibility rules for noncitizens in place before welfare reform.

On April 26, 2002, House-Senate farm bill conferees announced agreement on food stamp amendments (reported on May 1, 2002). On May 2, 2002, the House adopted the House-Senate conference agreement on the omnibus farm bill (the Farm Security and Rural Investment Act; H.R. 2646; H.Rept. 107-424). President Bush signed H.R. 2646 into law (**P.L. 107-171**) on May 13, 2002. It contains substantial changes to food stamp eligibility rules for noncitizens, expanding food stamp eligibility to include:

- all LPR children, regardless of date of entry (it also ends requirements to deem sponsors' income and resources to these children);
- LPRs receiving government disability payments, so long as they pass any noncitizen eligibility test established by the disability program (e.g., SSI recipients would have to meet SSI noncitizen requirements in order to get food stamps);[19] and
- all individuals who have resided in the U.S. for 5 or more years as "qualified aliens" — i.e., LPRs, refugees/asylees, and other non-temporary legal residents (such as Cuban/Haitian entrants).[20]

---

[19] Because most potential disabled food stamp recipients also are SSI recipients and must pass the generally more stringent SSI noncitizen test, this amendment would affect few noncitizens.

[20] Although the conference agreement does not explicitly adopt the Senate proposal to lift the current seven-year limit on eligibility for refugees and asylees, adoption of a five-year legal residence rule would effectively eliminate it. Also see **Appendix B**.

The changes to rules for the disabled would be effective October 1, 2002; new rules for children would be effective October 1, 2003; and the new five-year residence rule would go into effect April 1, 2003. The Congressional Budget Office estimates that these expansions will cost $2.53 billion over 10 years and, when fully implemented, affect some 390,000 persons.

TANF. In the House, the Republican bills reauthorizing TANF — H.R. 4090 and H.R. 4092 (modified versions of the Bush Administration proposal), and H.R. 4210 — did not propose changes in the noncitizen eligibility rules for TANF. However, several reauthorization bills sponsored by Democrats would expand TANF coverage for noncitizens. Title VI of "The Next Step in Reforming Welfare Act" (H.R. 3625) would have eliminated the five-year federal eligibility bar applied to LPRs applying for TANF, as would have S. 2052. H.R. 3113 would have eliminated all bars against TANF receipt by LPRs. Requirements that sponsors' income and resources be "deemed" to noncitizens applying for TANF (and that any benefits received be subject to potential repayment by the sponsor) also were addressed in legislative proposals.[21] H.R. 3625 would have eased deeming rules and dropped sponsor repayment requirements, as would S. 2052; H.R. 3113 would have dropped sponsor repayment requirements. On May 2, 2002, the House Ways and Means Committee ordered reported an amended version of H.R. 4090, rejecting proposals to expand noncitizen eligibility for TANF or change sponsor deeming/repayment requirements. On May 14, 2002, the House Ways and Means Committee reported H.R. 4090, rejecting proposals to expand noncitizen eligibility for TANF and change sponsor deeming/repayment requirements. Provisions of the reported version of H.R. 4090 were subsequently incorporated into a larger bill, H.R. 4737, which was passed by the House on May 16.

When the Senate Finance Committee marked up its substitute version of H.R. 4737 on June 26, 2002, however, it included provisions that would have given states the option to use TANF funds to assist all LPRs, including those who have arrived on or after August 22, 1996. It would have required states taking this option to deem immigrants' income to include income of sponsors for purposes of determining eligibility for only 3 years after entry, essentially making the deeming rules for the post-PRWORA immigrants comparable to those for the pre-PRWORA immigrants. These deeming rules would not have applied to minor children of sponsored immigrants.

Legislation to reauthorize TANF reached an impasse in 2002, and the original TANF law expired on October 1, 2002. TANF and its related programs have been operating on temporary spending authority, now due to expire March 31, 2003.

Medicaid/SCHIP. An amendment that would have incorporated the state option of extending Medicaid and SCHIP coverage to lower-income pregnant and postpartum LPR women and their children into H.R. 4737 passed the Senate Finance

---

[21] For food stamps, changes to sponsor liability rules were proposed in S. 583/H.R. 2142 and S. 940/H.R. 1990. They would have removed sponsors' liability for repayment in certain circumstances, but were not considered in the farm bill's food stamp reauthorization debate noted above.

Committee on June 26, 2002. Several bills (H.R. 1143, H.R. 1528, S. 582, S. 940/H.R. 1990, and S. 2052) had already been introduced that addressed Medicaid/SCHIP. These bills generally would have given states the option of extending Medicaid and SCHIP coverage to lower-income LPRs (to the extent they are not already covered) and pregnant and postpartum LPR women and their children.

Other Legislation. In terms of the Supplemental Security Income (SSI) program, H.R. 3625 (noted above) would have ended current bars against SSI eligibility for LPRs and ended the sponsor repayment requirement for SSI benefits, but there was no action on legislation to expand SSI coverage of noncitizens.

On a related matter, the Family Sponsor Immigration Act of 2001 (**P.L. 107-150**) provides that, where a citizen or permanent resident has petitioned for permanent resident status for an alien and the petitioner has died before the alien has been granted this status (and if the Attorney General determines for humanitarian reasons that revocation of the petition would be inappropriate), a close family member other than the original petitioner may be allowed to sign the necessary affidavit of support.

Legislation in the 108th Congress

The issue of expanding Medicaid and SCHIP coverage to LPRs who are pregnant women and children arose during the debate over the prescription drug legislation that ultimately became P.L. 108-173. The Senate-passed version of S.1, the "Prescription Drug and Medicare Improvement Act of 2003," included a provision that would have given states the option to cover LPRs who were pregnant women and children under the Medicaid and SCHIP programs. The House-passed prescription drug bill, H.R. 1, did not include this provision to expand noncitizen eligibility for Medicaid and SCHIP. The Senate struck all after the enacting clause and substituted the text of S. 1, when it passed its version of H.R. 1 on July 7, 2003. When the conference report on H.R. 1 was filed (H.Rept.108-391) on November 21, 2003, however, it did not have the provision to expand noncitizen eligibility for Medicaid and SCHIP.

As the Senate considers H.R. 4, the legislation that would reauthorize TANF, possible amendments on noncitizen eligibility are likely to come up again. There are two competing versions of H.R. 4 that would reauthorize TANF; one passed the House in February 2003, and the other was reported by the Senate Committee on Finance in October 2003. Although both versions are silent on noncitizen eligibility, provisions related to other major programs affected by restrictions on the eligibility of noncitizens — Medicaid and the Supplemental Security Income (SSI) program — as well as TANF are possible amendments to H.R. 4 when it comes before the Senate.

One set of concerns is focused whether eligibility should be extended to refugees and asylees who have exhausted their time-limited benefit eligibility for all major programs except food stamps. The 107th Congress restored food stamp benefits for refugees and asylees, and some have argued that SSI benefits for refugees and asylees should not be time-limited. The five-year limit for refugees and asylees

receiving TANF, however, is consistent with the general time-limited policies of TANF.

A recurring issue is whether to give states the option of extending Medicaid and SCHIP coverage to lower-income LPRs (to the extent they are not already covered) and pregnant and postpartum LPR women and their children. Language similar to Senate-passed S. 1 may re-emerge in the Senate debate over H.R. 4.

Appendix A. Noncitizen Eligibility for Selected Major Federal Programs

Class of alien	Food stamps	SSI	TANF	Medicaid
Legal permanent residents (LPRs):				
— without a substantial (generally 10-year) work history,[a]	Ineligible for five years after entry, *except*: (1) persons with a military connection, (2) persons resident in the as of U.S. August 22, 1996, and age 65+ at the time, (3) persons receiving disability benefits, and (4) children under age 18.	Ineligible until naturalized, *except*: (1) persons with a military connection, (2) persons receiving SSI benefits as of August 22, 1996, and (3) persons resident in the as of U.S. August 22, 1996, and now disabled (eligible for SSI disability benefits). (*Note*: Disabled children are included as eligible if resident in the U.S. as of August 22, 1996.)	Eligibility required for persons with a military connection. Eligibility at state option for persons resident in the U.S. as of August 22, 1996. Post-August 22, 1996, entrants: ineligible for five years after entry, then eligible at state option.	Same as TANF, *plus* coverage required for SSI recipients. (*Note:* Eligible for emergency medical services.)
— with a substantial (generally 10-year) work history.[a]	Eligible.	Eligible.	Eligible.	Eligible.

Class of alien	Food stamps	SSI	TANF	Medicaid
Military connection:				
— aliens with a military connection (active duty military personnel, honorably discharged veterans, and their immediate families).	Eligible.[b]	Eligible.[b]	Eligible.[b]	Eligible.[b]
Humanitarian cases:				
— asylees, refugees, Cuban/Haitian entrants, certain aliens whose deportation/removal is being withheld for humanitarian reasons, and Vietnam-born Amerasians fathered by U.S. citizens.[c]	Eligible after entry/grant of such status.	Eligible *for seven years* after entry/grant of such status. Ineligible after seven years unless naturalized or if in receipt of SSI benefits as of August 22, 1996.	Eligible *for five years* after entry/grant of such status. Eligible at state option after five years.	Eligible *for seven years* after entry/grant of such status. Eligible at state option after seven years.
Special Cases:				
— noncitizen "cross-border" American Indians,[d]	Eligible.	Eligible.	Eligible at state option.	Eligible.
— Hmong/Highland Laotians,[e]	Eligible.	Eligible only if individual meets eligibility criteria for another noncitizen category — e.g., as a legal permanent resident, asylee, refugee, person with a military connection.	Same as SSI. (*Note:* LPRs eligible under conditions noted above for TANF treatment of LPRs.)	Same as SSI. (*Note:* LPRs eligible under conditions noted above for Medicaid treatment of LPRs.)

Class of alien	Food stamps	SSI	TANF	Medicaid
Special cases (cont'd): — parolees and conditional entrants,[f]	Eligible.	Eligible only if individual: (1) has a military connection, (2) was receiving SSI as of August 22, 1996, or (3) was resident in the U.S. as of August 22, 1996, and is now disabled (eligible for SSI disability benefits).	Eligible if resident as of August 22, 1996. Ineligible for five years after entry, if entry is post-August 22, 1996. Otherwise eligible at state option.	Same as TANF.
— cases of abuse (battery or extreme cruelty),[g]	Eligible.	If not eligible as an LPR or humanitarian case, then eligible if the individual: (1) has a military connection, (2) was receiving SSI as of August 22, 1996, or (3) was resident in the U.S. as of August 22, 1996, and is now disabled (eligible for SSI disability benefits).	Eligible if resident as of August 22, 1996. Ineligible for five years after entry, if entry is post-August 22, 1996. Otherwise eligible at state option.	Same as TANF.

Class of alien	Food stamps	SSI	TANF	Medicaid
Special cases (cont'd):				
— victims of trafficking in persons,[h]	Eligible.	Same as food stamps.	Eligible *for five years* after entry. Eligible at state option after five years.	Eligible *for seven years* after entry. Eligible at state option after seven years.
— aliens in temporary protected status, in extended voluntary departure (EVD) status, or deferred enforced departure (DED) status.	Ineligible.	Ineligible, unless in receipt of SSI benefits August 22, 1996.	Ineligible.	Eligible only for emergency services.
Nonimmigrants[i]	Ineligible.	Ineligible.	Ineligible.	Eligible only for emergency services.
Unauthorized aliens[j]	Ineligible.	Ineligible.	Ineligible.	Eligible only for emergency services.
Naturalized aliens	Eligible on naturalization.	Eligible on naturalization.	Eligible on naturalization.	Eligible on naturalization.

a. A substantial work history consists of 40 "qualifying quarters" of work (credits) calculated as they would be for Social Security eligibility purposes — including work not covered by Social Security and work credited from parents and spouses, but *not* including work performed after 1996 while receiving federal means-tested benefits like TANF, food stamps, or Medicaid. A qualifying quarter is a 3-month period of full or part-time work with sufficient income to qualify the earner for credit toward eligibility for Social Security benefits. The qualifying quarter income amount is increased annually, and, for 2001, stands at $830; no more than four credit quarters can be earned in any one year. The qualifying quarter test takes into account work by an alien's parent before the alien became 18 (including work before the alien was born/adopted) and by the alien's spouse (provided the alien remains married to the spouse or the spouse is deceased).

b. Eligible military personnel, veterans, and immediate family members *also* must be a legal permanent resident, or an asylee, refugee, Cuban/Haitian entrant, alien whose deportation/removal is being withheld, parolee, or conditional entrant.

c. Includes Amerasians admitted as immigrants who were born in Vietnam during the Vietnam era and fathered by a U.S. citizen — as well as their spouses, children, and certain other immediate family members.

d. Noncitizen "cross-border" American Indians (from Canada or Mexico) are noncitizens who belong to a federally recognized tribe or who were born in Canada and have the right to cross the Canadian-U.S. border unhindered (so-called "Jay Treaty" Indians).

e. Members of a Hmong or Highland Laotian tribe when the tribe assisted U.S. personnel by taking part in military/rescue missions during the Vietnam era — including spouses and unmarried dependent children.
f. Eligible parolees must be paroled for at least one year.
g. Eligibility in abuse cases is limited to aliens who have been abused (subject to battery or extreme cruelty) in the U.S. by a spouse or other family/ household member, aliens whose children have been abused, and alien children whose parent has been abused — where the alien has been approved for, or has pending an application/petition with a prima facie case for, immigration preference as a spouse or child or cancellation of removal. The alien cannot be residing with the individual responsible for the abuse, and the agency providing benefits must determine that there is a substantial connection between the abuse and the need for benefits.
h. Eligible for treatment as refugees under the provisions of Section 107 of the Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386). Eligible victims of trafficking in persons are those subjected to (1) sex trafficking where the act is induced by force, fraud, or coercion, or the person induced to perform the act is under age 18, or (2) involuntary servitude. If age 18 or older, they must be "certified" as willing to assist in the investigation and prosecution of the trafficker(s) and have made an application for a nonimmigrant "T" visa (or be in the U.S. to ensure the effective prosecution of the trafficker(s)).
i. Nonimmigrants are those admitted temporarily for a limited purpose (e.g., students, visitors, or temporary workers).
j. Unauthorized ("illegal") aliens are those in the U.S. in violation of immigration law for whom no legal relief or recognition has been extended.

Appendix B: "Qualified Aliens"

The 1996 welfare law divided noncitizens into two general categories for purposes of benefit eligibility. The least restrictive category is that of *qualified aliens*, a category that, despite its name, is subject to numerous limitations and does not itself indicate eligibility for assistance. Qualified aliens are legal permanent residents, refugees, aliens paroled into the United States for at least 1 year, and aliens granted asylum or related relief. The 1996 immigration law added certain abused spouses and children as another class, and P.L. 105-33 added Cuban-Haitian entrants.

The other, more restrictive category is that of *non-qualified aliens*. It consists of other noncitizens, including unauthorized (illegal) aliens, nonimmigrants (i.e., aliens admitted for a temporary purpose, such as education or employment), short-term parolees, asylum applicants, and various classes of aliens granted temporary permission to remain. Non-qualified aliens generally are ineligible for almost all federal assistance provided directly to households or individuals. Limited exceptions include emergency medical services and disaster relief.

In general, qualified aliens compose the "universe" of potentially eligible noncitizens. As noted below and in the earlier portions of this report, however, these aliens must, in most cases, pass another test to gain eligibility. In addition, some classes of noncitizens who are not specifically listed as qualified aliens (e.g., Hmong/Highland Laotians, Vietnam-born Amerasians fathered by U.S. citizens) are indeed eligible for benefits. Qualified aliens are subject to eligibility restrictions that vary by program (see Appendix A) and may be subject to sponsor-to-alien deeming rules that affect their financial eligibility for aid (noted earlier in this report).

- To gain eligibility for food stamps, qualified aliens must (1) have a substantial work history or military connection, (2) have been resident in the United States as of August 22, 1996, and meet certain age or disability requirements, or (3) be within seven years of entry (e.g., if a refugee/asylee).
- To gain eligibility for SSI, qualified aliens must (1) have a substantial work history or military connection, (2) have been an SSI recipient as of August 22, 1996, (3) have been resident in the United States as of August 22, 1996, and be disabled, or (3) be within seven years of entry (e.g., if a refugee/asylee).
- To gain eligibility for TANF, qualified aliens must (1) have a substantial work history or military connection, (2) be in a state that has chosen to allow eligibility to those resident as of August 22, 1996, and/or new entrants who have been resident five years, or (3) be within five years of entry (e.g., if a refugee/asylee). New entrants are not eligible for five years after entry.
- To gain eligibility for Medicaid, qualified aliens must (1) have a substantial work history or military connection, (2) be in a state that has chosen to allow eligibility to those resident as of August 22, 1996, and/or new entrants who have been resident five years, or (3) be within seven years of entry (e.g., if a refugee or asylee). For Medicaid and SCHIP, new entrants are not eligible for five years after entry. However, for SCHIP, the five-year ban is the only

additional citizenship-related eligibility requirement that must be met by qualified aliens.