



Overview of Immigrant Eligibility for Federal Programs

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The major federal public benefits programs have long excluded some non-U.S. citizens from eligibility for assistance. Programs such as the Supplemental Nutrition Assistance Program (SNAP, formerly known as the Food Stamp Program), nonemergency Medicaid, Supplemental Security Income (SSI), and Temporary Assistance for Needy Families (TANF) and its precursor, Aid to Families with Dependent Children (AFDC), were largely unavailable to undocumented immigrants and people in the United States on temporary visas.

However, the 1996 federal welfare and immigration laws introduced an unprecedented era of restrictionism.¹ Prior to the enactment of these laws, lawful permanent residents of the U.S. generally were eligible for assistance in a manner similar to U.S. citizens. Once the laws were

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

implemented, most lawfully residing immigrants were barred from receiving assistance under the major federal benefits programs for five years or longer.

Even where eligibility for immigrants was preserved by the 1996 laws or restored by subsequent legislation, many immigrant families hesitate to enroll in critical health care, job-training, nutrition, and cash assistance programs due to fear and confusion caused by the laws' complexity and other intimidating factors. As a result, the participation of immigrants in public benefits programs decreased sharply after passage of the 1996 laws, causing severe hardship for many low-income immigrant families who lacked the support available to other low-income families.²

Efforts to address the chilling effects and confusion have continued since that time. The Trump administration's exclusionary policies compounded the problem, making it even more difficult to ensure that eligible immigrants and their family members would secure services.

This article focuses on eligibility and other rules governing immigrants' access to federal public benefits programs. Many states have attempted to fill some of the gaps in noncitizen coverage resulting from the 1996 laws, either by electing federal options to cover more eligible noncitizens or by spending state funds to cover at least some of the immigrants who are ineligible for federally funded services.

In determining an immigrant's eligibility for benefits, it is necessary to understand the federal rules as well as the rules of the state in which an immigrant resides. Updates on federal and state rules are available on NILC's website.³

Immigrant Eligibility Restrictions

Categories of Immigrants: "Qualified" and "Not Qualified"

The 1996 welfare law created two categories of immigrants for benefits eligibility purposes: "qualified" and "not qualified." Contrary to what these names suggest, the law excluded many people in *both* groups from eligibility for many benefits, with a few exceptions. The "qualified" immigrant category includes:

- ▶ lawful permanent residents, or LPRs (people with green cards)
- ▶ refugees, people granted asylum or withholding of deportation/removal, and conditional entrants
- ▶ people granted parole by the U.S. Department of Homeland Security (DHS) for a period of at least one year
- ▶ Cuban and Haitian entrants

² Michael Fix and Jeffrey Passel, *The Scope and Impact of Welfare Reform's Immigrant Provisions* (Discussion Paper No. 02-03) (The Urban Institute, Jan. 2002), www.urban.org/research/publication/scope-and-impact-welfare-reforms-immigrant-provisions.

³ *Guide to Immigrant Eligibility for Federal Programs* update page, www.nilc.org/updatepage/.

- ▶ certain abused immigrants, their children, and/or their parents ⁴
- ▶ certain survivors of trafficking ⁵
- ▶ individuals residing in the U.S. pursuant to a Compact of Free Association (COFA) (for Medicaid purposes only)⁶

All other immigrants, including undocumented immigrants, as well as many people who are lawfully present in the U.S., are considered “not qualified.”⁷

In the years since the initial definition became law, there have been a few expansions of access to benefits. In 2000, Congress established a new category of noncitizens — survivors of trafficking — who are eligible for federal public benefits to the same extent as refugees, regardless of whether they have a qualified immigrant status.⁸ In 2003, Congress clarified that “derivative beneficiaries” listed on trafficking survivors’ visa applications (spouses and children of adult trafficking survivors; spouses, children, parents, and minor siblings of child survivors)

⁴ To be considered a “qualified” immigrant under the battered spouse or child category, the immigrant must have an approved visa petition filed by a spouse or parent, a self-petition under the Violence Against Women Act (VAWA) that has been approved or sets forth a prima facie case for relief, or an approved application for cancellation of removal under VAWA. The spouse or child must have been battered or subjected to extreme cruelty in the U.S. by a family member with whom the immigrant resided, or the immigrant’s parent or child must have been subjected to such treatment. The immigrant must also demonstrate a “substantial connection” between the domestic violence and the need for the benefit being sought. And the battered immigrant, parent, or child must not be living with the abuser. While many people who have U visas have survived domestic violence, they are not considered qualified battered immigrants under this definition.

⁵ Survivors of trafficking and their derivative beneficiaries who obtain a T visa or whose application for a T visa sets forth a prima facie case are considered “qualified” immigrants. This group was added to the definition of “qualified” by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110–457, § 211 (Dec. 23, 2008).

⁶ 8 U.S.C. § 1641(b)(8).

⁷ Throughout the remainder of this article, *qualified* will be understood to have this particular meaning, as will *not-qualified*; they will not be enclosed in quotation marks.

Before 1996, some of these immigrants were served by benefit programs under an eligibility category called “permanently residing in the U.S. under color of law” (PRUCOL). PRUCOL 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 U.S. Department of Homeland Security (DHS) is aware of a person’s presence in the U.S. but has no plans to deport or remove them from the country. A few states, including California and New York, continue to provide services to immigrants meeting this definition, using state or local funds.

⁸ The Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–386, § 107 (Oct. 28, 2000). Federal agencies are required to provide benefits and services to individuals who have been subjected to a “severe form of trafficking in persons” to the same extent as refugees, without regard to their immigration status. To receive these benefits, the survivor must be either under 18 years of age or certified by the U.S. Department of Health and Human Services (HHS) as willing to assist in the investigation and prosecution of severe forms of trafficking in persons. In the certification, HHS confirms that the person either (a) has made a bona fide application for a T visa that has not been denied, or (b) is a person whose continued presence in the U.S. is being ensured by the attorney general in order to prosecute traffickers in persons.

also may secure federal benefits.⁹ By 2009, Iraqis and Afghans granted Special Immigrant visas similarly became eligible for benefits to the same extent as refugees.¹⁰ In 2021, Congress extended the same benefits eligibility to certain Afghans paroled into the U.S.¹¹ And in 2020, Congress declared that, for Medicaid purposes only, citizens of Micronesia, Marshall Islands, and Palau who reside in the U.S. pursuant to a Compact of Free Association (COFA migrants) would be considered “qualified” immigrants.¹²

Federal Public Benefits Generally Denied to “Not Qualified” Immigrants

With some important exceptions detailed below, the law prohibits not-qualified immigrants from enrolling in most “federal public benefit programs.”¹³ Federal public benefits include a variety of safety-net services paid for by federal funds.¹⁴ But the welfare law’s definition does not specify which programs are covered by the term, leaving that clarification to each federal benefit-granting agency. In 1998, the U.S. Department of Health and Human Services (HHS) published a notice clarifying which of its programs fall under the definition.¹⁵ The list of 31 HHS programs includes Medicaid, the Children’s Health Insurance Program (CHIP), Medicare, TANF, Foster Care, Adoption Assistance, the Child Care and Development Fund, and the Low-Income Home Energy Assistance Program. Any new programs must be designated as federal public

⁹ Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108–193, § 4(a)(2) (Dec. 19, 2003).

¹⁰ Iraqis and Afghans granted Special Immigrant visas (SIV) under the Refugee Crisis in Iraq Act of 2007 § 1244(g) (subtitle C of title XII of division A of Public Law 110–181; 122 Stat. 398) or the Afghan Allies Protection Act of 2009 § 602(b)(8) (title VI of division F of Public Law 111– 8; 123 Stat. 809) are eligible for benefits to the same extent as refugees. Department of Defense Appropriations Act, 2010, Pub. L. No. 111–118, § 8120 (Dec. 19, 2009). Afghans granted special immigrant parole (who have applied for SIV) are considered covered under this act and are also eligible for benefits to the same extent as refugees. “Afghan Special Immigrant Parolee and Lawful Permanent Resident Status” (USCIS, Aug. 12, 2021), <https://www.uscis.gov/save/whats-new/afghan-special-immigrant-parolee-and-lawful-permanent-resident-status>.

¹¹ Extending Government Funding and Delivering Emergency Assistance Act, Pub. L. 117–43 (Sept. 30, 2021). Afghans granted humanitarian parole between July 31, 2021, and September 30, 2022 — and their spouses and children, and parents or guardians of unaccompanied children granted parole after September 30, 2022 — also are eligible for federal benefits to the same extent as refugees. Eligibility for this group continues until March 31, 2023, or the end of their parole term, whichever is later.

¹² Consolidated Appropriations Act, 2021, Pub. L. 116–260, § 208(c) (Dec. 27, 2020).

¹³ Welfare law § 401 (8 U.S.C. § 1611).

¹⁴ “Federal public benefit” is described in the 1996 federal welfare law as (a) any grant, contract, loan, professional license, or commercial license provided by an agency of the U.S. or by appropriated funds of the U.S., 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 U.S. or appropriated funds of the U.S.

¹⁵ HHS, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), “Interpretation of ‘Federal Public Benefit,’” 63 Fed. Reg. 41658–61 (Aug. 4, 1998). The HHS notice clarifies that not every benefit or service provided within these programs is a federal public benefit.

benefits in order to trigger the associated eligibility restrictions and, until they are designated as such, should remain open to broader groups of immigrants.

The HHS notice clarifies that not every benefit or service provided within these programs is a federal public benefit. For example, in some cases not all of a program's benefits or services are provided to an individual or household; they may extend, instead, to a community of people — as in the weatherization of an entire apartment building.¹⁶

The welfare law also attempted to force states to pass additional laws, after August 22, 1996, if they choose to provide state public benefits to certain immigrants.¹⁷ Such micromanagement of state affairs by the federal government is potentially unconstitutional under the Tenth Amendment.¹⁸

Exceptions to the Restrictions

The law includes important exceptions for certain types of services. Regardless of their immigration status, not-qualified immigrants are eligible for emergency Medicaid¹⁹ if they are otherwise eligible for their state's Medicaid program.²⁰ The law does not restrict access to public health programs that provide immunizations and/or treatment of communicable disease symptoms (whether or not those symptoms are caused by such a disease). School breakfast and lunch programs remain open to all children regardless of immigration status, and every state has opted to provide access to the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).²¹

Short-term noncash emergency disaster assistance remains available without regard to immigration status. Also exempted from the restrictions are other in-kind services necessary to protect life or safety, as long as no individual or household income qualification is required. In 2001, the U.S. attorney general published a final order specifying the types of benefits that meet these criteria. The attorney general's list includes child and adult protective services; programs

¹⁶ HHS, Division of Energy Assistance, Office of Community Services, 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).

¹⁷ Welfare law § 411 (8 U.S.C. § 1621).

¹⁸ See, e.g., *Matter of Application of Cesar Adrian Vargas for Admission to the Bar of the State of New York* (2015 NY Slip Op 04657; decided on June 3, 2015, Appellate Division, Second Department Per Curiam) (holding that the requirement under 8 U.S.C. § 1621(d) that states must pass legislation in order to opt out of the federal prohibition on issuing professional licenses — in this case, admission to the New York State bar — to undocumented immigrants infringes on New York State's 10th amendment rights).

¹⁹ Emergency Medicaid covers the treatment of an emergency medical condition, which is defined as "a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in: (A) placing the patient's health in serious jeopardy, (B) serious impairment to bodily functions; or (C) serious dysfunction of any bodily organ or part." 42 U.S.C. § 1396b(v).

²⁰ Welfare law § 401(b)(1)(A) (8 U.S.C. § 1611(b)(1)(A)).

²¹ Welfare law § 742 (8 U.S.C. § 1615).

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.²²

Verification Rules

When a federal agency designates a program as a federal public benefit foreclosed to not-qualified immigrants, the law requires the state or local agency to verify the immigration and citizenship status of all program applicants. However, many federal agencies have not specified which of their programs provide federal public benefits. Until they do, state and local agencies that administer the programs are not obligated to verify the immigration status of people who apply for them.

And under an important exception contained in the 1996 immigration law, nonprofit charitable organizations are not required to "determine, verify, or otherwise require proof of eligibility of any applicant for such benefits." This exception relates specifically to the immigrant benefits restrictions in the 1996 welfare and immigration laws.²³

Eligibility for Major Federal Benefit Programs

Congress restricted eligibility even for many qualified immigrants by arbitrarily distinguishing between those who entered the U.S. before or "on or after" the date the law was enacted, August 22, 1996. The law barred most immigrants who entered the U.S. on or after that date from "federal means-tested public benefits" during the five years after they secure qualified immigrant status.²⁴ This waiting period is often referred to as the five-year bar. Federal agencies clarified that the "federal means-tested public benefits" are Medicaid (except for emergency services), CHIP, TANF, SNAP, and SSI.²⁵

TANF, Medicaid, and CHIP

States can receive federal funding for TANF, Medicaid, and CHIP to serve qualified immigrants who have completed the federal five-year bar.²⁶ Refugees, people granted asylum or

²² U.S. Dept. of Justice (DOJ), "Final Specification of Community Programs Necessary for Protection of Life or Safety under Welfare Reform Legislation," A.G. Order No. 2353- 2001, 66 Fed. Reg. 3613-16 (Jan. 16, 2001).

²³ IIRIRA § 508 (8 U.S.C. § 1642(d)).

²⁴ Welfare law § 403 (8 U.S.C. § 1613).

²⁵ HHS, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), "Interpretation of 'Federal Means-Tested Public Benefit,'" 62 Fed. Reg. 45256 (Aug. 26, 1997); U.S. Dept. of Agriculture (USDA), "Federal Means Tested Public Benefits," 63 Fed. Reg. 36653 (July 7, 1998). The CHIP program, created after the passage of the 1996 welfare law, was later designated as a federal means-tested public benefit program. See Health Care Financing Administration, "The Administration's Response to Questions about the State Child Health Insurance Program," Question 19(a) (Sept. 11, 1997).

²⁶ States were also given an option to provide or deny federal TANF and Medicaid to most qualified immigrants who were in the U.S. before Aug. 22, 1996, and to those who enter the U.S. on or after that date, once they have completed the federal five-year bar. Welfare law § 402 (8 U.S.C. § 1612). Only one state,

withholding of deportation/removal, Cuban/Haitian entrants, certain Amerasian immigrants,²⁷ Iraqi and Afghan Special Immigrants, and survivors of trafficking are exempt from the five-year bar, as are qualified immigrants who are veterans or active duty military and their spouses and children. In addition, children who receive federal foster care and COFA migrants are exempt from the five-year bar in the Medicaid program.

Over half of the states have used state funds to provide TANF, Medicaid, and/or CHIP to some or all of the immigrants who are subject to the five-year bar on federally funded services, or to a broader group of immigrants.²⁸ Several states or counties provide health coverage to children or pregnant persons regardless of their immigration status.

In 2009, when Congress first reauthorized the CHIP program, states were granted an option to provide federally funded Medicaid and CHIP to "lawfully residing" children and/or pregnant persons regardless of their date of entry into the U.S.²⁹ Thirty-five states plus the District of Columbia (as of July 2021) have opted to take advantage of this federal funding for immigrant health care coverage,³⁰ which became available on April 1, 2009.

Seventeen states plus the District of Columbia use federal funds to provide prenatal care regardless of immigration status, under the CHIP program's option enabling states to enroll fetuses in CHIP. Thus the pregnant person's fetus is technically the recipient of CHIP-funded services. This approach potentially limits the scope of services available to the pregnant person to those directly related to the fetus's health.

Wyoming, denies Medicaid to immigrants who were in the country when the welfare law passed. Colorado's proposed termination of Medicaid to these immigrants was reversed by the state legislature in 2005 and never took effect. In addition to Wyoming, six states (Mississippi, Montana, North Dakota, South Carolina, South Dakota, and Texas) require lawful permanent residents who complete the five-year bar to have credit for 40 quarters of work history in the U.S. in order to qualify for Medicaid. South Carolina and Texas, however, provide health coverage to lawfully residing children, while South Carolina and Wyoming cover lawfully residing pregnant persons regardless of their date of entry into the U.S. Five states (Indiana, Mississippi, Ohio, South Carolina, and Texas) fail to provide TANF to all qualified immigrants who complete the federal five-year waiting period. For more detail, see NILC's "Table: Overview of Immigrant eligibility for Federal Programs," endnotes 5-7, at www.nilc.org/table_ovrw_fedprogs/.

²⁷ For purposes of the exemptions described in this article, the term *Amerasians* applies only to individuals granted lawful permanent residence under a special statute enacted in 1988 for Vietnamese Amerasians. See § 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in § 101(c) of Public Law 100-202 and amended by the 9th proviso under Migration and Refugee Assistance in Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, Public Law 100-461, as amended).

²⁸ See *Guide to Immigrant Eligibility for Federal Programs*, 4th ed. (National Immigration Law Center, 2002), and updated tables at www.nilc.org/updatepage/.

²⁹ Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (H.R.2), Public Law 111-3 (Feb. 4, 2009).

³⁰ Postpartum care is not covered by these federal funds unless a state normally pays for this care as part of a bundled payment or global fee method. HHS Letter to State Health Officials (Nov. 12, 2002). See also *Medical Assistance Programs for Immigrants in Various States* (National Immigration Law Center, July 2021), www.nilc.org/medical-assistance-various-states/.

The District of Columbia, New Jersey, and New York provide prenatal care to women regardless of immigration status, using state or local funds.

Although the federal health care reform law, known as the Affordable Care Act (ACA),³¹ did not alter immigrant eligibility for Medicaid or CHIP, it provided new pathways for lawfully present immigrants to obtain health insurance. Coverage purchased in the ACA's health insurance marketplaces is available to lawfully present noncitizens whose immigration status makes them ineligible for Medicaid.³²

SNAP

Although the 1996 law severely restricted immigrant eligibility for the Supplemental Nutrition Assistance Program (SNAP, formerly known as the Food Stamp Program), subsequent legislation restored access for many immigrants. Qualified immigrant children, refugees, people granted asylum or withholding of deportation/removal, Cuban/Haitian entrants, certain Amerasian immigrants, Iraqi and Afghan Special Immigrants, survivors of trafficking, qualified immigrant veterans, active duty military and their spouses and children, lawful permanent residents with credit for 40 quarters of work history, certain Native Americans, lawfully residing Hmong and Laotian tribe members, and immigrants receiving disability-related assistance are eligible regardless of their date of entry into the U.S.³³ Qualified immigrant seniors who were born before August 22, 1931, may be eligible if they were lawfully residing in the U.S. on August 22, 1996. Other qualified immigrant adults, however, must wait until they have been in qualified status for five years before they can secure critical nutrition assistance.

Six states — California, Connecticut, Illinois, Maine, Minnesota, and Washington — provide state-funded nutrition assistance to some or all of the immigrants who were rendered ineligible for the federal SNAP program.³⁴

SSI

Congress imposed its harshest restrictions on immigrant seniors and immigrants with disabilities who seek assistance under the SSI program.³⁵ Although advocacy efforts in the two years following the welfare law's passage achieved a partial restoration of these benefits, significant gaps in eligibility remain. For example, SSI continues to exclude not-qualified immigrants who were not already receiving the benefits, as well as most qualified immigrants

³¹ Pub. Law No. 111-148, as amended by the Health Care and Education Act of 2010, Pub. Law No. 111-152. For more information about immigrant eligibility for coverage under the Affordable Care Act, see *Immigrants and the Affordable Care Act (ACA)* (NILC, Jan. 2014), www.nilc.org/immigrantsshr/.

³² For more information on the ACA, see NILC's fact sheets at www.nilc.org/acafacts/.

³³ For the purpose of "immigrants receiving disability-related assistance," disability-related programs 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 for SSI.

³⁴ See NILC's updated tables on state-funded services at www.nilc.org/updatepage/.

³⁵ Welfare law § 402(a) (8 U.S.C. § 1612(a)).

who entered the country after the welfare law passed and seniors without disabilities who were in the U.S. before that date.³⁶

“Humanitarian” immigrants (including refugees, people granted asylum or withholding of deportation/removal, Amerasian immigrants, Cuban and Haitian entrants, Iraqi and Afghan Special Immigrants, and survivors of trafficking) can receive SSI, but only during the first seven years after having obtained the relevant status. The main rationale for the seven-year time limit was that it was intended to provide a sufficient opportunity for humanitarian immigrant seniors and those with disabilities to naturalize and retain their eligibility for SSI as U.S. citizens. However, a combination of factors, including immigration backlogs, processing delays, former statutory caps on the number of asylees who can adjust their immigration status, language barriers, and other obstacles, made it impossible for many of these individuals to naturalize within seven years. Although Congress enacted an extension of eligibility for refugees who faced a loss of benefits due to the seven-year time limit in 2008, that extension expired in 2011.³⁷ Subsequent attempts to reauthorize the extension were unsuccessful, and the termination from SSI of thousands of seniors and people with disabilities continues.

Five states — California, Hawaii, Illinois, Maine, and New Hampshire — provide cash assistance to certain immigrant seniors and people with disabilities who were rendered ineligible for SSI; some others provide much smaller general assistance grants to these immigrants.

The Impact of Sponsorship on Eligibility

Under the 1996 welfare and immigration laws, family members and some employers eligible to file a petition to help a person immigrate must become financial sponsors of the immigrant by signing a contract with the government (an affidavit of support). Under the enforceable affidavit (Form I-864), the sponsor promises to support the immigrant and to repay certain benefits that the immigrant may use.

Congress imposed additional eligibility restrictions on immigrants whose sponsors sign an enforceable affidavit of support. When an agency is determining a lawful permanent resident's financial eligibility for TANF, SNAP, SSI, nonemergency Medicaid, or CHIP,³⁸ in some cases the law requires the agency to “deem” the income of the immigrant's sponsor or the sponsor's spouse as available to the immigrant. The sponsor's income and resources are added to the immigrant's, which often disqualifies the immigrant as over-income for the program. The 1996 laws imposed deeming rules in certain programs until the immigrant becomes a citizen or secures credit for 40 quarters (approximately 10 years) of work history in the U.S.

Domestic violence survivors and immigrants who would go hungry or homeless without assistance (“indigent” immigrants) are exempt from sponsor deeming for at least 12 months.³⁹

³⁶ Most new entrants cannot receive SSI until they become citizens or secure credit for 40 quarters of work history (including work performed by a spouse during marriage, persons “holding out to the community” as spouses, and by parents before the immigrant was 18 years old).

³⁷ The SSI Extension for Elderly and Disabled Refugees Act, Pub. Law. 110-328 (Sept. 30, 2008).

³⁸ Welfare law § 421 (8 U.S.C. § 1631).

³⁹ IIRIRA § 552 (8 U.S.C. § 1631(e) and (f)).

Some programs apply additional exemptions from the sponsor-deeming rules.⁴⁰ The U.S. Department of Agriculture (USDA) has issued helpful guidance on the indigence exemption and other deeming and liability issues.⁴¹

Beyond Eligibility: Overview of Barriers That Impede Access to Benefits for Immigrants

Confusion about Eligibility

Confusion about eligibility rules pervades benefit agencies and immigrant communities. The confusion stems from the complex interaction of the immigration and welfare laws, differences in eligibility criteria for various state and federal programs, and a lack of adequate training on the rules as clarified by federal agencies. Consequently, many eligible immigrants have assumed that they should not seek services, and eligibility workers have turned away eligible immigrants mistakenly.

Fear of Being Considered a Public Charge

The immigration laws allow officials to deny an application for lawful permanent residence or to deny a noncitizen entry into the U.S. if the authorities determine that the person is “likely to become a public charge.”⁴² In deciding whether an immigrant is likely to become a public charge, immigration or consular officials review the “totality of the circumstances,” including the person’s health, age, income, education and skills, employment, family circumstances, and, most importantly, the affidavits of support.

The misapplication of this public charge ground of inadmissibility immediately after the welfare law passed contributed significantly to the chilling effect on immigrants’ access to services. The law on public charge did not change in 1996, and use of programs such as Medicaid or SNAP had never weighed heavily in determining whether individuals were inadmissible under the public charge ground.

⁴⁰ Children, for example, are exempt from deeming in the Supplemental Nutrition Assistance Program. In states that choose to provide Medicaid and CHIP to lawfully residing children and pregnant persons, regardless of their date of entry, deeming and other sponsor-related barriers do not apply to these groups.

⁴¹ 7 C.F.R. § 274.3(c). See also *Supplemental Nutrition Assistance Program: Guidance on Non-Citizen Eligibility* (USDA, June 2011), <https://fns-prod.azureedge.net/snap/eligibility/non-citizen-eligibility>. See also *Deeming of Sponsor’s Income and Resources to a Non-Citizen* (HHS, TANF-ACF-PI-2003-03, Apr. 17, 2003), <https://www.acf.hhs.gov/ofa/policy-guidance/tanf-acf-pi-2003-03-deeming-sponsors-income-and-resources-non-citizen>. Federal agencies (HHS and USDA) posted additional guidance pursuant to the Trump administration’s May 23, 2019, memorandum on enforcing the responsibilities of sponsors. President Biden rescinded this memorandum on February 2, 2021, directing agencies to review all actions taken in accordance with the Trump memorandum.

⁴² INA § 212(a)(4).

Confusion and fear about these rules, however, became widespread.⁴³ Immigrants' rights advocates, health care providers, and state and local governments organized to persuade federal agencies to clarify the limits of the rules. In 1999, the Immigration and Naturalization Service (INS, whose functions were later assumed by the Department of Homeland Security, or DHS) issued helpful guidance and a proposed regulation on the public charge doctrine.⁴⁴ The guidance clarifies that receipt of health care and other noncash benefits will not jeopardize the immigration status of recipients or their family members by putting them at risk of being considered a public charge.⁴⁵

The Trump administration attempted to alter these rules dramatically by issuing rules that would make it much more difficult for low- and middle-income families to immigrate, and that profoundly exacerbated the chilling effect on access to services. Multiple courts found that the rules were likely unlawful. The Biden administration dismissed the appeals of these decisions, allowed an order vacating the DHS rule to take effect, and formally withdrew the prior administration's DHS public charge rule. It has announced its intention to promulgate new public charge rules. In the meantime, the principles articulated in the 1999 Field Guidance govern public charge decisions.

Particularly given these developments, widespread confusion and concern about the public charge rules remain, deterring many eligible immigrants from seeking critical services.⁴⁶

Requirement of Affidavits of Support

The 1996 laws enacted rules that make it more difficult to immigrate to the U.S. to reunite with family members. Effective December 19, 1997, relatives (and some employers) who sponsor an immigrant have been required to meet strict income requirements and to sign a long-term contract, or affidavit of support (USCIS Form I-864), promising to maintain the immigrant at 125

⁴³ Claudia Schlosberg and Dinah Wiley, *The Impact of INS Public Charge Determinations on Immigrant Access to Health Care* (National Health Law Program and NILC, May 22, 1998), <https://www.montanaprobono.net/geo/search/download.67362>.

⁴⁴ DOJ, "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds," 64 Fed. Reg. 28689–93 (May 26, 1999); see also DOJ, "Inadmissibility and Deportability on Public Charge Grounds," 64 Fed. Reg. 28676–88 (May 26, 1999); U.S. Dept. of State, INA 212(A)(4) Public Charge: Policy Guidance, 9 FAM 40.41.

⁴⁵ The use of all health care programs, except for long-term institutionalization (e.g., Medicaid payment for nursing home care), was declared to be irrelevant to public charge determinations. Programs providing cash assistance for income maintenance purposes are the only other programs that are relevant in the public charge determination. The determination is based on the "totality of a person's circumstances," and therefore even the past use of cash assistance can be weighed against other favorable factors, such as a person's current income or skills or the contract signed by a sponsor promising to support the intending immigrant.

⁴⁶ See, e.g., *Research Documents Harm of Public Charge Policy During the COVID-19 Pandemic* (Protecting Immigrant Families, Apr. 2021), <https://protectingimmigrantfamilies.org/wp-content/uploads/2021/04/PIF-Documenting-Harm-Fact-Sheet-2.pdf>.

percent of the federal poverty level and to repay any means-tested public benefits the immigrant may receive.⁴⁷

The specific federal benefits for which sponsors may be liable have been defined to be TANF, SSI, SNAP, nonemergency Medicaid, and CHIP. Regulations about the affidavits of support issued in 2006 make clear that states are not obligated to seek reimbursement from sponsors and that states cannot collect reimbursement for services used prior to issuance of public notification that the services are considered means-tested public benefits for which sponsors will be liable.⁴⁸

Most states have not designated which programs would give rise to sponsor liability, and, for various reasons, agencies generally have not attempted to seek reimbursement from sponsors. However, the specter of making their sponsors liable financially has deterred eligible immigrants from applying for critical services.

Language Access

Many immigrants face significant linguistic and cultural barriers to obtaining benefits. As of 2019, approximately 22 percent of the U.S. population (5 years of age and older) spoke a language other than English at home.⁴⁹ Although 97 percent of long-term immigrants to the U.S. eventually learn to speak English well,⁵⁰ many are in the process of learning the language, and around 8.2 percent of people living in the U.S. speak English less than very well.⁵¹ These limited-English proficient (LEP) residents cannot effectively apply for benefits or meaningfully communicate with a health care provider without language assistance.

Title VI of the Civil Rights Act of 1964 and its implementing regulations prohibit recipients of federal funding from discriminating on the basis of national origin, which has been interpreted to prohibit discrimination based on language. Benefit agencies, health care providers, and other entities that receive federal financial assistance are required to take “reasonable steps” to assure that people who are LEP have “meaningful access” to federally funded programs, but compliance with this law varies widely, and language access remains a challenge.⁵²

⁴⁷ Welfare law § 423, amended by IIRIRA § 551 (8 U.S.C. § 1183a).

⁴⁸ U.S. Dept. of Homeland Security, “Affidavits of Support on Behalf of Immigrants,” 71 Fed. Reg. 35732, 35742–43 (June 21, 2006). On May 23, 2019, the Trump administration issued a memorandum on enforcing the responsibilities of sponsors. President Biden rescinded the memorandum through an executive order issued on February 2, 2021, directing agencies to review all actions taken in accordance with the Trump memorandum.

⁴⁹ Selected Social Characteristics in the United States (American Communities Survey table, 2019).

⁵⁰ James P. Smith and Barry Edmonston, eds., *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration* (Washington, DC: National Academy Press, 1997), www.nap.edu/catalog.php?record_id=5779#toc, p. 377.

⁵¹ American Community Survey, *supra* note 50.

⁵² See the federal interagency language access website, www.lep.gov, for a variety of materials, including guidance from the U.S. Dept. of Justice and federal benefit agencies.

Section 1557 of the Affordable Care Act prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in health programs or activities that receive federal funding or are administered by an executive agency or any entity established under Title I of the ACA, which created the health insurance marketplaces such as HealthCare.gov.⁵³

Regulations finalized in 2020 rolled back aspects of section 1557's implementation, as provided in 2016 regulations, including narrowing the scope of its coverage and some specific provisions related to language access. The Biden administration has indicated that it will propose new regulations in the spring of 2022.⁵⁴

Verification

Rules that require benefit agencies to verify applicants' immigration or citizenship status have been misinterpreted by some agencies, leading some to demand immigration documents or Social Security numbers (SSNs) in situations when applicants are not required to submit such information.

In 1997, the U.S. Department of Justice (DOJ), the department primarily responsible for implementing and enforcing immigration laws prior to the creation of DHS in 2002, issued interim guidance for federal benefit providers to use in verifying immigration status.⁵⁵ The guidance, which remains in effect, directs benefit agencies already using the Systematic Alien Verification for Entitlements (SAVE) process to continue to do so.⁵⁶ Previously, the use of SAVE in the SNAP program was an option that could be exercised by each state, but the 2014 Farm Bill mandated that SAVE be used in SNAP nationwide.⁵⁷

However, important protections for immigrants who are subject to verification remain in place. Applicants for major benefits are guaranteed a "reasonable opportunity" to provide requested

⁵³ 42 U.S.C. § 18116.

⁵⁴ Uniform Regulatory Agenda, (Office of Management and the Budget, Spring 2021).
<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=0945-AA17>.

⁵⁵ DOJ, "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 Aug. 1998, the agency issued proposed regulations that draw heavily on the interim guidance and the Systematic Alien Verification for Entitlements (SAVE) program. See DOJ, "Verification of Eligibility for Public Benefits," 63 Fed. Reg. 41662-86 (Aug. 4, 1998). Final regulations have not yet been issued. Once the regulations become final, states will have two years to implement a conforming system for the federal programs they administer.

⁵⁶ SAVE is used to help state benefits agencies verify eligibility for several major benefits programs. See 42 U.S.C. § 1320b-7. DHS verifies an applicant's immigration status by tapping numerous databases and/or through a manual search of its records. This information is used only to verify eligibility for benefits and may not be used for civil immigration enforcement purposes. See the Immigration Reform and Control Act of 1986, 99 Pub. L. 603, § 121 (Nov. 6, 1986); DOJ, "Verification of Eligibility for Public Benefits," 63 Fed. Reg. 41662, 41672, and 41684 (Aug. 4, 1998). See also *The Systematic Alien Verification for Entitlements (SAVE) Program: A Fact Sheet* (American Immigration Council, Dec. 15, 2011), <https://www.americanimmigrationcouncil.org/research/systematic-alien-verification-entitlements-save-program-fact-sheet>.

⁵⁷ 113 Pub. L. 79, § 4015 (Feb. 7, 2014).

immigration documents, including, in some cases, receipts confirming that the person has applied for replacement of lost documents. In the federal programs that are required by law to use SAVE, applicants who declare that they have a satisfactory status and who provide documents within the reasonable opportunity period should remain eligible for assistance while verification of their status is pending. And information submitted to the SAVE system may not be used for civil immigration enforcement purposes.

The 1997 guidance recommends that agencies make decisions about financial and other eligibility factors before asking an applicant for information about their immigration status.

Questions on Application Forms

Federal agencies have worked to reduce the chilling effect of immigration status-related questions on benefit applications. In 2000, HHS and USDA issued a “Tri-Agency Guidance” document, recommending that states delete from benefit applications questions that are unnecessary and that may chill participation by immigrant families.⁵⁸ The guidance confirms that only the immigration status of the applicant for benefits is relevant. It encourages states to allow family or household members who are not seeking benefits to be designated as nonapplicants early in the application process. Similarly, under Medicaid, TANF, and SNAP, only the applicant must provide a Social Security number. In 2011, the USDA issued a memo instructing states to apply these principles in their online application procedures.⁵⁹

SSNs are not required for people seeking only emergency Medicaid.⁶⁰

In 2001, HHS said that states providing CHIP through separate programs (rather than through Medicaid expansions) are authorized, but not obligated, to require SSNs on their CHIP applications.⁶¹

Reporting to the Department of Homeland Security

Another common source of fear in immigrant communities stems from a 1996 provision that requires benefits-administering agencies to report to DHS people who the agencies *know* are

⁵⁸ Letter and accompanying materials from HHS and USDA to State Health and Welfare Officials: “Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children’s Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits” (Sept. 21, 2000).

⁵⁹ *Conforming to the Tri-Agency Guidance through Online Applications* (USDA, Feb. 2011), www.fns.usda.gov/sites/default/files/Tri-Agency_Guidance_Memo-021811.pdf.

⁶⁰ The Medicaid rules also require that agencies assist eligible applicants in obtaining an SSN, may not delay or deny benefits pending issuance of the SSN, and provide exceptions for individuals who are ineligible for an SSN or who have well-established religious objections to obtaining one. 42 C.F.R. § 435.910(e), (f), and (h).

⁶¹ HHS, Health Care Financing Administration, Interim Final Rule, “Revisions to the Regulations Implementing the State Children’s Health Insurance Program,” 66 Fed. Reg. 33810, 33823 (June 25, 2001). The proposed rule on Medicaid and CHIP eligibility under the Affordable Care Act of 2010 codifies the Tri-Agency Guidance, restricting the information that may be required from nonapplicants, but proposes to make SSNs mandatory for CHIP applicants. 76 Fed. Reg. 51148, 51191-2, 51197 (Aug. 17, 2011).

not lawfully present in the U.S. This requirement is, in fact, quite narrow in scope.⁶² It applies only to three programs: SSI, certain federal housing programs, and TANF.⁶³

In 2000, federal agencies outlined the limited circumstances under which the reporting requirement is triggered.⁶⁴ Only people who are actually seeking benefits (not relatives or household members applying on their behalf) are subject to the reporting requirement. Agencies are not required to report such applicants unless there has been a formal determination, subject to administrative review, on a claim for SSI, public housing, or TANF. The conclusion that the person is unlawfully present also must be supported by a determination by the immigration authorities, "such as a Final Order of Deportation."⁶⁵ Findings that do not meet these criteria (e.g., a DHS response to a SAVE computer inquiry indicating an immigrant's status, an oral or written admission by an applicant, or suspicions of agency workers) are insufficient to trigger the reporting requirement. Agencies are not required to submit reports to DHS unless they have knowledge that meets the above requirements. Finally, the guidance stresses that agencies are not required to make immigration status determinations that are not necessary to confirm eligibility for benefits.

There is no federal reporting requirement in health programs. To address the concerns of eligible citizens and immigrants in mixed-immigration status households, the DHS issued a memo in 2013 confirming that information submitted by applicants or family members seeking Medicaid, CHIP, or health care coverage under the Affordable Care Act would not be used for civil immigration enforcement purposes.⁶⁶

Looking Ahead

The 1996 welfare law produced sharp decreases in public benefits participation by immigrants. Proponents of welfare "reform" saw that fact as evidence of the law's success, noting that a reduction of welfare use, particularly among immigrants, was precisely what the legislation intended. The wisdom of these restrictions increasingly has been called into question, including the unfairness of excluding immigrants from programs that are supported by their taxes.

⁶² Welfare law § 404, amended by BBA §§ 5564 and 5581(a) (42 U.S.C. §§ 608(g), 611a, 1383(e), 1437y).

⁶³ *Id.* See also H.R. Rep. 104-725, 104th Cong. 2d Sess. 382 (July 30, 1996). The Food Stamp Program (now called the Supplemental Nutrition Assistance Program, or SNAP) had a reporting requirement that preexisted the 1996 law.

⁶⁴ Social Security Administration, HHS, U.S. Dept. of Labor, U.S. Dept. of Housing and Urban Development, and DOJ – Immigration and Naturalization Service, "Responsibility of Certain Entities to Notify the Immigration and Naturalization Service of Any Alien Who the Entity 'Knows' Is Not Lawfully Present in the United States," 65 Fed. Reg. 58301 (Sep. 28, 2000). USDA similarly has clarified that "State agencies must conform to the reporting requirements of the Interagency Notice." See *Supplemental Nutrition Assistance Program: Guidance on Non-Citizen Eligibility* (USDA, June 2011), <https://fns-prod.azureedge.net/snap/eligibility/non-citizen-eligibility>, pp. 48-52. See also 7 C.F.R. § 273.4(b)(1).

⁶⁵ *Id.*

⁶⁶ *Clarification of Existing Practices Related to Certain Health Care Information* (DHS, Oct. 25, 2013), www.ice.gov/doclib/ero-outreach/pdf/ice-aca-memo.pdf.

During the COVID-19 pandemic, many states and localities recognized that they could not protect the health and safety of their residents unless everyone in the community had access to health care, safe working conditions, and economic support. Numerous jurisdictions offered short-term disaster assistance, stimulus payments, or other relief to individuals who were excluded from federal economic impact payments and unemployment insurance programs. Some offered tax credits or basic income to a subset of residents regardless of their immigration status.

These efforts, while helpful, were not sufficient to meet the need or to address the longstanding racial disparities in access to care, support, and opportunities. Understanding that our lives, health, and economic security are interconnected, policymakers are exploring new strategies for ensuring that all community members can thrive.