United States Department of Agriculture

Food and Nutrition Service

Food Stamp Program

Eligibility Determination Guidance

Non-Citizen Requirements in the Food Stamp Program

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ABOUT THIS GUIDANCE

INTRODUCTION

For over 30 years, the Food Stamp Program has served as the nation's nutrition safety net providing food to low-income families and individuals for a healthy diet. Unlike many other assistance programs, the Food Stamp Program is not restricted to certain groups of individuals, such as the elderly, families with children, or the disabled – it is available to nearly everyone with limited income and resources. Legal immigrants, however, do not have full access to the program regardless of their financial situation.

Prior to the 1996 welfare reforms under the Personal Responsibility and Work Opportunity Reconciliation Act, most legal immigrants who had settled in the United States were eligible for food stamps just like citizens. With the 1996 welfare reforms, most legal immigrants lost eligibility even if they had been in the country when the law was passed on August 22, 1996. In 1998, Congress began restoring food stamp eligibility to legal immigrants who were in the United States before August 22, 1996 and were elderly, are children, or are disabled. With the enactment of the 2002 Farm Bill, major groups of legal immigrants will again be eligible for food stamps including legal immigrants arriving in the United States after 1996. In October 2002, eligibility was restored to all legal immigrants receiving disability benefits. In April 2003, qualified aliens who have lived in the country for five years regain eligibility and in October 2003, eligibility is restored to all qualified children without a waiting period.

Throughout deliberations on the 2002 Farm Bill, President George W. Bush, with support from State officials and immigrant advocacy groups throughout the country, made restoration of eligibility to legal immigrants after a five-year waiting period a top priority in the reauthorization of the Food Stamp Program. In remarks made at Ellis Island in July 2001, President Bush said, "Immigration is not a problem to be solved. It is a sign of a confident and successful nation. And people who seek to make America their home…should be greeted not with suspicion and resentment, but with openness and courtesy." The Congress adopted President Bush's proposal – a change that makes food stamp eligibility consistent with other major Federal assistance programs such as Temporary Assistance for Needy Families, Medicaid, and the State Children's Health Insurance Program.

When the Farm Bill restorations are fully phased in, some 400,000 legal immigrants from working-poor families, their children, the elderly and the disabled will once again have access to nutrition assistance through the Food Stamp Program.

PURPOSE

The laws governing non-citizen eligibility have become extremely complex since the 1996 Welfare Reform law was enacted. In addition, frequent changes in the law make it difficult for State agencies that administer the program to keep up with the numerous requirements and for legal immigrants themselves to understand when they are eligible to receive benefits.

Many of the legal immigrants who are now eligible for food stamps are not participating in the program. In 2000, the most current year data are available, less than 45 percent of eligible legal immigrants and only 38 percent of citizen children living with non-citizen adults participated in the program as compared to 59 percent for the population overall. Some immigrants may not understand they are eligible for food stamps, they may mistakenly believe receipt of benefits will affect their immigration status or subject them to deportation, or they may fear an undocumented household member will be reported to the Immigration and Naturalization Service.

This guidance is intended to provide basic information about the non-citizen requirements in the Food Stamp Program. It attempts to answer three questions: 1) which immigrants are eligible for food stamps; 2) when are they eligible; and 3) how is eligibility and allotment amount determined for households with immigrants. While it is expected that the main users of this guidance will be State agencies, it may also be helpful for lawmakers, research groups, and advocacy groups involved with immigrant issues.

WHAT THIS GUIDANCE CONTAINS

FOOD STAMP PROGRAM

NON-CITIZEN ELIGIBILITY REQUIREMENTS

SECTION I – GENERAL ELIGIBILITY

NOTE: Throughout this document, we use the term "immigrant" as a catch all term for all non-citizens rather than the more accurate term "alien".

Background

Prior to the Welfare Reform legislation of 1996, most legal immigrants were eligible for food stamps on the same basis as citizens. With the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (P.L. 104-193), most legal immigrants lost eligibility for food stamps. Since that time, food stamp eligibility has been restored to certain groups of immigrants.

Under what circumstances is an immigrant eligible for food stamps?

In general, most immigrants must meet two requirements to be eligible for food stamps *in addition* to other program requirements such as limits on income and resources. They must:

- ✓ be in a **qualified alien** category; and
- ✓ meet a condition that allows qualified aliens to get food stamps.

Who is a qualified alien?

A qualified alien means an alien who at the time the alien applies for or receives food stamps is in one of the following categories as determined by the Immigration and Naturalization Service (INS) of the U.S. Department of Justice (DOJ):

- ✓ Lawfully admitted for permanent residence (LPR) in the United States (holders of green cards). This category also includes "Amerasian immigrants" as defined under section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1988;
- ✓ Granted asylum under section 208 of the Immigration and Nationality Act (INA);
- ✓ Refugee admitted to the United States under section 207 of the INA;
- ✓ Paroled into the United States under section 212(d)(5) of the INA for at least 1 year;
- ✓ Deportation is being withheld under section 243(h) of the INA as in effect before 4/1/97, or removal is withheld under section 241(b)(3) of the INA;
- ✓ Granted conditional entry under section 203(a)(7) of the INA as in effect before 4/1/80;
- ✓ Cuban or Haitian entrant under section 501(e) of the Refugee Education Assistance Act of 1980; or

- ✓ Under certain circumstances, a battered immigrant spouse, battered immigrant child, immigrant parent of a battered child or an immigrant child of a battered parent with a petition pending under 204(a)(1)(A) or (B) or 244(a)(3) of the INA.

Under what conditions is a qualified alien eligible for food stamps?

To receive food stamps, **qualified aliens** must also meet **ONE** of the following conditions and are either eligible indefinitely or limited to a maximum of seven years.

- The following categories are eligible for food stamps indefinitely:

  - ✓ An LPR who can be credited with 40 qualifying quarters of work under the Social Security system (credits may be earned individually, in combination with a spouse and in some circumstances a parent);
  - ✓ An elderly individual who was born on or before August 22, 1931 and who was lawfully residing in the United States on August 22, 1996;
  - ✓ Children under 18 years of age who were lawfully residing in the United States on August 22, 1996; (**Beginning on October 1, 2003, qualified aliens under 18 years of age are eligible regardless of when they entered the United States.)**
  - ✓ Blind or disabled individuals receiving benefits or assistance for their condition as defined under section 3(r) of the Food Stamp Act regardless of when they entered the United States;
  - ✓ Beginning on April 1, 2003, an individual who has lived in the United States as a qualified alien for five years from the date of entry; or
  - ✓ An individual who is lawfully residing in a State and is on active duty (other than for training) in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard (but not full-time National Guard) or is an honorably discharged veteran whose discharge is not because of alien status. This category includes the spouse (or surviving spouse who has not remarried) or unmarried dependent children of these individuals. A discharge "Under Honorable Conditions" does not meet this requirement.

- The following qualified aliens are eligible to receive food stamps during the first seven years they are admitted or granted status in one of the following categories. **NOTE: If these individuals meet one of the other conditions above, they are eligible indefinitely. For example, effective April 1, 2003, these qualified aliens are eligible indefinitely once they have met the five-year requirement.**

  - ✓ Refugee admitted under section 207 of the INA (including immigrants who have been certified by the U.S. Department of Health and Human Services to be victims of a severe form of trafficking in persons in accordance with the Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386);
  - ✓ Asylee granted asylum under section 208 of the INA;

- ✓ Deportation withheld under section 243(h) or removal withheld under section 241(b)(3) of the INA;
- ✓ Cuban or Haitian entrant under section 501(e) of the Refugee Education Assistance Act of 1980; or
- ✓ Amerasian immigrant under section section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1988.

Which categories of aliens are exempt from the non-citizen limitation?

The following categories of non-citizens are eligible for food stamps on the same basis as citizens (i.e., they do not have to be qualified aliens):

- ✓ Naturalized citizens. (Technically, these individuals are not considered aliens since they have the same status as citizens.)
- ✓ American Indians born in Canada living in the United States under section 289 of the INA or non-citizen members of a Federally-recognized Indian tribe under section 4(e) of the Indian Self-Determination and Education Assistance Act. This provision is intended to cover Native Americans who are entitled to cross the United States border into Canada or Mexico. It includes, among others, the St. Regis Band of the Mohawk in New York, the Micmac in Maine, the Abenake in Vermont, and the Kickapoo in Texas.
- ✓ An individual lawfully residing in the United States who was a member of a Hmong or Highland Laotian tribe that rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (August 5, 1964 – May 7, 1975). This category includes the spouse (or unremarried surviving spouse) or unmarried dependent children of these individuals.

Which categories of aliens are ineligible for food stamps?

Individuals are prohibited from receiving food stamps under any circumstances if they are:

- ✓ lawfully residing in the United States in a non-qualified status and are not exempt from the immigrant restrictions (such as students or qualified aliens who have not been in status for five years); or
- ✓ undocumented immigrants (such as individuals who entered the country as temporary residents and overstayed their visas or who entered without a visa).

Who determines if an immigrant is in a qualified status?

The INS has sole responsibility for determining the status of immigrants.

When does the 7-year count begin for refugees, asylees, and deportees?

For refugees, it is the date they entered the United States since refugee status is usually granted in another country. For asylees, it is the date asylum was granted, and for deportees, it is the date deportation or removal was withheld.

ELIGIBILITY BASED ON RECEIPT OF DISABILITY

How did the 2002 Farm Bill change eligibility for food stamps based on disability?

Beginning in October 2002, food stamp eligibility was restored to all qualified aliens who are receiving disability-related assistance or benefits (as defined in the Food Stamp Act) regardless of when they entered the United States. Prior to that time, these individuals were only eligible if they were lawfully residing in the United States on August 22, 1996. The 2002 Farm Bill simply removed the requirement that qualified aliens had to be lawfully in the country on August 22, 1996; it did not change the definition of who is considered disabled.

Who is considered disabled for food stamp purposes?

Persons are considered disabled for food stamp purposes if they are receiving or certified to receive Supplemental Security Income (SSI), interim assistance pending SSI, Social Security disability, Federal or State disability retirement benefits for a permanent disability, veteran's disability benefits, or railroad retirement disability. In addition, persons receiving disability-related Medicaid, State or Federal supplemental assistance, and disability-related State General Assistance benefits may be considered disabled for food stamp purposes if they are determined disabled using criteria as stringent as Federal SSI criteria. (A specific definition of disability is defined at section 3(r)(2) through (7) of the Food Stamp Act.)

Is an elderly person over 60 years old considered disabled?

No. An elderly person is not considered disabled unless that individual is receiving a type of disability-related assistance described above.

Do State general assistance or medical programs that use a medical practitioner's statement in order to determine that the immigrant meets the SSI disability criteria meet the disability criteria under the food stamp definition?

Yes. So long as the programs meet the SSI disability criteria, the State agency may base its determination on a medical practitioner's statement.

Is an individual considered disabled if that individual receives disability benefits under a State Medicaid or SSI replacement program that is solely State funded?

Yes. An individual receiving medical assistance under a State-funded Medicaid or SSI replacement program would be considered disabled so long as these programs are equivalent to the State's disability-based general assistance programs that meet the Federal SSI disability or blindness criteria.

ELIGIBILITY FOR QUALIFIED ALIEN CHILDREN

How does the 2002 Farm Bill change eligibility for immigrant children?

Currently, qualified aliens under 18 years of age are eligible for food stamps if they were lawfully residing in the United States on August 22, 1996. Beginning on October 1, 2003, all children who are qualified aliens AND who have not turned 18 years old are eligible regardless of when they come to the United States. Once a child turns 18 years old, the child may continue to be eligible for food stamps if that child meets another eligibility criterion such as having status as a qualified alien for five years. In addition, on October 1, 2003, eligible children will be exempt from all deeming requirements.

Are some children eligible before October 1, 2003?

Yes. Children who have qualified alien status and were lawfully residing in the United States on August 22, 1996 are eligible now. From April 1, 2003 until October 1, 2003, children arriving after August 22, 1996 will be eligible if they have been in a qualified alien status for five years. (April 1, 2003 is the effective date for another provision in the 2002 Farm Bill that restores eligibility to immigrants who have been in a qualified alien status for five years – see next section.)

Will children arriving in the United States after August 22, 1996 have to wait five years before they can start receiving food stamps once the 2002 Farm Bill provision for children is effective on October 1, 2003?

No. Beginning on October 1, 2003, children are eligible once they attain status as a qualified alien.

If a child is receiving food stamps based on this criterion and turns 18 years old during a certification period, is the household required to report the change? Does the State agency have to flag these cases to review eligibility during a certification period since it will know when a child turns 18 years old or can it wait until the household's next recertification to make any change?

On the issue of reporting requirements, unless the household is subject to monthly reporting, the household is not required to report the change. If, however, the household

reports a change in status, the State agency is required to act on the change under regular processing requirements.

Since the State agency is aware of a potential change in eligibility at the time the household is last recertified, it would have to act on the change according to regulations at 7 CFR 273.12(c). Under these procedures, a State agency is required to issue a notice of adverse action to the household if benefits will be decreased and to make the change effective for the month after the expiration of this adverse notice unless the household requests a fair hearing. Prior to decreasing benefits, the State agency must also determine if the child remains eligible based on other food stamp criterion such as meeting the five-year requirement.

References

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) – sections 402 and 431.

Trafficking Victims Protection Act of 2000 (P.L. 106-386) – section 107(b).

Code of Federal Regulations – section 273.4.

SECTION II— ELIGIBLITY BASED ON THE FIVE-YEAR RESIDENCY REQUIREMENT

Background

When PRWORA was enacted, Congress wanted to ensure that receipt of Federal assistance did not create an incentive for newly arriving immigrants. Consequently, PRWORA barred legal immigrants arriving on or after August 22, 1996 from receiving most Federal benefits, including Temporary Assistance for Needy Families (TANF), until they have been in the country for five years as a qualified alien. Legal immigrants were, however, made ineligible for food stamps with certain exceptions. The Department determined, however, that this general ban did not apply to the Food Stamp Program where the law specifically allows for receipt of food stamp benefits. Legislative changes enacted in the 2002 Farm Bill imposed a similar five-year requirement that is specific to the Food Stamp Program.

What is the five-year requirement?

The Farm Security and Rural Investment Act of 2002 (Public Law 107-171), commonly referred to as the 2002 Farm Bill, restores food stamp eligibility to a legal immigrant who has lived in the United States as a qualified alien for a period of five years or longer.

When does the five-year requirement go into effect?

Qualified aliens meeting the five-year requirement and other program requirements can begin receiving food stamps on April 1, 2003.

When does the five-year waiting period begin?

The five-year waiting period begins on the date the immigrant obtains status as a qualified alien through the INS. While it is possible for some refugees to have obtained a qualified alien status prior to entering the United States, these individuals are eligible upon entering the country without the five-year wait based on their refugee status.

If qualified status is granted retroactively, does the retroactive time count toward the five-year requirement?

Yes. In certain situations, the INS may grant an alien qualified status retroactively. That retroactive time counts toward the five-year requirement.

Do all qualified aliens need to meet the five-year requirement?

No. Asylees, refugees, Amerasians, Cuban/Haitian entrants, trafficking victims and aliens whose deportation or removal is being withheld are eligible for food stamp benefits when they are admitted into the country or granted status. As discussed in section I,

qualified aliens only have to meet one of the conditions that make them eligible for food stamps such as receiving disability-related assistance or benefits or having 40 qualifying quarters of work coverage.

If a qualified alien is in an exempt category (e.g., asylee or refugee) and later adjusts to LPR status, does the qualified alien have to meet the five-year requirement?

No. Asylees, refugees, Amerasians, Cuban/Haitian entrants, trafficking victims and aliens whose deportation or removal was being withheld are eligible for food stamp benefits during the first seven years they are admitted or granted status in one of these exempt categories regardless of later adjustment. An example of this is an immigrant who was initially granted asylum in January 2001 and then adjusted to LPR status in January 2002. Even though this immigrant has not been in a qualified alien status for five years on April 1, 2003 when the new law is effective, the qualified alien is eligible during the first seven years as an asylee. In addition, qualified aliens who are in one of the exempt categories for five years have automatically met the five-year requirement.

When an alien has adjusted to LPR status from another category, the green card will usually show the date of the adjustment of status rather than the date the previous status was granted. To obtain a history of an immigrant's status from the INS, State agencies will have to specifically ask for the information on INS' Forms G-845 and G-845-Supplement.

If an immigrant has been in the United States in an undocumented status and later obtains status as a qualified alien, is the qualified alien automatically barred from receiving food stamps because of the undocumented status?

No. So long as the immigrant has been in status as a qualified alien for five years, the immigrant meets the five-year requirement.

How is the five-year requirement different at section 402 of PRWORA different from the general five-year ban at section 403 of PRWORA?

The five-year requirement at section 402 of PRWORA is specific to the Food Stamp Program while the more general five-year ban at section 403 of PRWORA applies to all programs issuing Federal means-tested benefits. On January 14, 1998, the Department issued a legal interpretation of the law stating that the more specific requirements in section 402 of PRWORA take precedence over the general requirements in section 403 of PRWORA.

What this means for the Food Stamp Program is that the requirements in section 403 of PRWORA should not be substituted for the five-year requirement at section 402 of PRWORA. For example, section 403 of PRWORA applies to qualified aliens who enter the country on or after August 22, 1996 while section 402 applies to qualified aliens regardless of when they enter the country. Consequently, to receive food stamps, an immigrant who is establishing eligibility based on the five-year requirement must have

been in a qualified status for five years even if that immigrant entered the United States before August 22, 1996.

References

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) – section 403.

Trafficking Victims Protection Act of 2000 (P.L. 106-386) – section 107(b).

Code of Federal Regulations – section 273.4.

SECTION III – SPONSOR-TO-IMMIGRANT DEEMING

Background

Sponsors who bring family-based and certain employment-based immigrants to this country must demonstrate that they can provide enough financial support to sponsored immigrants so that these individuals do not have to rely on public benefits. One method of demonstrating financial responsibility is to count the sponsor's income and resources as part of the immigrant's own income and resources when determining whether the immigrant is eligible for public benefits. This attribution of income and resources is called "deeming". Prior to passage of PRWORA, sponsored immigrants were subject to deeming in the Food Stamp Program for up to three years. The PRWORA and subsequent amendments made by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208) made two significant changes to the sponsor-to-immigrant deeming requirements: 1) the length of time that the income and resources of sponsors must be attributed to immigrants they sponsor extended beyond the three-year requirement; and 2) for the first time, agencies providing public benefits to sponsored immigrants during the deeming period may sue sponsors in Federal or State courts to repay the value of those benefits if repayment has been requested and not paid.

How does sponsor-to-immigrant deeming affect the Food Stamp Program?

The income and resources of an immigrant's sponsor (and the sponsor's spouse) who has signed a *legally binding* affidavit of support are required to be counted as belonging to the immigrant (or deemed), regardless of actual availability, when determining the sponsored immigrant's eligibility and benefit amount for food stamps.

Which qualified aliens are subject to deeming requirements?

The deeming requirements apply only to eligible LPRs whose sponsor has signed a legally binding affidavit of support (known as 213A affidavits—Form I-864 or I-864A) on or after December 19, 1997.

Most persons who immigrate to the United States as family members must now have a sponsor – someone who signs an affidavit promising to provide enough financial support to maintain the immigrant at or above 125 percent of the Federal poverty line (or 100 percent for active duty military if they are sponsoring their spouse or children). Affidavits of support filed on or after December 19, 1997 are *legally enforceable* and sponsors who fail to support immigrants they sponsor may be sued by government agencies providing means-tested benefits or by the immigrants they sponsor. Prior to this time, affidavits of support were, according to some courts, not legally binding meaning the sponsor could not be legally compelled to support the immigrant.

Which qualified aliens have a legally binding affidavit of support?

The only qualified aliens with legally enforceable affidavits are family-sponsored LPRs, including immediate relatives, and a few employment-based LPRs who came to the United States to work for relatives or in companies partially owned (more than five percent) by relatives AND who have filed for a visa application or applied for an adjustment to LPR status on or after December 19, 1997.

Note: Some family-based immigrants who became LPRs after December 19, 1997 do not have binding affidavits of support, and therefore are not subject to deeming because their application for LPR status was filed before that date.

Which immigrants are exempt from sponsor-to-immigrant deeming requirements?

The following groups are not subject to deeming rules:

- ✓ **Immigrant whose sponsor has not signed a legally binding affidavit of support** discussed in the preceding question**.** This category includes all but family-based and a few employment-based LPRs who applied on or after December 19, 1997 and all immigrants who became LPRs or whose sponsors signed affidavits of support before December 19, 1997. Aliens, such as refugees, who are sponsored by an organization or group also fall into this category.

- ✓ **Immigrants without sponsors.** In general, qualified aliens who enter the country under provisions of immigration law other than the family-sponsored categories do not have sponsors of the type that incur a liability when the immigrant obtains means-tested benefits. Included in this group are refugees, asylees, persons granted withholding of deportation, Amerasians, and Cuban or Haitian entrants. (While it is possible for these individuals to be "sponsored" by an organization such as a church, they are not sponsored on an I-864 Affidavit of Support and that organization does not have to sign a legally binding affidavit of support that would subject that individual to deeming requirements.)

- ✓ **Indigent Exception.** If the immigrant's own income and any assistance provided by the sponsor or any other individuals is not enough for the immigrant to obtain food and shelter without the program, the amount of the income and resources attributed to the alien through deeming cannot exceed the amount actually provided for up to a 12-month period. The State agency must notify the U.S. Attorney General if such determinations are made. (Refer to section VII of this guidance for notification procedures.) Final rules published by FNS on November 21, 2000 (65 FR 70143) clarified that an immigrant is considered "indigent" if the sum of the immigrant's household's own income and any cash or in-kind assistance provided by the sponsor or others is less than 130 percent of the poverty income line. Each indigence determination is effective for 12 months and may be renewed for additional 12-month periods.

- ✓ **Battered Spouse or Child Exception.** Deeming also does not apply during any 12-month period if the alien is a battered spouse, battered child or parent, or child of a battered person providing the battered alien lives in a separate household from the person responsible for the battery. The exemption can be extended for additional 12-month periods if the alien demonstrates that the battery is recognized by a court, administrative order, or by the INS and if the agency administering the benefits determines that the battery has a substantial connection to the need for benefits.

- ✓ **Sponsor in same food stamp household.** If the sponsor lives in the same household as the alien, deeming does not apply because the sponsor's income and resources are already counted. There is, however, no deeming exemption if the sponsor receives food stamps in another household.

- ✓ **Ineligible Member.** If the sponsored alien is ineligible for food stamps because of immigration status (i.e., is not a qualified alien or is an LPR without five years of residency), the sponsor's income is not deemed to other eligible members of the immigrant's household.

- ✓ **Children.** Beginning on October 1, 2003, sponsor-to-immigrant deeming is eliminated for children who are under 18 years old regardless of when they entered the United States.

- ✓ **Immigrant whose deeming period has ended.** See next question for further information.

How long does sponsor-to-immigrant deeming last?

Deeming or attribution of the sponsor's income and resources to the sponsored immigrant lasts until:

- ✓ the sponsored immigrant becomes a naturalized citizen;
- ✓ the sponsored immigrant can be credited with 40 qualifying quarters of work;
- ✓ the sponsored immigrant is no longer an LPR and leaves the U.S.;
- ✓ the sponsored immigrant meets one of the exceptions listed in the preceding question; or
- ✓ the sponsor or the sponsored immigrant dies.

If deeming applies, how much of the sponsor's resources are deemed to the alien?

Under current regulations, all but $1,500 of the amount of resources (as defined according to regular food stamp rules) of the sponsor and the sponsor's spouse are deemed to the sponsored immigrant.

If deeming applies, how much of the sponsor's income is deemed to the sponsored immigrant?

Under current regulations, the amount of the sponsor's income attributed to the sponsored alien is the total monthly earned and unearned income of the sponsor and sponsor's spouse reduced by 20 percent of their earned income and by the Food Stamp Program's gross income eligibility limit for a household equal in size to the sponsor's household -- sponsor, sponsor's spouse if living with the sponsor, and any other person who is a dependent or receives support from the sponsor or sponsor's spouse. If the sponsor signs an affidavit of support for more than one immigrant, the sponsor's income is pro-rated among the sponsored immigrants. Income is defined according to regular food stamp rules.

What if the immigrant's sponsor refuses to provide information?

Immigrants who are exempt from deeming do not need to provide information about the sponsor's income and resources. If, however, an immigrant is subject to deeming, the eligible sponsored immigrant is responsible for obtaining the cooperation of the sponsor and for providing the State agency at the time of application and recertification with the information and documentation necessary to calculate deemed income and resources. The State agency must assist the household in obtaining the necessary verification. If necessary, INS through its SAVE program can provide the sponsor's name, address, and Social Security number.

Are State agencies required to impose these deeming rules in their State-funded food stamp programs?

No. States may set their own eligibility rules for their State-funded programs.

In making an indigence determination, is the State agency required to count in-kind assistance (i.e., assistance that is not in the form of cash) provided to the immigrant by the sponsor or other individuals? If so, how does the State agency assign a monetary value to this assistance?

The State agency is required to consider in-kind assistance (such as food and shelter) provided to the immigrant when it determines if an immigrant is indigent. The value of in-kind assistance is only taken into consideration in making this indigence determination; it is not considered when determining eligibility or benefit levels for the immigrant household. As stated in the preamble to final regulations published by FNS on November 21, 2000 (65 FR 70168), the FNS has not established specific procedures for how a State agency is to assign a monetary value to in-kind assistance. State agencies may, therefore, use their discretion in establishing a reasonable method for making this assignment.

References

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) – section 421.

Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208) (IIRIRA) – P.L. 104-208 – enacted on September 30, 1996.

Code of Federal Regulations – 7 CFR 273.4 – Food Stamp Provisions.

Code of Federal Regulations – 8 CFR 213a and 299 – INS provisions on affidavits of support.

SECTION IV – SPONSOR LIABILITY

Background

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 established a mandate requiring sponsors of certain immigrants to meet minimum income requirements and to be financially responsible for immigrants they sponsor. Beginning on December 19, 1997, applications for immigrant visas or an adjustment of status must include a legally-enforceable affidavit of support for family-sponsored immigrants and for employment-based immigrants who are coming to the United States to work for relatives, or for a company where a relative owns at least five percent of the company. Sponsors who fail to support the immigrants they sponsor can be sued by government entities providing means-tested benefits as well as by the immigrants they sponsor.

What is sponsor liability?

A sponsor who has signed a legally binding affidavit of support on or after December 19, 1997 for an immigrant they sponsor may be liable for the value of food stamp benefits received by that sponsored immigrant.

Which sponsors are legally liable when an immigrant they sponsor receives food stamp benefits?

Only those LPRs with sponsors who signed binding affidavits of support (INS Form I-864) may be responsible for food stamps benefits received by immigrants they sponsor if those benefits were received *during the period of time the affidavit of support is in effect*.

How long is the affidavit of support in effect?

The affidavit of support remains in effect until the sponsored immigrant becomes a naturalized citizen, can be credited with 40 qualifying quarters of work, is no longer an LPR and leaves the United States permanently, or until the sponsor or the sponsored immigrant dies. The sponsor is not responsible for benefits the sponsored immigrant receives after the support period has ended. If, however, benefits were received by sponsored immigrants during the period when the agreement was in effect, the sponsor or the sponsor's estate is liable to repay the cost of these benefits for ten years after benefits were last received.

Are there any exceptions for sponsors?

Final regulations published by FNS on November 21, 2000 (65 FR 70169) clarified that a State agency cannot request reimbursement from the sponsor during any period of time that the sponsor receives food stamps. If a sponsor subsequently stops receiving food stamps, the sponsor is still not liable for benefits issued to the sponsored immigrant during the period of time the sponsor received food stamps.

What is the State agency's responsibility to enforce sponsor liability?

State agencies must request reimbursement from sponsors who have signed legally binding affidavits of support on or after December 19, 1997 for any "means-tested public benefits" received by the immigrant during the period of time the affidavit is in effect (until the immigrant becomes a citizen, permanently leaves the country, or can be credited with 40 qualifying quarters of work or until the sponsor dies). For further information, refer to the interim rule published by the DOJ on October 20, 1997 – "Affidavits of Support on Behalf of Immigrants" (62 FR 54346) and regulations at 8 CFR 213A.

Prior to pursuing a request for reimbursement, the State agency must first verify that the immigrant's sponsor is subject to a liability by determining, for example, if the sponsor signed a binding affidavit of support, if the sponsor received food stamps while the sponsorship agreement was in effect, or if the affidavit-of-support period has ended.

Is the Food Stamp Program a "means-tested public benefit" for purposes of determining sponsor liability?

Yes.

What if the liability is not paid?

If the amount of the liability is not paid, the State agency *may but is not required to* pursue legal action against the sponsor in a Federal or State court. For further information, refer to the interim rule published by the DOJ on October 20, 1997 – "Affidavits of Support on Behalf of Immigrants" (62 FR 54346) and regulations at 8 CFR 213A.

Will FNS set standards for billing sponsors for repayment?

As stated in the preamble to final regulations published by FNS on November 21, 2000 (65 FR 70169), FNS will develop policy on billing in coordination with other Federal agencies. Currently, the only standard set by FNS is that a State agency cannot request reimbursement from the sponsor during any period of time that the sponsor receives food stamps. At this time, FNS has no plans to set standards in this area and does not foresee doing so unless there is coordinated interdepartmental guidance.

Are sponsor liability claims subject to regular food stamp claims rules?

No. Benefits issued correctly to sponsored immigrants cannot be considered as food stamp overpayments under the Food Stamp Act. State agencies may not keep a portion of liabilities recouped from sponsors.

How can a State agency verify if an immigrant has a sponsor who has signed a legally binding affidavit of support?

The State agency may verify whether an immigrant has a sponsor who has signed a binding affidavit of support by submitting to INS the "Document Verification Request and Supplement (INS Form G-845 and G-845 Supplement) and requesting completion of block #7 – Affidavit of Support. Information provided by the INS includes the name, social security number, and address of the immigrant's sponsor.

Pending verification, the State agency cannot delay, deny, reduce or terminate the individual's eligibility for benefits on the basis of the individual's immigration status.

Will sponsor liability be subject to Quality Control (QC) review?

No. Action taken by the State agency against a sponsor is not reviewable for QC purposes. QC will review whether the amount of the allotment received by the sponsored immigrant is correct independent of any action taken by the State agency to determine sponsor liability.

References

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) – section 551.

Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208) (IIRIRA) – P.L. 104-208 – enacted on September 30, 1996.

Code of Federal Regulations – 8 CFR 213a and 299 – INS provisions on affidavits of support.

Interim rule published by the DOJ on October 20, 1997 – "Affidavits of Support on Behalf of Immigrants" (62 FR 54346).

Final regulations published by FNS on November 21, 2000 – "Food Stamp Program: Noncitizen Eligibility, and Certification Provisions of Pub. L. 104-193 as Amended by Public Laws 104-208, 105-33 and 105-185" (65 FR 70134-70212).

SECTION V – DETERMINATION OF 40 QUALIFYING QUARTERS OF WORK COVERAGE

Background

Determining whether an immigrant has worked or can be credited with 40 qualifying quarters of work has two purposes for food stamps. First, under PRWORA, an LPR may receive food stamps if that LPR has worked or can be credited with 40 qualifying quarters of work. Few individuals will qualify on this criterion when provisions of the 2002 Farm Bill are effective which restore food stamp eligibility to qualified aliens after five years and to children without the waiting period. Second, sponsor-to-immigrant deeming and sponsor liability stop once an immigrant can be credited with 40 qualifying quarters.

How can a State agency verify whether an immigrant has 40 qualifying quarters?

The State agency may request information from the Social Security Administration (SSA) through its automated system know as the "Quarters of Coverage History System" (QCHS) and/or obtain information from the household. Procedures for requesting information are contained in SSA's manual for obtaining quarters of coverage information.

SSA information regarding quarters of coverage may be incomplete due to a lag time or delay in obtaining and processing current information from employers. If work quarters cannot be verified through the QCHS, they can be verified through other means such as wage stubs, tax returns, or statements from employers.

What if the immigrant asserts that he/she has 40 quarters but the State agency cannot confirm this information with the SSA?

If the household asserts that members have 40 quarters of work history, but the SSA cannot confirm the information and is conducting an investigation to determine if additional quarters can be credited, the State agency must certify the household pending the results of the investigation for up to 6 months from the original date of insufficient quarters.

Are certain quarters prohibited from being counted as a qualifying quarter?

Yes. In addition to those quarters in which not enough income was earned to qualify, quarters earned after December 31, 1996 cannot be counted if the immigrant received food stamps or any other Federal means-tested public benefits (such as Medicaid, Supplemental Security Income, State Children's Health Insurance Program, or TANF) during that quarter.

Can an immigrant receive credit for work performed by other individuals?

Yes. An immigrant may receive credit for work performed by a parent of the immigrant before the immigrant turns 18 years old and quarters worked by the immigrant's spouse if they are still married or if the spouse is deceased.

Can an immigrant receive credit for work performed while an immigrant was in the country illegally?

Yes. The SSA counts quarters worked while a person is living in this country regardless of the person's immigration status at the time the work was performed. For food stamp purposes, these quarters are counted unless they are quarters in which not enough income was earned or are quarters earned after December 31, 1996 in which the immigrant received Federal means-tested public benefits.

May work be credited if social security taxes were not withheld?

Yes. In March 1997, the Office of Legal Counsel of the Department of Justice issued an interpretation that qualifying quarters of work not covered by Title II of the Social Security Act, commonly referred to as noncovered earnings, may be credited in determining quarters of coverage for immigrants. Information on noncovered employment may be accessed through the QCHS.

References

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) – sections 402, 403, 421 and 435.

Code of Federal Regulations – 7 CFR 273.4(a)(5)(ii)(A) and 7 CFR 273.2(f)(1)(ii)(B).

SECTION VI –TREATMENT OF INELIGIBLE IMMIGRANT'S INCOME AND RESOURCES

Background

The Food Stamp Program has special rules and procedures for handling the income and resources of ineligible immigrants living in households with other eligible members. How the income and resources of ineligible immigrants are treated depends on whether the immigrant was ineligible before the 1996 Welfare Reform law was enacted or became ineligible under the 1996 Welfare Reform law.

How are income and resources handled for immigrants ineligible under the pre-1996 Welfare Reform law?

Immigrants ineligible before the 1996 Welfare Reform law was enacted primarily include visitors, tourists, diplomats, students and undocumented immigrants as well as those who are unable or unwilling to provide documentation of their immigration status. For these ineligible individuals, the State agency must count all of their resources when determining eligibility for other household members. The State agency, however, has an option on how it will count their income and deductible expenses. The State agency may either count all of the income and deductible expenses of the pre-PRWORA ineligibles, or the State agency may count all but a pro rata share of their income and expenses. If the State agency chooses to prorate income (i.e., divide the income equally among all ineligible and eligible household members), there is a further option to count all of the ineligible member's income in applying the gross income test for eligible members and only a prorated share when applying the net income test and determining benefit levels. Alternatively, the State agency may prorate the ineligible member's income and expenses for both the gross and net income tests and in determining allotment amounts.

For example, in a household consisting of an employed, undocumented immigrant with three citizen children, the State agency could count all of the undocumented immigrant's income and expenses when determining eligibility and benefit amounts for the three children or it could count 3/4ths of that person's income/deductible expenses ($1/4^{th}$ is allocated to the ineligible member). If the State agency chooses to prorate income, it may count all of the undocumented immigrant's income when applying the gross income test for the three eligible children while only counting a prorated share for the net income test and determining allotment amounts.

How are income and resources handled for immigrants ineligible under the 1996 Welfare Reform law?

Immigrants ineligible under PRWORA include LPRs, asylees, refugees, parolees, deportees, special agriculture workers admitted for temporary residence and certain aged, blind or disabled immigrants admitted for temporary or permanent residence. For these individuals, the State agency must count all of the ineligible immigrant's resources. In

addition, it may count either none of the ineligible immigrant's income and deductible expenses or a pro rata share of the immigrant's income and expenses. If the State agency chooses not to count any income/expenses, the total benefit amount for eligible members cannot exceed the amount of the allotment the household would have received if the ineligible member had been included. A State agency must elect one option for determining eligibility and benefit levels and apply that option State-wide.

EXAMPLE: Household consists of mom and dad who are both legal non-citizens and two citizen children. Dad and mom have combined earnings of $1500 per month and pay $600 per month in rent with utilities included. Dad and mom lost eligibility for food stamps under PRWORA – their citizen children remain eligible.

Option 1. Count none of the ineligible member's income/expenses when calculating allotment amounts for the eligible members. Under this option, the benefit amount for the eligible members cannot exceed the amount of the allotment the household would have received if all members were still eligible for food stamps.

The State agency determines two allotment amounts. The first calculation is based on a 4-person household (mom, dad, and their two children) and the full amount of their income and expenses. The second allotment is based on a 2-person household consisting of the two citizen children only – none of mom or dad's income/expenses are counted.

4-Person Household		2-Person Household	
a. Total earned income	$1500	a. Total earned income	$0
b. Less 20% earned income deduction	$ 300	b. Less 20% earned income deduction	$0
c. Less standard deduction	$ 134	c. Less standard deduction	$0
d. Adjusted income (a-b-c)	$1066	d. Adjusted income (a-b-c)	$0
e. Shelter expense	$600	e. Shelter expense	$0
f. Excess shelter deduction (e-[1/2 of d])	$67	f. Excess shelter deduction (e-[1/2 of d])	$0
g. Net monthly income (d-f)	$999	g. Net monthly income (d-f)	$0
h. Maximum allotment for 4	$465	h. Maximum allotment for 2	$256
i. 30% of g.	$300	i. 30% of g.	$0
j. Allotment amount (h-i)	$165	j. Allotment amount (h-i)	$256
Final allotment amount for children (lesser of $165 or $256) -- $165			

Option 2. Count a prorated share of the ineligible members' income and expenses when determining allotment amounts for the eligible members.

2-Person Household	
a. Total earned income ($1500/4x2)	$750
b. Less 20% earned income deduction	$150
c. Less standard deduction for 2 persons	$134
d. Adjusted income (a-b-c)	$466
e. Shelter expense ($600/4x2)	$300
f. Excess shelter deduction (e-[1/2 of d])	$67
g. Net monthly income (d-f)	$399
h. Maximum allotment for 2	$256
i. 30% of g.	$120
j. Allotment amount (h-i)	$136
Final allotment amount for children -- $136	

References

Code of Federal Regulations – 7 CFR 273.11(c)(3)

SECTION VII – REPORTING ILLEGAL AND INDIGENT IMMIGRANTS

Background

The Food Stamp Program has three separate reporting requirements for State agencies. First, State agencies are required to report to the INS certain individuals who are in the country in violation of the INA (see below). Second, the State agency must notify the U.S. Attorney General when it sues the sponsor and obtains a final civil judgment against the sponsor. Third, the State agency must notify the U.S. Attorney General when it determines an immigrant is indigent and consequently, exempt from sponsor-to-immigrant deeming rules.

Reporting Illegal Immigrants

Section 404 of PRWORA requires certain Federal and State entities (but not the Food Stamp Program) to report to the INS on a quarterly basis any individual who they "know" is not lawfully present in the United States. Although this mandate does not apply to the Food Stamp Program, section 11(e)(16) of the Food Stamp Act contains a similar mandate for State agencies to report immediately to the INS any member of a food stamp household who is present in the United States in violation of the INA. On September 28, 2000, the SSA published an Interagency Notice in the Federal Register (65 FR 58301) that provides guidance for compliance with section 404 of PRWORA. That Notice clarifies that a government entity "knows" that an immigrant is present illegally only when the entity's finding or conclusion of unlawful presence is made as part of a formal determination subject to administrative review and is supported by a determination of the INS or the Executive Office of Immigration Review, such as a Final Order of Deportation.

What is the State agency's responsibility for reporting illegal immigrants for food stamp purposes?

Under current regulations at 7 CFR 273.4(b), a State agency may meet the reporting requirements for food stamps by conforming with the above-cited Interagency Notice. Alternatively, a State agency may follow guidelines issued in a September 1, 1982, FNS memorandum which recommended that an immigrant should be reported to the INS when:

- ✓ there is an admission by the applicant or another household member (or the household's authorized representative) that illegal aliens are present in the household;
- ✓ INS documents presented by the household during the application process are determined to be forged; or
- ✓ A formal order of deportation or removal is presented by the household during the application or recertification process.

Reporting Noncompliant Sponsors

A sponsor is considered to be noncompliant with the provisions of section 213A of the immigration laws when that sponsor does not reimburse a Federal, State, or local agency for the costs of any benefits paid to the sponsored immigrant when that agency requests repayment for means-tested public benefits provided to a sponsored immigrant and, as a result, obtains a final civil judgment against the sponsor.

How should this notification be made?

Procedures for notifying the U.S. Attorney General are provided in an interim rule published by the INS on October 20, 1997 – "Affidavits of Support on Behalf of Immigrants" (62 FR 54346). In that rule, State agencies are required to send a certified copy of the final civil judgment to the INS Statistics Branch. This copy should be accompanied by a cover letter that includes the reference "Civil Judgments for Congressional Reports under Section 213A(i)(3) of the Act." The current address for INS' Statistics Division is:

U.S. Immigration and Naturalization Service
Statistics Division, Room 4034
425 I St., NW
Washington, DC 20536

Reporting Indigent Immigrants

As discussed in the deeming section of this guidance, a sponsored immigrant is considered indigent when that immigrant is unable to obtain food and shelter without public assistance.

When the State agency determines an immigrant "indigent", is the agency required to notify the U.S. Attorney General?

Yes. The State agency must notify the U.S. Attorney General when such determinations are made. Households should be informed that the names and address of the sponsored immigrant and the sponsor will be provided to the U.S. Attorney General.

How should this notification be made?

Procedures for notifying the U.S. Attorney General are provided in an interim rule published by the DOJ on October 20, 1997 – "Affidavits of Support on Behalf of Immigrants" (62 FR 54346). In that rule, State agencies are required to send a written notice of the determination, including the name of the sponsored immigrant and of the sponsor, to the INS' Statistics Branch. The written notice should include the reference, "Determinations under 421(e) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996." The current address for INS' Statistics Division is:

U.S. Immigration and Naturalization Service
Statistics Division, Room 4034
425 I St., NW
Washington, DC 20536

References

Food Stamp Act – section 11(e)(16)

Interagency Notice, "Responsibility of Certain Entities to Notify the Immigration and Naturalization Service on any Alien Who the Entity "Knows" Is Not Lawfully Present in the United States", published in the Federal Register (65 FR 58301) on September 28, 2000.

Code of Federal Regulations – 7 CFR 273.4(b)

Interim rule published by the INS on October 20, 1997 – "Affidavits of Support on Behalf of Immigrants" (62 FR 54346).

SECTION VIII – PUBLIC CHARGE

Background

Under longstanding INS rules, an immigrant who is likely at any time to become a "public charge" is ineligible for admission into the United States or adjustment of status to become a lawful permanent resident and may, in very rare instances, face deportation. According to the INS, "public charge" means an alien who has become (for deportation purposes) or who is likely to become (for admission/adjustment purposes) primarily dependent on the government for subsistence. Both INS and the Department of State make public charge determinations.

Does receipt of food stamps make an immigrant a "public charge"?

No. Receiving food stamps does not make an immigrant a "public charge" – meaning an immigrant to the United States will not be deported, denied entry to the country, or denied permanent status because he or she receives food stamps. Similarly, lawful receipt of food stamps will not affect an immigrant's ability to naturalize.

Has the INS published anything specifically stating that receipt of food stamps will not be considered when it makes public charge determinations?

Yes. The INS has posted on its Web site several publications in which the INS specifically states that benefits received from the Food Stamp Program as well as other U.S.D.A. nutrition assistance programs will not be considered when public charge determinations are made. This information is posted in several languages on INS' Web site – an index can be found at:
http://www.ins.gov/graphics/publicaffairs/presinfo4.htm#PublicCharge

For example, the following information is included in the INS Summary – "A Quick Guide to Public Charge And Receipt of Public Benefits", at
http://www.ins.gov/graphics/publicaffairs/summaries/public.htm.

- ✓ "Aliens applying to become Lawful Permanent Residents (LPRs) (who do not yet have a "green card") – An alien will **NOT** be considered a "public charge" for using:

  HEALTH CARE BENEFITS, including programs such as Medicaid, the Children's Health Insurance Program (CHIP), prenatal care, or other free or low-cost medical care at clinics, health centers, or other settings (other than long-term care in a nursing home or similar institution)

  FOOD PROGRAMS, such as Food Stamps, WIC (the Special Supplemental Nutrition Program for Women, Infants, and Children), school meals, or other food assistance

OTHER PROGRAMS THAT DO NOT GIVE CASH, such as public housing, child care, energy assistance, disaster relief, Head Start, or job training or counseling…."

- ✓ "Aliens who are LPRs (who already have a "green card") – LPRs cannot lose their status (have their "green card" revoked) if they, their children, or other family members use:

  HEALTH CARE, FOOD PROGRAMS, or other **NON-CASH PROGRAMS…"**

Reference

INS Summary – "A Quick Guide to Public Charge And Receipt of Public Benefits" at http://www.ins.gov/graphics/publicaffairs/summaries/public.htm

SECTION IX – VERIFICATION OF IMMIGRATION STATUS

General Requirements

What are applicants' responsibilities for providing proof of immigration status?

Most immigrants who have entered the United States legally are in possession of documents issued by the INS which contain information about that individual's immigration status and the date that individual entered the country or adjusted to the status shown on the card. In general, it is the responsibility of the applicant/recipient to provide these INS documents. Until acceptable documentation is provided, an immigrant is ineligible for food stamp benefits unless:

- ✓ The State agency has submitted a copy of a document provided by the household to the INS for verification. Pending such verification, the State agency cannot deny, delay, reduce or terminate the individual's eligibility for food stamps on the basis of immigration status.

- ✓ The individual provides documentation that the SSA is conducting an investigation to determine if more quarters of work coverage can be credited. In this situation, the State agency must certify the individual pending the results of the investigation for up to 6 months from the date of original determination of insufficient quarters.

- ✓ The applicant or State agency has submitted a request to a Federal agency (other than the INS) for verification of information applicable to the individual's immigration status. In this situation, the State agency must certify the individual pending the results of the investigation for up to 6 months from the date of original request for verification.

What are State agency responsibilities for verifying immigration status?

State agencies are required to verify immigration status of individuals who are *applying* for food stamp benefits. State agencies *may not* require applicants to provide information about the citizenship or immigration status of any non-applicant family or household member or deny benefits to an applicant because a non-applicant family or household member has not disclosed his or her citizenship or immigrant status.

What if an immigrant does not want the State agency to contact INS about his/her status?

If an immigrant does not want the State agency to contact the INS to verify his or her status, the State agency must give the household the option of withdrawing its application or participating without that member. Household members may be considered "non-applicants" if they do not want to provide information about citizenship, immigration status or a social security number. Although these "non-applicants" will not receive food

stamps, they still must disclose their income, resources and other information so that the State agency can determine eligibility and benefit amounts for the "applicant" household members. State agencies cannot deny benefits to otherwise eligible household members simply because other members have chosen not to disclose their citizenship, immigration status, or social security number. For additional information, refer to final regulations published by FNS on November 21, 2000 (65 FR 70147). In addition, detailed guidance on procedures for non-applicants is available in a tri-agency memorandum, "Joint Guidance on Citizenship, Immigration Status and Social Security Numbers", signed by officials from the Department of Agriculture, and the Administration for Children and Families and the Centers for Medicare and Medicaid Services (previously known as the Health Care Financing Administration) in the U.S. Department of Health and Human Services. This guidance was released on September 21, 2000 and is available at FNS' Web site: http://www.fns.usda.gov/fsp/rules/Memo/00/JointGuidanceonCitizenship.htm

What if an applicant claims to be a U.S. citizen or U.S. national but cannot provide verification?

If an applicant cannot provide acceptable verification of U.S. citizenship or national status (such as a U.S. birth certificate or documents issued by INS, Certificate of Citizenship – N-560 or N-561, or Certificate of Naturalization – N-550 or N-570) and the household can provide a reasonable explanation for the lack of verification, the State agency must accept a signed statement, under penalty of perjury, from a third party indicating a reasonable basis for personal knowledge that the individual in question is a U.S. citizen or national. (Other acceptable forms of verification are included in attachment 4 to INS' interim guidance referenced below.)

How can a State agency verify:

- ✓ **Immigration status.** Household members applying for food stamps are required to provide their INS documentation as a condition of eligibility. The State agency is then required to verify the validity of those documents. The State agency should obtain information on acceptable documents and INS codes from DOJ's "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" published in the Federal register on November 17, 1997 (62 FR 61344). If the State agency has electronic access to the Systematic Alien Verification for Entitlements (SAVE) database, the State agency must verify immigration status through that system. When the automated check cannot verify the documents or when there is a significant discrepancy between the automated data and the information provided by the applicant/recipient, the State agency must verify the validity of that documentation by submitting INS Form G-845 (Document Verification Request) to the INS with attached photocopies of the documentation. The State agency must also use this manual procedure when it does not have access to SAVE and the documents submitted by the immigrant are questionable.

- ✓ **Eligibility based on veteran or active duty status**. As discussed in Section I, eligibility for food stamps extends to qualified aliens who are veterans with an "honorable" discharge or who are on active duty (other than for training) in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard (but not full-time National Guard) as well as to the spouse and dependent children of veterans and active duty personnel. Verification of active duty can be established through the service member's current Military Identification Card or a copy of the member's military orders. Verification of honorable discharge status can be established through the veteran's discharge certificate showing "Honorable" discharge from active duty in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard. A discharge "Under Honorable Conditions" does not meet this requirement.

- ✓ **Exemption for certain Native Americans.** American Indians born in Canada to whom section 289 of the INA applies and members of a Federally-recognized tribe are eligible for food stamp benefits on the same basis as citizens. Some American Indians born in Canada to whom section 289 of the INA applies may have INS documentation establishing LPR status which can be verified through SAVE or other procedures States use to verify immigration status. Applicants without INS documents may present a letter or other tribal document certifying at least 50 percent Indian Blood, as required by section 289 of INA, combined with a birth certificate or other evidence of birth in Canada.

  Applicants can establish membership in a Federally-recognized tribe by presenting a membership card or other tribal document establishing membership in an Indian tribe. If an applicant has no documentation, the State can verify membership by contacting the applicable tribe. A list of Indian Tribes and tribal government contacts may be obtained from DOJ's Office of Tribal Justice.

- ✓ **Victims of trafficking.** The Office of Refugee Resettlement (ORR) of the U.S. Department of Health and Human Services has been given the authority to certify that an individual is a victim of a severe form of trafficking and will issue a certification letter to such individuals. Applicants in this category must submit their original certification letter from ORR. Victims of severe form of trafficking are not required to provide immigration documents to verify their status. The date of certification on the letter should be used as the "date of entry" for eligibility purposes, as well as the expiration date. State agencies must call the "Trafficking Verification Line" at (202) 401-5510 to confirm the validity of the certification letter. (Further information on this group is discussed in the next section.)

- ✓ **Exemption for Hmong or Highland Laotian Tribal Members**. Food stamp eligibility extends to an individual lawfully residing in the United States who was a member of a Hmong or Highland Laotian tribe that rendered assistance to the United States during the Vietnam era as well as to that individual's spouse (or unremarried surviving spouse) or unmarried dependent children. To verify status in this category, a State agency may refer to FNS' guidance dated September 28, 1998 – "Technical Assistance Guide for the Implementation of Section 508 of the

Agriculture Research, Extension, and Education Reform Act of 1998" and a follow-up to this guidance dated February 24, 1999 – "Hmong and Highland Laotian Guidance on Verifying Status". (State agencies may obtain copies of these memoranda from their Regional Offices.)

How can a State agency verify how long an immigrant has been in a qualified status?

INS documents generally contain the date an immigrant entered the country or adjusted to the immigration status reflected on the document. If an immigrant does not have INS documentation, the State agency can verify the date of entry into the United States or date status was given by submitting INS Form G-845 and Form G-845 Supplement to the INS.

References

Code of Federal Regulations – 7 CFR 273.2(f)(1)(ii) – verification of status, 273.2(f)(2)(i) and (ii) – verification of questionable information, 273.2(f)(10) – optional use of SAVE and 272.11(d) – SAVE Program.

"Joint Guidance on Citizenship, Immigration Status and Social Security Numbers" issued on September 21, 2000. A copy of this guidance is available at http://www.fns.usda.gov/fsp/rules/Memo/00/JointGuidanceonCitizenship.htm

DOJ's "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" published in the Federal register on November 17, 1997 (62 FR 61344). Exhibit B to Attachment 6 of this guidance discusses veteran or active duty status.

DOJ's proposed rule, "Verification of Eligibility for Public Benefits" published in the Federal register on November 4, 1998 (63 FR 41662). Among other things, this rule covers verification criteria for Native Americans.

FNS' guidance dated September 28, 1998 covering verification procedures for Hmong and Highland Laotian tribal members – "Technical Assistance Guide for the Implementation of Section 508 of the Agriculture Research, Extension, and Education Reform Act of 1998" and a follow-up to this guidance dated February 24, 1999 – "Hmong and Highland Laotian Guidance on Verifying Status".

Information on Victims of a Severe Form of Trafficking may be found at HHS' Office of Refugee Resettlement Web site at:
http://www.acf.dhhs.gov/programs/orr/programs/astvict.htm

Final regulations published by FNS on November 21, 2000 – "Food Stamp Program: Noncitizen Eligibility, and Certification Provisions of Pub. L. 104-193 as Amended by Public Laws 104-208, 105-33 and 105-185" (65 FR 70134-70212).

SECTION X – VICTIMS OF SEVERE FORM OF TRAFFICKING AND BATTERED IMMIGRANTS

Background

Individuals who are determined to be victims of certain violent acts such as battery, extreme cruelty, or trafficking are provided special exceptions from the general restrictions governing non-citizen's eligibility for food stamps. While these rules are intended to provide relief to vulnerable groups, it is unlikely that many individuals will qualify for these exemptions.

Victims of Severe Form of Trafficking

What are the general eligibility requirements?

Under the "Trafficking Victims Protection Act of 2000" (P.L. 106-363), adult victims of trafficking who are certified by the U.S. Department of Health and Human Services are eligible for food stamp benefits to the same extent as refugees. Children who are under 18 years of age and have been subject to trafficking are also eligible on the same basis as refugees but they do not need to be certified.

What is trafficking?

In the Trafficking Victims Protection Act, the term "severe forms of trafficking in persons" means –

- ✓ sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- ✓ the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Who determines if an individual is a trafficking victim?

The Office of Refugee Resettlement (ORR) in the U.S. Department of Health and Human Services has sole responsibility for determining whether an individual is a trafficking victim. The ORR will issue adult victims of trafficking a certification letter. While children under the age of 18 years do not have to be certified, the ORR will issue these individuals a letter, similar to the adult certification letter, stating that the child is a victim of a severe form of trafficking. State agencies are not authorized to make a determination as to whether an individual is a trafficking victim nor will they need to contact the INS regarding immigration status.

Do victims of trafficking need to have a certain immigration status to receive food stamps?

No. Victims of trafficking do not need to hold a certain immigration status to receive food stamps. As discussed above, trafficking victims must, however, be certified (or, in the case of minors receive a similar determination) by the ORR to receive food stamps. State agencies should accept these letters in place of INS documentation.

How long are the certification letters valid?

Certification letters contain expiration dates which are 8 months from the initial certification date. The ORR intends to issue follow-up certification letters if individuals continue to meet the requirements. State agencies should conduct a redetermination of eligibility at the time of the expiration of the certification letter.

Battered Immigrants

What are the general requirements?

Section 431 of PRWORA provides qualified alien status to categories of immigrants who have been subjected to battery or extreme cruelty in the United States by a family member with whom they reside. Qualified alien status also extends to an immigrant whose child or an immigrant child whose parent has been abused. Additionally, this group of battered immigrants is exempt from deeming requirements for a 12-month period. The exemption can be extended beyond the 12-month period if the alien demonstrates that the battery is recognized by a court, administrative order, or by the INS and if the agency administering the benefits determines that the battery has a substantial connection to the need for benefits.

What conditions must be met to obtain qualified alien status in this category?

An alien is a qualified alien if he/she meets the following 4 requirements. In general, these rules apply to abused immigrants who are (or were) married to LPRs or U.S. citizens, or whose parents are LPRs or citizens:

- ✓ The battered immigrant must show that he/she has an approved or pending petition which makes a prima facie case for immigration status in one of the following categories: 1) a Form I-130 filed by their spouse or the child's parent; 2) a Form I-130 petition as a widow(er) of a U.S. citizen; 3) an approved self-petition under the Violence Against Women Act (including those filed by a parent); or 4) an application for cancellation of removal or suspension of deportation filed as a victim of domestic violence.

- ✓ The immigrant, the immigrant's child or the immigrant child's parent has been abused in the United States under the following circumstances:

- The immigrant has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent of the immigrant, or by a member of the spouse's or parent's family residing in the same household if the spouse or parent consent to the battery or cruelty.
- The immigrant's child has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent of the alien, or by a member of the spouse's or parent's family residing in the same household if the spouse or parent consents to the battery or cruelty, and the immigrant did not actively participate in the battery or cruelty.
- The parent of an immigrant child has been battered or subjected to extreme cruelty in the United States by the parent's spouse, or by a member of the spouse's family residing in the same household as the parent, if the spouse consents to or acquiesces in such battery or cruelty.

✓ There is a substantial connection between the battery or extreme cruelty and the need for food stamps; and

✓ The battered immigrant, child, or parent no longer resides in the same household as the abuser.

If an immigrant is determined to be a qualified alien under these conditions, is that person eligible for food stamp benefits on immigration status?

No. The conditions discussed above only establish that the battered immigrant is a qualified alien. As discussed in section I, a qualified alien must meet the other conditions for eligibility such as a five-year residency requirement or an LPR with 40 qualifying quarters of work.

When does the five-year waiting period begin for abused immigrants?

The five-year period begins when the prima facie case determination is issued or when the abused immigrant's I-130 visa petition is approved. In making its determination, a State agency should keep in mind that the relevant date for eligibility is the date the immigrant obtained qualified alien status as an abused immigrant rather than the date of that individual's immigration status, such as that of an LPR.

How does a State agency determine whether the battery has a substantial connection to the need for benefits?

On December 11, 1997, the DOJ published in the Federal Register (62 FR 65285) guidance for making a determination as to whether a substantial connection exists between the battery or extreme cruelty and the applicant's need for public benefits. Examples in this guidance include the following situations where benefits are needed: to enable the applicant and the applicant's child or parent to become self-sufficient; to escape the abuser or community in which the abuser lives or to ensure the safety of the applicant; because of a loss of financial support, dwelling or source of income due to

separation from the abuser; to alleviate nutritional risk; or for medical attention, mental health counseling, or because of a disability that resulted from the abuse.

If a battered immigrant with a sponsor receives food stamps, can the sponsor be held liable?

When the immigrant's sponsor has signed a binding affidavit of support (INS Form I-864), the sponsor may be liable for food stamps received by the battered immigrant. As discussed in the section on Sponsor Liability, State agencies are not required to pursue legal action against a sponsor.

References

Trafficking Victims Protection Act of 2000 (P.L. 106-386) enacted into law on October 28, 2000.

Information on Victims of a Severe Form of Trafficking may be found at HHS' Office of Refugee Resettlement Web site at http://www.acf.dhhs.gov/programs/orr/programs/astvict.htm.

DOJ's' "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" published in the Federal register on November 17, 1997 (62 FR 61344). Exhibit B to Attachment 5 of this guidance discusses battered aliens.

HHS Fact sheet on "Access to HHS-Funded Service for Immigrant Survivors of Domestic Violence" at http://www.hhs.gov/ocr/immigration/bifsltr.html

"Guidance on Standards and Methods for Determining Whether a Substantial Connection Exists Between Battery or Extreme Cruelty and Need for Specific Public Benefits" published by the Department of Justice in the Federal Register (62 FR 65285) on December 11, 1997.

SECTION XI – MAJOR LEGISLATION AFFECTING IMMIGRANTS IN THE FOOD STAMP PROGRAM

Pre -Welfare Reform

- Before the Welfare Reform legislation of 1996, legal immigrants who had settled here were eligible for public assistance on the same basis as citizens. The following categories had been eligible for food stamps: (1) lawfully admitted immigrants; (2) refugees; (3) those with agriculture worker status; (4) elderly, blind, or disabled amnesty aliens; (5) amnesty aliens converted to permanent resident status and certain members of their household. Aliens in the country illegally or those with temporary visas, such as students or tourists, were not eligible for benefits.

Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104-193) August 22, 1996

- Welfare reform barred *most legal immigrants* from receiving food stamps and Supplemental Security Income (SSI). Three groups were exempt: (1) lawful permanent residents who can be credited with 40 qualifying quarters of work and did not receive any Federal means-tested benefits during any of those quarters after December 31 1996; (2) veterans, aliens on active duty in the Armed Forces, their spouses and unmarried dependent children; and (3) refugees, asylees, and those with their deportation withheld, for 5 years after entry in the United States.

Balanced Budget Act of 1997 (P.L. 105-33) August 5, 1997

- Food stamp law was not changed by the BBA with respect to benefits for legal immigrants. However, the BBA restored SSI and Medicaid eligibility to the following groups: (1) those receiving benefits on August 22, 1996; (2) those in the country on August 22, 1996 and later became disabled; (3) refugees and asylees had their eligibility extended from 5 to 7 years; (4) Cuban, Haitians, and Amerasians; and (5) certain Native Americans living along the Canadian and Mexican borders.

Agriculture Research, Extension, and Education Reform Act (P.L. 105-185) June 23, 1998

- Ag Research addressed eligibility for food stamps. Under this law eligibility was restored to: (1) children under 18 years of age who were in the United States on August 22, 1996; (2) individuals in the United States on August 22, 1996 who were age 65 and over or disabled on that date or who become disabled after that date; (3) Hmong refugees who were tribal members at the time they assisted our military during Vietnam; (4) certain Native Americans living along the Canadian and Mexican borders; and (5) refugees and asylees had their eligibility period extended from 5 to 7 years.

Farm Security and Rural Investment Act of 2002 (P.L. 107-171) May 13, 2002

- Commonly referred to as the Farm Bill of 2002, this law incrementally restored eligibility to three groups of qualified aliens who: (1) are receiving disability benefits regardless of date of entry – effective October 1, 2002; (2) are under 18 years of age regardless of date of entry – effective October 1, 2003 (also eliminated all deeming requirements for this group); or (3) have lived in the U.S. for 5 years as a qualified alien beginning on date of entry – effective April 1, 2003.