

LOCAL GOVERNMENT LAW BULLETIN

No. 110 May 2007

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ARE IMMIGRANTS ELIGIBLE FOR PUBLICLY FUNDED BENEFITS AND SERVICES?

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Local government agencies in North Carolina provide a wide variety of benefits and services supported by federal, state, or local funds—including Medicaid, food stamps, assistance for the disabled, child and adult protective services, school lunch programs, and vaccinations, among many others. Local government officials and employees often ask whether these benefits and services may or must be denied to people who are not United States citizens. The answer varies depending on the benefit or service in question.

In general, noncitizens are not eligible for publicly funded benefits and services on the same terms as citizens. However, different subgroups of noncitizens are treated differently and inconsistently under federal benefit eligibility laws. As a result, some public benefits *must* be denied to some subgroups of noncitizens—even noncitizens who have “green cards.” At the same time, other benefits *may not* be denied to noncitizens—even noncitizens who are unlawfully present in the United States.

Local government agencies that provide publicly funded benefits and services must determine whether eligibility for those benefits is restricted for noncitizens by federal law. This determination must be made separately for each benefit or service an agency provides, as it is not uncommon for a single agency to provide some benefits that must be denied to certain noncitizens and other benefits that may not be denied. If a particular benefit must be denied to all or some noncitizens, the agency must follow specific procedures for verifying the citizenship or immigration status of all applicants for the benefit or service. If a particular benefit may not be denied to noncitizens, the agency is not required to verify applicants’ citizenship or immigration status.¹

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¹ Two federal documents address verification of citizenship or immigration status. In 1997, the U.S. Department of Justice (DOJ) issued *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 (Nov. 17, 1997). In

This bulletin explains how federal law categorizes noncitizens for purposes of benefit eligibility. It then describes the legal rules for determining noncitizens' eligibility for federal, state, and local benefits.

Citizens, Immigrants, and Nonimmigrants

Before discussing the benefit eligibility laws in detail, a few definitions are in order.

A person is a U.S. *citizen* if he or she was born in the United States, Puerto Rico, the U.S. Virgin Islands, or Guam; or if he or she has become a citizen by going through a process called naturalization.²

In this bulletin, *noncitizen* is used to mean any person who is not a U.S. citizen. The term includes both *immigrants* and *nonimmigrants*. *Immigrants* are noncitizens who are present in the United States with the intent to remain indefinitely. *Nonimmigrants* are noncitizens who are in the United States temporarily, such as tourists, business travelers, and students.

Immigrants may be *authorized* or *unauthorized*. Authorized immigrants (sometimes called "documented" or "legal") are in the United States with legal permission. Unauthorized immigrants

1998, the federal agency that was then known as the Immigration & Naturalization Service (INS) issued proposed regulations setting forth verification procedures. *Verification of Eligibility for Public Benefits*, 63 Fed. Reg. 41662 (Aug. 4, 1998). The INS proposed rule was substantially similar to the DOJ interim guidance and was intended to be used "in tandem" with the DOJ interim guidance until final rules were issued. Final rules have never been issued, so the 1997 and 1998 documents are still the sources local government agencies should consult to determine when and how to verify the immigration status of benefit applicants.

A full discussion of when and how status must be verified is beyond the scope of this bulletin. However, agencies should be aware that the DOJ guidance specifies that, before attempting to verify applicants' citizenship or immigration status, the agency must determine whether the benefit or service is one that must be denied on the basis of immigration status.

² 8 U.S.C. §§ 1401(a), 1401(b), 1402, 1406, 1407, 1427. While this definition captures most citizens, there are a few other ways of obtaining citizenship. For example, a person born outside the U.S. may be a citizen if at least one of the person's parents is a U.S. citizen and other eligibility criteria are met. *See* 8 U.S.C. §§ 1401(c), 1401(d), 1401(e), 1401(g), 1409.

(sometimes called "undocumented" or "illegal") do not have permission to be in the U.S.

Finally, this bulletin uses the term *resident* to refer to any person who resides in the state of North Carolina, regardless of the person's citizenship or immigration status.

Federal Law Framework: The Welfare Reform Act of 1996

The basic rules for noncitizen benefit eligibility were set forth in Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.³ This law, which is commonly known as the Welfare Reform Act:

- Created a new designation, "qualified alien," for the purpose of determining which noncitizens are eligible for which public benefits and services.
- Imposed restrictions on eligibility for some federal, state, and local benefits for most qualified aliens.
- Barred noncitizens who are not qualified aliens ("nonqualified aliens") from receiving many federal, state, and local benefits.
- Authorized states to further restrict qualified aliens' benefit eligibility.
- Authorized states to provide state and local public benefits to noncitizens who are not lawfully present in the United States.

Subsequent federal legislation altered the rules initially created by the Welfare Reform Act.⁴ Among other things, these laws broadened the definition of qualified alien and restored some immigrants' eligibility for some benefits. Other federal actors have affected benefit eligibility as well. In 1996 and 2001, then-U.S. Attorney General Janet Reno exercised authority granted to her by the Welfare Reform Act to identify some of the benefits for which nonqualified aliens remain eligible. In addition, several federal agencies have published notices explaining or interpreting the effect of the Welfare Reform Act and subsequent legislation on the benefits they administer. The end product of all this

³ Pub. L. No. 104-193.

⁴ *See, e.g.*, Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208; Balanced Budget Act of 1997, Pub. L. No. 105-33; Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. No. 106-386; Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171.

activity is a very complicated set of benefit eligibility rules for noncitizens.

The remainder of this document defines “qualified alien” and “nonqualified alien” and summarizes the benefit eligibility rules for each of those categories. Note that this discussion is limited to whether an individual’s citizenship or immigration status affects his or her eligibility for a particular benefit. Many public benefits have other eligibility criteria, such as financial criteria, that must be satisfied before an individual may obtain the benefit. Nothing in the rules discussed here alters those other criteria—noncitizens who are eligible for public benefits under the immigrant benefit eligibility rules still must satisfy any other eligibility criteria in order to receive the benefit.⁵

Qualified and Nonqualified Aliens

A noncitizen’s eligibility for public benefits depends largely on whether he or she is a “qualified alien.”⁶ The following categories of noncitizens are qualified aliens:

- lawful permanent residents
- persons granted asylum
- refugees
- noncitizens paroled into the U.S. for at least one year⁷
- persons granted withholding of deportation
- noncitizens granted conditional entry under the federal immigration laws as in effect before April 1, 1980
- Cuban/Haitian entrants, as defined in the Refugee Education Assistance Act of 1980
- battered spouses or children who meet certain criteria, and sometimes certain of their family members as well

⁵ See 8 U.S.C. § 1643(a)(1).

⁶ 8 U.S.C. § 1641.

⁷ A person may be “paroled” into the United States in the discretion of the U.S. Attorney General who determines, on a case-by-case basis, whether some noncitizens should be permitted to enter the U.S. for urgent humanitarian reasons or because there will be significant public benefit from allowing the person to enter. 8 U.S.C. § 1182(d)(5).

All other noncitizens are nonqualified aliens.⁸ Unauthorized immigrants fall into this category, but so do some noncitizens who are permitted to be in the United States, such as applicants for asylum who have employment authorizations, family members of U.S. citizens whose applications for adjustment of immigration status are pending, and nonimmigrants.

In some cases, benefit eligibility rules refer to specified groups of noncitizens who are not clearly within either the qualified or nonqualified categories. For example, a number of public benefits have been extended to members of Hmong and Highland Lao tribes that assisted the U.S. during the Vietnam War and some of their family members, provided they are lawfully present in the U.S. In such cases, these people appear to be eligible for benefits without regard to whether they fit within one of the categories in the definition of qualified alien. Similarly, victims of “a severe form of trafficking in persons” are not included in the definition of “qualified alien” but are generally eligible for benefits to the same extent as refugees.⁹ For the sake of simplicity, this document describes these groups’ benefit eligibility in the section about qualified aliens.

Benefit Eligibility: Qualified Aliens

The Welfare Reform Act and legislation amending it addressed qualified aliens’ eligibility for three categories of federal benefits: food stamps, supplemental security income, and “federal means-tested public benefits,” a term that is described in more detail below.

The benefit eligibility rules do not treat all qualified aliens the same. Many of the rules distinguish between individuals based on whether they became qualified aliens before or after August 22, 1996 (the date the Welfare Reform Act became law). Noncitizens who entered the U.S. or acquired the status of qualified alien after that date must observe a 5-year waiting period for many benefits.

⁸ The term “nonqualified alien” does not appear in the Welfare Reform Act, which referred instead to “aliens who are not qualified aliens.” Different shorthand terms to describe this group may be found in the literature, including “not-qualified alien” and “unqualified alien,” but “nonqualified alien” seems to have emerged as the most frequently used term.

⁹ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. No. 106-386, § 107(b)(1)(A) (codified at 22 U.S.C. § 7105).

In addition, three categories of qualified aliens are eligible for a wider range of public benefits than other qualified aliens: qualified aliens with military connections, lawful permanent residents with long work histories in the U.S., and noncitizens admitted to the U.S. for humanitarian reasons.¹⁰ The categories and their benefit eligibility may be described generally as follows:

- *Qualified aliens with military connections:* This group consists of honorably discharged U.S. veterans and their spouses and dependents, and members of the U.S. armed services on active duty and their spouses and dependents.¹¹ Qualified aliens with military connections are treated essentially the same as citizens for the purpose of benefit eligibility—that is, they may potentially receive any public benefit, provided they meet any other eligibility criteria associated with the benefit.
- *Lawful permanent residents (LPRs) with long work histories in the U.S.:* Members of this group are immigrants with LPR status who have worked forty qualifying quarters under Title II of the Social Security Act (Old Age, Survivors, & Disability Insurance).¹² LPRs with long work histories in the U.S. are eligible for some federal benefits on the same terms as citizens. However, members of this category who entered the U.S. or acquired LPR status after August 22, 1996 are subject to a five-year waiting period before they are eligible to receive federal means-tested public benefits.¹³
- *Noncitizens admitted to the U.S. for humanitarian reasons:* The membership of this group varies by benefit. It always includes refugees, persons granted asylum, and persons granted withholding of deportation. It sometimes includes persons paroled into the U.S. for one year or longer,

¹⁰ The names for these three categories are the author's—they do not appear as such in the law (though some government agencies and other entities have adopted similar names for the categories).

¹¹ See, e.g., 8 U.S.C. § 1612(a)(2)(C).

¹² See, e.g., 8 U.S.C. § 1612(a)(2)(B). The formula for determining the number of qualifying quarters is in 8 U.S.C. § 1645. A quarter that began after December 31, 1996 does not count as a qualifying quarter if the person received any federal means-tested public benefit during that quarter.

¹³ 8 U.S.C. § 1613(a).

Cuban/Haitian entrants, Amerasian immigrants, or others. Noncitizens admitted to the U.S. for humanitarian reasons are often exempted from waiting periods that other qualified aliens must observe before becoming eligible for benefits.

Supplemental Security Income (SSI)

The following qualified aliens are eligible for SSI, the federal program that provides cash assistance to low-income elderly or disabled people:¹⁴

- Qualified aliens with military connections
- Lawful permanent residents with long work histories in the U.S.
- Noncitizens who were lawfully residing in the U.S. on August 22, 1996 and were receiving SSI on that date
- Noncitizens who were lawfully residing in the U.S. on August 22, 1996, and who were, or who become, disabled or blind
- Cross-border Native Americans (members of tribes that cross the U.S. border with Canada or Mexico)
- Noncitizens who received SSI after July 1996 based on applications filed before January 1, 1979
- Victims of trafficking

In addition, some qualified aliens who are admitted to the U.S. for humanitarian reasons are eligible to receive SSI for a limited period of time. The following qualified aliens may receive SSI during their first seven years of lawful residence in the United States:¹⁵

- Refugees
- Persons granted asylum
- Persons granted withholding of deportation
- Cuban/Haitian entrants
- Amerasian immigrants
- Victims of trafficking

All other qualified aliens are barred from receiving SSI.¹⁶

¹⁴ 8 U.S.C. § 1612(a)(2) (all groups in the list except victims of trafficking); 22 U.S.C. § 7105(b) (victims of trafficking).

¹⁵ 8 U.S.C. § 1612(a)(2)(A) (all groups in the list except victims of trafficking); 22 U.S.C. § 7105(b) (victims of trafficking).

¹⁶ 8 U.S.C. § 1612(a)(1).

Food Stamps

The initial rules established by the Welfare Reform Act made most qualified aliens ineligible for food stamps. Over the course of several years, legislation was enacted that gradually restored food stamp eligibility for qualified aliens who have resided in the U.S. with the status of “qualified alien” for at least five years.¹⁷

The 5-year waiting period does not apply to:¹⁸

- Qualified aliens with military connections
- Adults who were 65 years of age or older and lawfully residing in the U.S. on August 22, 1996
- Children under the age of 18
- Persons lawfully in the U.S. and receiving government benefits for disability or blindness
- Cross-border Native Americans
- Refugees
- Persons granted asylum
- Persons granted withholding of deportation
- Cuban/Haitian entrants
- Amerasian immigrants
- Lawful residents who were members of the Hmong or Highland Lao tribes who provided assistance to U.S. military forces during the Vietnam War, their spouses and dependent children
- Victims of trafficking

Federal Means-Tested Public Benefits

Noncitizens who entered the U.S. and acquired the status of qualified alien before August 22, 1996 are eligible for federal means-tested public benefits. Most qualified aliens who entered the U.S. after August 22, 1996 are not eligible for federal means-tested public benefits until five years after their lawful admission to the United States with a status of qualified alien.¹⁹

The following subsets of qualified aliens are exempt from this five-year waiting period:²⁰

¹⁷ 8 U.S.C. § 1612(a)(2)(L).

¹⁸ 8 U.S.C. § 1612(a)(2) (all groups in the list except victims of trafficking); 22 U.S.C. § 7105(b) (victims of trafficking).

¹⁹ 8 U.S.C. § 1613(a).

²⁰ 8 U.S.C. § 1613(b) (all groups in the list except victims of trafficking); 22 U.S.C. § 7105(b) (victims of trafficking).

- Qualified aliens with military connections
- Refugees
- Persons granted asylum
- Persons granted withholding of deportation
- Cuban/Haitian entrants
- Amerasian immigrants
- Victims of trafficking

Congress did not define the term “federal means-tested public benefits,” but it did specify that the following programs and services are exempt from the rules restricting eligibility for such benefits:²¹

- Medicaid for emergency medical services (but not for organ transplants)
- Short-term, non-cash emergency disaster relief
- Services provided under the National School Lunch Act and the Child Nutrition Act
- Immunizations
- Testing for treatment of symptoms of communicable diseases
- Payments for foster care and adoption assistance
- Student assistance under the Higher Education Act and the Public Health Service Act
- Means-tested programs under the Elementary and Secondary Education Act
- Head Start
- Benefits under the Job Training Partnership Act
- Programs, services, or assistance specified by the U.S. Attorney General that (1) deliver in-kind services at the community level, (2) do not condition assistance on the recipient’s income or resources, and (3) are necessary for the protection of life or safety (the programs and services that fall in this category are described below, under “Benefit Eligibility: Nonqualified Aliens,” subsection on “Federal Public Benefits”)

Some federal agencies have interpreted the term “federal means-tested public benefit” and concluded what it means for their agencies’ programs. For example, the U.S. Department of Health and Human Services (HHS) determined that, of the programs it administers, only the following constitute federal mean-tested public benefits:²²

²¹ 8 U.S.C. § 1613(c).

²² *Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA): Interpretation of*

- Medicaid (other than emergency Medicaid)
- Temporary Assistance for Needy Families (TANF)
- State Children’s Health Insurance Program (SCHIP)

Likewise, the U.S. Department of Agriculture determined that, of the programs it administers, only food stamps and the food-assistance block grant programs in Puerto Rico, the Northern Mariana Islands, and American Samoa constitute federal means-tested public benefits.²³

Option for States to Further Restrict Qualified Aliens’ Eligibility

Federal Benefits

The Welfare Reform Act authorized states to impose further limits on qualified aliens’ eligibility for benefits provided by “designated federal programs,” defined as Medicaid, Temporary Assistance to Needy Families (TANF), and benefits under the Social Services Block Grant (SSBG).²⁴ However, state laws limiting qualified aliens’ eligibility for these programs must include exceptions for qualified aliens with military connections and lawful permanent residents with long work histories in the U.S.²⁵

Further, any state law limiting qualified aliens’ eligibility for Medicaid must include an exception for cross-border Native Americans and qualified aliens who are eligible for Medicaid because they are receiving SSI.²⁶ It must also include an exception that permits Amerasian immigrants to receive Medicaid until five years after entry in the U.S., and an exception permitting the following groups to receive the benefits for at least their first seven years in the U.S.:²⁷

- Refugees
- Persons granted asylum
- Persons granted withholding of deportation

“Federal Means-Tested Public Benefit,” 62 Fed. Reg. 45256 (Aug. 26, 1997).

²³ *Federal Means-Tested Public Benefits*, 63 Fed. Reg. 36653 (July 7, 1998).

²⁴ 8 U.S.C. § 1612(b)(1).

²⁵ 8 U.S.C. § 1612(b)(2)(B) and (C).

²⁶ 8 U.S.C. § 1612(b)(2)(E) and (F).

²⁷ 8 U.S.C. § 1612(b)(2)(A)(i) (all groups in the list except victims of trafficking); 22 U.S.C. § 7105(b) (victims of trafficking).

- Cuban/Haitian entrants
- Victims of trafficking

Finally, any state law limiting qualified aliens’ eligibility for TANF or SSBG benefits must include an exception permitting the following qualified aliens to receive the benefits for at least their first five years in the U.S.:²⁸

- Refugees
- Persons granted asylum
- Persons granted withholding of deportation
- Cuban/Haitian entrants
- Amerasian immigrants
- Victims of trafficking

State Benefits

States are authorized to limit eligibility for state public benefits for qualified aliens, nonimmigrants, or aliens paroled into the U.S. for less than one year.²⁹ However, any state law limiting eligibility for state public benefits must include an exception for qualified aliens with military connections, lawful permanent residents with long work histories in the U.S., and Amerasian immigrants.³⁰ It must also include an exception permitting the following groups to receive the benefits for at least their first five years in the U.S.:³¹

- Refugees
- Persons granted asylum
- Persons granted withholding of deportation
- Cuban/Haitian entrants
- Victims of trafficking

States and their political subdivisions are authorized to prohibit or otherwise limit or restrict noncitizens’ eligibility for programs of general cash assistance. States may limit or restrict these benefits for all noncitizens or for classes of noncitizens. However, limitations imposed by a state under this authority may not be more restrictive than limitations imposed under comparable federal programs.³²

²⁸ 8 U.S.C. § 1612(b)(2)(A)(ii) (all groups in the list except victims of trafficking); 22 U.S.C. § 7105(b) (victims of trafficking).

²⁹ 8 U.S.C. § 1622(a).

³⁰ 8 U.S.C. § 1622(b)(1)(E), (b)(2) and (b)(3).

³¹ 8 U.S.C. § 1622(b)(1) (all groups in the list except victims of trafficking); 22 U.S.C. § 7105(b) (victims of trafficking).

³² 8 U.S.C. § 1623.

Benefit Eligibility: Nonqualified Aliens

Federal Public Benefits

The Welfare Reform Act made nonqualified aliens ineligible for any “federal public benefit,” defined as:

- (A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and
- (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or appropriated funds of the United States.³³

Although it appears broad, the general rule of ineligibility for federal public benefits is not absolute. The Welfare Reform Act itself included a number of exceptions to the general rule. Later legislation added more exceptions. Finally, the actions of some federal agencies expanded the exceptions and interpreted the statutory definition narrowly, with the result that nonqualified aliens remain eligible for a number of federal public benefits.

Under the exceptions established by federal legislation, nonqualified aliens remain eligible for:³⁴

³³ 8 U.S.C. § 1611(c)(1). The law specified that the term “federal public benefit” does not apply:

- (A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if [certain applicable compacts of free association are] in effect;
- (B) with respect to benefits for an alien who as a work authorized nonimmigrant or as [a lawful permanent resident] qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits ... ; or
- (C) to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States.

8 U.S.C. § 1611(c)(2).

³⁴ 8 U.S.C. § 1611(b) (except where otherwise indicated).

- Medicaid benefits for emergency services (but not for organ transplants)
- Short-term, non-cash emergency disaster relief
- Immunizations
- Testing for and treatment of symptoms of communicable diseases
- Benefits under federal school lunch and school breakfast programs³⁵
- Several other federally funded food assistance programs, including WIC (the food assistance program for women, infants, and children), emergency food assistance, food distribution programs on Indian reservations, and certain programs under the federal Child Nutrition Act, unless the nonqualified alien’s state of residence has elected not to provide such benefits to nonqualified aliens³⁶
- Benefits from housing or community development assistance programs that the person was receiving as of August 22, 1996
- Benefits under Title II of the Social Security Act (Old Age, Survivors, and Disability Insurance), provided the nonqualified alien is lawfully present in the U.S.
- Medicare benefits, provided the nonqualified alien is lawfully present in the U.S. and was authorized to be employed during the time he or she earned wages rendering him or her eligible for Medicare
- Benefits earned under the Railroad Retirement Act or the Railroad Unemployment Insurance Act by nonqualified aliens who are lawfully present in the U.S.
- SSI, if the nonqualified alien was receiving SSI on August 22, 1996, as well as Medicaid if Medicaid eligibility is based on the nonqualified alien’s eligibility for SSI, but only for so long as the nonqualified alien continues to meet all other eligibility requirements for these benefits
- Programs or services specified by the U.S. Attorney General that (1) deliver in-kind services at the community level, (2) do not condition assistance on the recipient’s income or resources, and (3) are necessary for the protection of life or safety

The final exception in the above list essentially authorized the U.S. Attorney General to expand the

³⁵ 8 U.S.C. § 1615(a).

³⁶ 8 U.S.C. § 1615(b)(1)(C).

federal public benefits and services for which non-qualified aliens are eligible. In January 2001, then-Attorney General Janet Reno published a final specification of the programs or services that fall within the exception. Reno first stated that she did not construe the act to preclude noncitizens from receiving police, fire, ambulance, transportation, sanitation, and other widely available services, and therefore did not address those benefits in the specification. She then found that the following programs fit within the exception, provided they meet the criteria of (1) delivering in-kind services at the community level, (2) not conditioning assistance on the recipient's income or resources, and (3) are necessary for the protection of life or safety:³⁷

- Crisis counseling and intervention programs, child protective services, adult protective services, violence and abuse prevention programs, programs for victims of domestic violence or other crimes, and treatment of mental illness or substance abuse
- Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children
- Assistance for people during periods of hot, cold, or other adverse weather conditions
- Soup kitchens, community food banks, senior nutrition programs such as Meals on Wheels, and other community nutritional services for people requiring special assistance
- Medical and public health services (including treatment and prevention of diseases and injuries) and mental health, disability, or substance abuse assistance necessary to protect life or safety
- Activities designed to protect the lives and safety of workers, children, or community residents
- Any other programs, services, or assistance necessary for the protection of life or safety

Finally, actions by some federal agencies have had the effect of expanding nonqualified aliens' eligibility for benefits. Some federal agencies have taken positions on which of their programs meet the definition of "federal public benefit" and which do not.

³⁷ *Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation*, 66 Fed. Reg. 3613 (Jan. 16, 2001).

For example, the U.S. Department of Health and Human Services (HHS) published an interpretation of "federal public benefit" in August 1998.³⁸ HHS first examined part (A) of the definition, which refers to "any grant" provided by a federal agency or federal funds, and concluded that this part of the definition applies only to grants provided to individuals and therefore does not include block grant funds that federal agencies award to state or local governments. It then considered part (B) of the definition. It noted that a benefit must satisfy two conditions to be considered a benefit under part (B). First, it must be a "retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit" or a similar benefit. Second, it must be provided to "an individual, household, or family eligibility unit." HHS reasoned that the second condition narrows the set of benefits that fall within the categories described in the first condition, and concluded that benefits targeted at communities or specific sectors of the population—such as people with a particular physical condition or people of a certain age—do not fall within the scope of the term "federal public benefit."

HHS concluded that, of the programs it supports, thirty-one provide federal public benefits which must be denied to nonqualified aliens. At the same time, it noted that not all of the benefits or services provided under each program constitute federal public benefits. For example, a program on the list might provide a service not targeted to an individual, household, or family eligibility unit. Such a service would not be a federal public benefit. Finally, HHS directed all states and localities that administer programs supported by it to comply with its interpretation. The affected programs are:

- Adoption assistance
- State developmental disabilities councils (direct services only)
- Administration on Developmental Disabilities special projects
- Administration on Developmental Disabilities university affiliated programs (clinical disability assessment services only)
- Adult programs/payments to territories
- Agency for Health Care Policy & Research dissertation grants
- Child Care and Development Fund

³⁸ *Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA): Interpretation of "Federal Public Benefit,"* 63 Fed. Reg. 41657 (Aug. 4, 1998).

- Clinical training grant for faculty development in alcohol and drug abuse
- Foster care
- Health profession training and education assistance
- Independent living program
- Job Opportunities for Low-Income Individuals (JOLI)
- Low Income Home Energy Assistance Program (LIHEAP)
- Medicare
- Medicaid (except emergency Medicaid, which was exempted by Congress from the definition of “federal public benefit”)
- Mental health clinical training grants
- Native Hawaiian loan program
- Refugee cash assistance
- Refugee medical assistance
- Refugee preventive health services program
- Refugee social services formula program
- Refugee social services discretionary program
- Refugee targeted assistance formula program
- Refugee targeted assistance discretionary program
- Refugee unaccompanied minors program
- Refugee voluntary agency matching grant program
- Repatriation program
- Residential Energy Assistance Challenge Option (REACH)
- Social Services Block Grant (SSBG)
- State Child Health Insurance Program (SCHIP)
- Temporary Assistance for Needy Families (TANF)

State and Local Public Benefits

The Welfare Reform Act made most nonqualified aliens ineligible for “state or local public benefits,” a term defined identically to “federal public benefit” except that it refers to benefits funded or provided by state or local governments rather than the federal government.³⁹ However, nonqualified aliens who are nonimmigrants or who have been paroled into the U.S. for less than one year are eligible to receive state or local public benefits.⁴⁰

³⁹ 8 U.S.C. § 1621. The definition of “federal public benefit” is on page 7 of this bulletin.

⁴⁰ 8 U.S.C. § 1621(a).

Once again, the Welfare Reform Act created a number of exceptions to this general rule of ineligibility. It provided that nonqualified aliens are eligible for the following state or local public benefits:⁴¹

- Assistance for health care items and services necessary for treatment of emergency medical conditions (but not for organ transplants)
- Short-term, non-cash emergency disaster relief
- Immunizations
- Testing for and treatment of symptoms of communicable diseases
- Programs and services specified by the U.S. Attorney General that deliver in-kind services at the community level, do not condition assistance on the recipient’s income or resources, and are necessary for the protection of life or safety (these programs are described above, in the section on “Federal Public Benefits”)

Finally, the Welfare Reform Act authorized states to choose to extend additional state and local public benefits to noncitizens who are unlawfully present in the U.S. To do this, states must enact a state law with an effective date after August 22, 1996 that affirmatively extends eligibility for benefits not covered by the above list of exceptions to unlawfully present noncitizens.⁴²

Conclusion

North Carolina state and local government officials often question whether noncitizens—or certain subgroups of noncitizens, such as unauthorized immigrants—are eligible to receive publicly funded benefits or services. There is no across-the-board answer to these questions.

The federal laws governing benefit eligibility for noncitizens are extremely complicated and do not align neatly with the organizational structure of state and local government agencies that administer the benefits. A single agency may administer some benefits for which all noncitizens are eligible, some for which only qualified aliens are eligible, and some for which only a subset of qualified aliens are eligible. Furthermore, since the rules’ categories of “qualified” and “nonqualified” are not synonymous

⁴¹ 8 U.S.C. § 1621(b).

⁴² 8 U.S.C. § 1621(d).

with terms more commonly used to categorize noncitizens—such as authorized/unauthorized, documented/undocumented or legal/illegal—it is difficult, if not impossible, to answer broad questions about the comparative benefit eligibility of

authorized and unauthorized immigrants. Instead, each benefit must be considered separately. This bulletin provides a guide to conducting that analysis.

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School of Government. The University of North Carolina at Chapel Hill

Printed in the United States of America

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