

Sec.

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§ 1601. Statements of national policy concerning welfare and immigration

The Congress makes the following statements concerning national policy with respect to welfare and immigration:

(1) Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes.

(2) It continues to be the immigration policy of the United States that—

(A) aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations, and

(B) the availability of public benefits not constitute an incentive for immigration to the United States.

(3) Despite the principle of self-sufficiency, aliens have been applying for and receiving public benefits from Federal, State, and local governments at increasing rates.

(4) Current eligibility rules for public assistance and unenforceable financial support agreements have proved wholly incapable of assuring that individual aliens not burden the public benefits system.

(5) It is a compelling government interest to enact new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant in accordance with national immigration policy.

(6) It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits.

(7) With respect to the State authority to make determinations concerning the eligi-

bility of qualified aliens for public benefits in this chapter, a State that chooses to follow the Federal classification in determining the eligibility of such aliens for public assistance shall be considered to have chosen the least restrictive means available for achieving the compelling governmental interest of assuring that aliens be self-reliant in accordance with national immigration policy.

(Pub. L. 104-193, title IV, § 400, Aug. 22, 1996, 110 Stat. 2260.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in par. (7), was in the original "this title" meaning title IV of Pub. L. 104-193, Aug. 22, 1996, 110 Stat. 2260, which enacted this chapter, section 1183a of this title, and sections 611a and 1437y of Title 42, The Public Health and Welfare, amended section 1383 of this title, sections 32 and 6213 of Title 26, Internal Revenue Code, and sections 1436a and 1471 of Title 42, and enacted provisions set out as notes under section 1183a of this title and section 32 of Title 26. For complete classification of title IV to the Code, see Tables.

Statutory Notes and Related Subsidiaries

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110-328, § 1, Sept. 30, 2008, 122 Stat. 3567, provided that: "This Act [amending section 1612 of this title and sections 3304, 6103, and 6402 of Title 26, Internal Revenue Code, and enacting provisions set out as a note under section 3304 of Title 26] may be cited as the 'SSI Extension for Elderly and Disabled Refugees Act'."

SUBCHAPTER I—ELIGIBILITY FOR FEDERAL BENEFITS

§ 1611. Aliens who are not qualified aliens ineligible for Federal public benefits**(a) In general**

Notwithstanding any other provision of law and except as provided in subsection (b), an alien who is not a qualified alien (as defined in section 1641 of this title) is not eligible for any Federal public benefit (as defined in subsection (c)).

(b) Exceptions

(1) Subsection (a) shall not apply with respect to the following Federal public benefits:

(A) Medical assistance under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] (or any successor program to such title) for care and services that are necessary for the treatment of an emergency medical condition (as defined in section 1903(v)(3) of such Act [42 U.S.C. 1396b(v)(3)]) of the alien involved and are not related to an organ transplant procedure, if the alien involved otherwise meets the eligibility requirements for medical assistance under the State plan approved under such title (other than the requirement of the receipt of aid or assistance under title IV of such Act [42 U.S.C. 601 et seq.], supplemental security income benefits under title XVI of such Act [42 U.S.C. 1381 et seq.], or a State supplementary payment).

(B) Short-term, non-cash, in-kind emergency disaster relief.

(C) Public health assistance (not including any assistance under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]) for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

(D) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety.

(E) Programs for housing or community development assistance or financial assistance administered by the Secretary of Housing and Urban Development, any program under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], or any assistance under section 1926c of title 7, to the extent that the alien is receiving such a benefit on August 22, 1996.

(2) Subsection (a) shall not apply to any benefit payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] to an alien who is lawfully present in the United States as determined by the Attorney General, to any benefit if nonpayment of such benefit would contravene an international agreement described in section 233 of the Social Security Act [42 U.S.C. 433], to any benefit if nonpayment would be contrary to section 202(t) of the Social Security Act [42 U.S.C. 402(t)], or to any benefit payable under title II of the Social Security Act to which entitlement is based on an application filed in or before August 1996.

(3) Subsection (a) shall not apply to any benefit payable under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] (relating to the medicare program) to an alien who is lawfully present in the United States as determined by the Attorney General and, with respect to benefits payable under part A of such title [42 U.S.C. 1395c et seq.], who was authorized to be employed with respect to any wages attributable to employment which are counted for purposes of eligibility for such benefits.

(4) Subsection (a) shall not apply to any benefit payable under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.] or the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.] to an alien who is lawfully present in the United States as determined by the Attorney General or to an alien residing outside the United States.

(5) Subsection (a) shall not apply to eligibility for benefits for the program defined in section 1612(a)(3)(A) of this title (relating to the supplemental security income program), or to eligibility for benefits under any other program that is based on eligibility for benefits under the program so defined, for an alien who was receiving such benefits on August 22, 1996.

(c) "Federal public benefit" defined

(1) Except as provided in paragraph (2), for purposes of this chapter the term "Federal public benefit" means—

(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 by appropriated funds of the United States.

(2) Such term shall 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 section 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658 (or a successor provision) is in effect;

(B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Attorney General, after consultation with the Secretary of State; 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.

(Pub. L. 104-193, title IV, § 401, Aug. 22, 1996, 110 Stat. 2261; Pub. L. 105-33, title V, §§ 5561, 5565, Aug. 5, 1997, 111 Stat. 638, 639; Pub. L. 105-306, §§ 2, 5(a), Oct. 28, 1998, 112 Stat. 2926, 2927.)

Editorial Notes

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles II, IV, XVI, XVIII, and XIX of the Act are classified generally to subchapters II (§ 401 et seq.), IV (§ 601 et seq.), XVI (§ 1381 et seq.), XVIII (§ 1395 et seq.), and XIX (§ 1396 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. Part A of title XVIII of the Act is classified generally to part A (§ 1395c et seq.) of subchapter XVIII of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Housing Act of 1949, referred to in subsec. (b)(1)(E), is act July 15, 1949, ch. 338, 63 Stat. 413. Title V of the Act is classified generally to subchapter III (§ 1471 et seq.) of chapter 8A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

The Railroad Retirement Act of 1974, referred to in subsec. (b)(4), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93-445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

The Railroad Unemployment Insurance Act, referred to in subsec. (b)(4), is act June 25, 1938, ch. 680, 52 Stat. 1094, which is classified principally to chapter 11 (§351 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 367 of Title 45 and Tables.

This chapter, referred to in subsec. (c)(1), was in the original “this title” meaning title IV of Pub. L. 104-193, Aug. 22, 1996, 110 Stat. 2260, which enacted this chapter, section 1183a of this title, and sections 611a and 1437y of Title 42, The Public Health and Welfare, amended section 1383 of this title, sections 32 and 6213 of Title 26, Internal Revenue Code, and sections 1436a and 1471 of Title 42, and enacted provisions set out as notes under section 1183a of this title and section 32 of Title 26. For complete classification of title IV to the Code, see Tables.

Section 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658, referred to in subsec. (c)(2)(A), means section 141 of the Compact of Free Association between the Government of the United States and the Governments of the Marshall Islands and the Federated States of Micronesia, which is contained in section 201 of Pub. L. 99-239, set out as a note under section 1901 of Title 48, Territories and Insular Possessions, and section 141 of the Compact of Free Association between the United States and the Government of Palau, which is contained in section 201 of Pub. L. 99-658, set out as a note under section 1931 of Title 48.

The Immigration and Nationality Act, referred to in subsec. (c)(2)(B), is act June 27, 1952, ch. 477, 66 Stat. 163, which is classified principally to chapter 12 (§1101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

AMENDMENTS

1998—Subsec. (b)(5). Pub. L. 105-306, §2, added par. (5). Subsec. (c)(2)(C). Pub. L. 105-306, §5(a), added subpar. (C).

1997—Subsec. (b)(3). Pub. L. 105-33, §5561(a), added par. (3).

Subsec. (b)(4). Pub. L. 105-33, §5561(b), added par. (4).

Subsec. (c)(2)(A). Pub. L. 105-33, §5565, inserted before semicolon “, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658 (or a successor provision) is in effect”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5582 of Pub. L. 105-33, set out as a note under section 1367 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

ADDITIONAL FUNDING FOR STATE EMERGENCY HEALTH SERVICES FURNISHED TO UNDOCUMENTED ALIENS

Pub. L. 105-33, title IV, §4723, Aug. 5, 1997, 111 Stat. 515, provided that:

“(a) TOTAL AMOUNT AVAILABLE FOR ALLOTMENT.—There are available for allotments under this section for each of the 4 consecutive fiscal years (beginning with fiscal year 1998) \$25,000,000 for payments to certain States under this section.

“(b) STATE ALLOTMENT AMOUNT.—

“(1) IN GENERAL.—The Secretary of Health and Human Services shall compute an allotment for each fiscal year beginning with fiscal year 1998 and ending

with fiscal year 2001 for each of the 12 States with the highest number of undocumented aliens. The amount of such allotment for each such State for a fiscal year shall bear the same ratio to the total amount available for allotments under subsection (a) for the fiscal year as the ratio of the number of undocumented aliens in the State in the fiscal year bears to the total of such numbers for all such States for such fiscal year. The amount of allotment to a State provided under this paragraph for a fiscal year that is not paid out under subsection (c) shall be available for payment during the subsequent fiscal year.

“(2) DETERMINATION.—For purposes of paragraph (1), the number of undocumented aliens in a State under this section shall be determined based on estimates of the resident illegal alien population residing in each State prepared by the Statistics Division of the Immigration and Naturalization Service as of October 1992 (or as of such later date if such date is at least 1 year before the beginning of the fiscal year involved).

“(c) USE OF FUNDS.—From the allotments made under subsection (b), the Secretary shall pay to each State amounts the State demonstrates were paid by the State (or by a political subdivision of the State) for emergency health services furnished to undocumented aliens.

“(d) STATE DEFINED.—For purposes of this section, the term ‘State’ includes the District of Columbia.

“(e) STATE ENTITLEMENT.—This section constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment to States of amounts provided under this section.”

STUDY AND REPORT ON ALIEN STUDENT ELIGIBILITY FOR POSTSECONDARY FEDERAL STUDENT FINANCIAL ASSISTANCE

Pub. L. 104-208, div. C, title V, §506, Sept. 30, 1996, 110 Stat. 3009-672, provided that not later than one year after Sept. 30, 1996, the Comptroller General was to submit to Congress a report on the extent to which aliens who were not lawfully admitted for permanent residence were receiving postsecondary Federal student financial assistance, and the Secretary of Education and the Commissioner of Social Security were jointly to submit to Congress a report on the computer matching program of the Department of Education under section 1091(p) of title 20.

§ 1612. Limited eligibility of qualified aliens for certain Federal programs

(a) Limited eligibility for specified Federal programs

(1) In general

Notwithstanding any other provision of law and except as provided in paragraph (2), an alien who is a qualified alien (as defined in section 1641 of this title) is not eligible for any specified Federal program (as defined in paragraph (3)).

(2) Exceptions

(A) Time-limited exception for refugees and asylees

With respect to the specified Federal programs described in paragraph (3), paragraph (1) shall not apply to an alien until 7 years after the date—

(i) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 U.S.C. 1157];

(ii) an alien is granted asylum under section 208 of such Act [8 U.S.C. 1158];

(iii) an alien's deportation is withheld under section 243(h) of such Act [8 U.S.C. 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act [8 U.S.C. 1231(b)(3)] (as amended by section 305(a) of division C of Public Law 104-208);

(iv) an alien is granted status as a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980); or

(v) an alien is admitted to the United States as an Amerasian immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Public Law 100-202 and amended by the 9th proviso under MIGRATION AND REFUGEE ASSISTANCE in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, Public Law 100-461, as amended).

(B) Certain permanent resident aliens

Paragraph (1) shall not apply to an alien who—

(i) is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.]; and

(ii) (I) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act [42 U.S.C. 401 et seq.] or can be credited with such qualifying quarters as provided under section 1645 of this title, and (II) in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 1613 of this title) during any such period.

(C) Veteran and active duty exception

Paragraph (1) shall not apply to an alien who is lawfully residing in any State and is—

(i) a veteran (as defined in section 101, 1101, or 1301, or as described in section 107 of title 38) with a discharge characterized as an honorable discharge and not on account of alienage and who fulfills the minimum active-duty service requirements of section 5303A(d) of title 38,

(ii) on active duty (other than active duty for training) in the Armed Forces of the United States, or

(iii) the spouse or unmarried dependent child of an individual described in clause (i) or (ii) or the unremarried surviving spouse of an individual described in clause (i) or (ii) who is deceased if the marriage fulfills the requirements of section 1304 of title 38.

(D) Transition for aliens currently receiving benefits

(i) SSI

(I) In general

With respect to the specified Federal program described in paragraph (3)(A),

during the period beginning on August 22, 1996, and ending on September 30, 1998, the Commissioner of Social Security shall redetermine the eligibility of any individual who is receiving benefits under such program as of August 22, 1996, and whose eligibility for such benefits may terminate by reason of the provisions of this subsection.

(II) Redetermination criteria

With respect to any redetermination under subclause (I), the Commissioner of Social Security shall apply the eligibility criteria for new applicants for benefits under such program.

(III) Grandfather provision

The provisions of this subsection and the redetermination under subclause (I), shall only apply with respect to the benefits of an individual described in subclause (I) for months beginning on or after September 30, 1998.

(IV) Notice

Not later than March 31, 1997, the Commissioner of Social Security shall notify an individual described in subclause (I) of the provisions of this clause.

(ii) Food stamps

(I) In general

With respect to the specified Federal program described in paragraph (3)(B), ineligibility under paragraph (1) shall not apply until April 1, 1997, to an alien who received benefits under such program on August 22, 1996, unless such alien is determined to be ineligible to receive such benefits under the Food Stamp Act of 1977¹ [7 U.S.C. 2011 et seq.]. The State agency shall recertify the eligibility of all such aliens during the period beginning April 1, 1997, and ending August 22, 1997.

(II) Recertification criteria

With respect to any recertification under subclause (I), the State agency shall apply the eligibility criteria for applicants for benefits under such program.

(III) Grandfather provision

The provisions of this subsection and the recertification under subclause (I) shall only apply with respect to the eligibility of an alien for a program for months beginning on or after the date of recertification, if on August 22, 1996, the alien is lawfully residing in any State and is receiving benefits under such program on August 22, 1996.

(E) Aliens receiving SSI on August 22, 1996

With respect to eligibility for benefits for the program defined in paragraph (3)(A) (relating to the supplemental security income program), paragraph (1) shall not apply to an alien who is lawfully residing in the United States and who was receiving such benefits on August 22, 1996.

¹ See References in Text note below.

(F) Disabled aliens lawfully residing in the United States on August 22, 1996

With respect to eligibility for benefits for the specified Federal programs described in paragraph (3), paragraph (1) shall not apply to an alien who—

(i) in the case of the specified Federal program described in paragraph (3)(A)—

(I) was lawfully residing in the United States on August 22, 1996; and

(II) is blind or disabled (as defined in paragraph (2) or (3) of section 1614(a) of the Social Security Act (42 U.S.C. 1382c(a))); and

(ii) in the case of the specified Federal program described in paragraph (3)(B), is receiving benefits or assistance for blindness or disability (within the meaning of section 3(j) of the Food Stamp Act of 1977¹ (7 U.S.C. 2012(r))).²

(G) Exception for certain Indians

With respect to eligibility for benefits for the specified Federal programs described in paragraph (3), section 1611(a) of this title and paragraph (1) shall not apply to any individual—

(i) who is an American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act (8 U.S.C. 1359) apply; or

(ii) who is a member of an Indian tribe (as defined in section 5304(e) of title 25).

(H) SSI exception for certain recipients on the basis of very old applications

With respect to eligibility for benefits for the program defined in paragraph (3)(A) (relating to the supplemental security income program), paragraph (1) shall not apply to any individual—

(i) who is receiving benefits under such program for months after July 1996 on the basis of an application filed before January 1, 1979; and

(ii) with respect to whom the Commissioner of Social Security lacks clear and convincing evidence that such individual is an alien ineligible for such benefits as a result of the application of this section.

(I) Food stamp exception for certain elderly individuals

With respect to eligibility for benefits for the specified Federal program described in paragraph (3)(B), paragraph (1) shall not apply to any individual who on August 22, 1996—

(i) was lawfully residing in the United States; and

(ii) was 65 years of age or older.

(J) Food stamp exception for certain children

With respect to eligibility for benefits for the specified Federal program described in paragraph (3)(B), paragraph (1) shall not apply to any individual who is under 18 years of age.

(K) Food stamp exception for certain Hmong and Highland Laotians

With respect to eligibility for benefits for the specified Federal program described in paragraph (3)(B), paragraph (1) shall not apply to—

(i) any individual who—

(I) is lawfully residing in the United States; and

(II) was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in section 101 of title 38);

(ii) the spouse, or an unmarried dependent child, of such an individual; or

(iii) the unremarried surviving spouse of such an individual who is deceased.

(L) Food stamp exception for certain qualified aliens

With respect to eligibility for benefits for the specified Federal program described in paragraph (3)(B), paragraph (1) shall not apply to any qualified alien who has resided in the United States with a status within the meaning of the term “qualified alien” for a period of 5 years or more beginning on the date of the alien’s entry into the United States.

(M) SSI extensions through fiscal year 2011

(i) Two-year extension for certain aliens and victims of trafficking

(I) In general

Subject to clause (ii), with respect to eligibility for benefits under subparagraph (A) for the specified Federal program described in paragraph (3)(A) of qualified aliens (as defined in section 1641(b) of this title) and victims of trafficking in persons (as defined in section 7105(b)(1)(C) of title 22 or as granted status under section 101(a)(15)(T)(ii) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(T)(ii)]), the 7-year period described in subparagraph (A) shall be deemed to be a 9-year period during fiscal years 2009 through 2011 in the case of such a qualified alien or victim of trafficking who furnishes to the Commissioner of Social Security the declaration required under subclause (IV) (if applicable) and is described in subclause (III).

(II) Aliens and victims whose benefits ceased in prior fiscal years

Subject to clause (ii), beginning on September 30, 2008, any qualified alien (as defined in section 1641(b) of this title) or victim of trafficking in persons (as defined in section 7105(b)(1)(C) of title 22 or as granted status under section 101(a)(15)(T)(ii) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(T)(ii)]) rendered ineligible for the specified Federal program described in paragraph (3)(A) during the period be-

² So in original. Probably should be “2012(j)”).”.

ginning on August 22, 1996, and ending on September 30, 2008, solely by reason of the termination of the 7-year period described in subparagraph (A) shall be eligible for such program for an additional 2-year period in accordance with this clause, if such qualified alien or victim of trafficking meets all other eligibility factors under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.], furnishes to the Commissioner of Social Security the declaration required under subclause (IV) (if applicable), and is described in subclause (III).

(III) Aliens and victims described

For purposes of subclauses (I) and (II), a qualified alien or victim of trafficking described in this subclause is an alien or victim who—

(aa) has been a lawful permanent resident for less than 6 years and such status has not been abandoned, rescinded under section 246 of the Immigration and Nationality Act [8 U.S.C. 1256], or terminated through removal proceedings under section 240 of the Immigration and Nationality Act [8 U.S.C. 1229a], and the Commissioner of Social Security has verified such status, through procedures established in consultation with the Secretary of Homeland Security;

(bb) has filed an application, within 4 years from the date the alien or victim began receiving supplemental security income benefits, to become a lawful permanent resident with the Secretary of Homeland Security, and the Commissioner of Social Security has verified, through procedures established in consultation with such Secretary, that such application is pending;

(cc) has been granted the status of Cuban and Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980 (Public Law 96-422), for purposes of the specified Federal program described in paragraph (3)(A);

(dd) has had his or her deportation withheld by the Secretary of Homeland Security under section 243(h) of the Immigration and Nationality Act [8 U.S.C. 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208), or whose removal is withheld under section 241(b)(3) of such Act [8 U.S.C. 1231(b)(3)];

(ee) has not attained age 18; or

(ff) has attained age 70.

(IV) Declaration required

(aa) In general

For purposes of subclauses (I) and (II), the declaration required under this subclause of a qualified alien or victim of trafficking described in either such subclause is a declaration

under penalty of perjury stating that the alien or victim has made a good faith effort to pursue United States citizenship, as determined by the Secretary of Homeland Security. The Commissioner of Social Security shall develop criteria as needed, in consultation with the Secretary of Homeland Security, for consideration of such declarations.

(bb) Exception for children

A qualified alien or victim of trafficking described in subclause (I) or (II) who has not attained age 18 shall not be required to furnish to the Commissioner of Social Security a declaration described in item (aa) as a condition of being eligible for the specified Federal program described in paragraph (3)(A) for an additional 2-year period in accordance with this clause.

(V) Payment of benefits to aliens whose benefits ceased in prior fiscal years

Benefits paid to a qualified alien or victim described in subclause (II) shall be paid prospectively over the duration of the qualified alien's or victim's renewed eligibility.

(ii) Special rule in case of pending or approved naturalization application

With respect to eligibility for benefits for the specified program described in paragraph (3)(A), paragraph (1) shall not apply during fiscal years 2009 through 2011 to an alien described in one of clauses (i) through (v) of subparagraph (A) or a victim of trafficking in persons (as defined in section 7105(b)(1)(C) of title 22 or as granted status under section 101(a)(15)(T)(ii) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(T)(ii)]), if such alien or victim (including any such alien or victim rendered ineligible for the specified Federal program described in paragraph (3)(A) during the period beginning on August 22, 1996, and ending on September 30, 2008, solely by reason of the termination of the 7-year period described in subparagraph (A)) has filed an application for naturalization that is pending before the Secretary of Homeland Security or a United States district court based on section 336(b) of the Immigration and Nationality Act [8 U.S.C. 1447(b)], or has been approved for naturalization but not yet sworn in as a United States citizen, and the Commissioner of Social Security has verified, through procedures established in consultation with the Secretary of Homeland Security, that such application is pending or has been approved.

(3) "Specified Federal program" defined

For purposes of this chapter, the term "specified Federal program" means any of the following:

(A) SSI

The supplemental security income program under title XVI of the Social Security

Act [42 U.S.C. 1381 et seq.], including supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act [42 U.S.C. 1382e(a)] and payments pursuant to an agreement entered into under section 212(b) of Public Law 93-66.

(B) Food stamps

The food stamp program as defined in section 3(l) of the Food Stamp Act of 1977.¹

(b) Limited eligibility for designated Federal programs

(1) In general

Notwithstanding any other provision of law and except as provided in section 1613 of this title and paragraph (2), a State is authorized to determine the eligibility of an alien who is a qualified alien (as defined in section 1641 of this title) for any designated Federal program (as defined in paragraph (3)).

(2) Exceptions

Qualified aliens under this paragraph shall be eligible for any designated Federal program.

(A) Time-limited exception for refugees and asylees

(i) Medicaid

With respect to the designated Federal program described in paragraph (3)(C), paragraph (1) shall not apply to an alien until 7 years after the date—

(I) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 U.S.C. 1157];

(II) an alien is granted asylum under section 208 of such Act [8 U.S.C. 1158];

(III) an alien's deportation is withheld under section 243(h) of such Act [8 U.S.C. 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act [8 U.S.C. 1231(b)(3)] (as amended by section 305(a) of division C of Public Law 104-208);

(IV) an alien is granted status as a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980); or

(V) an alien³ admitted to the United States as an Amerasian immigrant as described in subsection (a)(2)(A)(i)(V)¹ until 5 years after the date of such alien's entry into the United States.

(ii) Other designated Federal programs

With respect to the designated Federal programs under paragraph (3) (other than subparagraph (C)), paragraph (1) shall not apply to an alien until 5 years after the date—

(I) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 U.S.C. 1157];

(II) an alien is granted asylum under section 208 of such Act [8 U.S.C. 1158];

(III) an alien's deportation is withheld under section 243(h) of such Act [8 U.S.C. 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act [8 U.S.C. 1231(b)(3)] (as amended by section 305(a) of division C of Public Law 104-208);

(IV) an alien is granted status as a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980); or

(V) an alien³ admitted to the United States as an Amerasian immigrant as described in subsection (a)(2)(A)(i)(V)¹ until 5 years after the date of such alien's entry into the United States.

(B) Certain permanent resident aliens

An alien who—

(i) is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.]; and

(ii) (I) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act [42 U.S.C. 401 et seq.] or can be credited with such qualifying quarters as provided under section 1645 of this title, and (II) in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 1613 of this title) during any such period.

(C) Veteran and active duty exception

An alien who is lawfully residing in any State and is—

(i) a veteran (as defined in section 101, 1101, or 1301, or as described in section 107 of title 38) with a discharge characterized as an honorable discharge and not on account of alienage and who fulfills the minimum active-duty service requirements of section 5303A(d) of title 38,

(ii) on active duty (other than active duty for training) in the Armed Forces of the United States, or

(iii) the spouse or unmarried dependent child of an individual described in clause (i) or (ii) or the unremarried surviving spouse of an individual described in clause (i) or (ii) who is deceased if the marriage fulfills the requirements of section 1304 of title 38.

(D) Transition for those currently receiving benefits

An alien who on August 22, 1996, is lawfully residing in any State and is receiving benefits under such program on August 22, 1996, shall continue to be eligible to receive such benefits until January 1, 1997.

(E) Medicaid exception for certain Indians

With respect to eligibility for benefits for the program defined in paragraph (3)(C) (relating to the medicaid program), section 1611(a) of this title and paragraph (1) shall not apply to any individual described in subsection (a)(2)(G).

³ So in original. Probably should be "alien is".

(F) Medicaid exception for aliens receiving SSI

An alien who is receiving benefits under the program defined in subsection (a)(3)(A) (relating to the supplemental security income program) shall be eligible for medical assistance under a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) under the same terms and conditions that apply to other recipients of benefits under the program defined in such subsection.

(G) Medicaid exception for citizens of freely associated states

With respect to eligibility for benefits for the designated Federal program defined in paragraph (3)(C) (relating to the Medicaid program), paragraph (1) shall not apply to any individual who lawfully resides in 1 of the 50 States or the District of Columbia in accordance with the Compacts of Free Association between the Government of the United States and the Governments of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau and shall not apply, at the option of the Governor of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, or American Samoa as communicated to the Secretary of Health and Human Services in writing, to any individual who lawfully resides in the respective territory in accordance with such Compacts.

(3) “Designated Federal program” defined

For purposes of this chapter, the term “designated Federal program” means any of the following:

(A) Temporary assistance for needy families

The program of block grants to States for temporary assistance for needy families under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.].

(B) Social services block grant

The program of block grants to States for social services under title XX of the Social Security Act [42 U.S.C. 1397 et seq.].

(C) Medicaid

A State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], other than medical assistance described in section 1611(b)(1)(A) of this title.

(Pub. L. 104-193, title IV, § 402, Aug. 22, 1996, 110 Stat. 2262; Pub. L. 104-208, div. C, title V, § 510, Sept. 30, 1996, 110 Stat. 3009-673; Pub. L. 105-18, title II, § 6005(a), June 12, 1997, 111 Stat. 191; Pub. L. 105-33, title V, §§ 5301-5302(b), 5303(a), (b), 5304, 5305(b), 5306(a), (b), 5562, 5563, Aug. 5, 1997, 111 Stat. 597, 598, 600-602, 638; Pub. L. 105-185, title V, §§ 503-508, June 23, 1998, 112 Stat. 578, 579; Pub. L. 107-171, title IV, § 4401(a), (b)(1), (c)(1), May 13, 2002, 116 Stat. 333; Pub. L. 110-234, title IV, § 4115(c)(2)(D), May 22, 2008, 122 Stat. 1110; Pub. L. 110-246, § 4(a), title IV, § 4115(c)(2)(D), June 18, 2008, 122 Stat. 1664, 1871; Pub. L. 110-328, § 2, Sept. 30, 2008, 122 Stat. 3567; Pub. L. 116-260, div. CC, title II, § 208(a), Dec. 27, 2020, 134 Stat. 2985.)

Editorial Notes

REFERENCES IN TEXT

Section 243 of such Act and section 243 of the Immigration and Nationality Act, referred to in subsecs. (a)(2)(A)(iii), (M)(i)(III)(dd) and (b)(2)(A)(i)(III), (ii)(III), are section 243 of act June 27, 1952, which is classified to section 1253 of this title. Section 1253 of this title was amended generally by Pub. L. 104-208, div. C, title III, § 307(a), Sept. 30, 1996, 110 Stat. 3009-612, and, as so amended, no longer contains a subsec. (h). For effective date of section 307 of Pub. L. 104-208, see section 309 of Pub. L. 104-208, set out as an Effective Date of 1996 Amendments note under section 1101 of this title.

Section 501(e) of the Refugee Education Assistance Act of 1980, referred to in subsecs. (a)(2)(A)(iv), (M)(i)(III)(cc) and (b)(2)(A)(i)(IV), (ii)(IV), is section 501(e) of Pub. L. 96-422, which is set out in a note under section 1522 of this title.

Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as contained in section 101(e) of Public Law 100-202, referred to in subsec. (a)(2)(A)(v), is section 101(e) [title V, § 584] of Pub. L. 100-202, Dec. 22, 1987, 101 Stat. 1329-183, which is set out as an Amerasian Immigration note under section 1101 of this title.

The 9th proviso under MIGRATION AND REFUGEE ASSISTANCE in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, Public Law 100-461, referred to in subsec. (a)(2)(A)(v), is contained in Pub. L. 100-461, title II, Oct. 1, 1988, 102 Stat. 2268-15, which is set out as an Amerasian Immigration note under section 1101 of this title.

The Immigration and Nationality Act, referred to in subsecs. (a)(2)(B)(i) and (b)(2)(B)(i), is act June 27, 1952, ch. 477, 66 Stat. 163, which is classified principally to chapter 12 (§ 1101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

The Social Security Act, referred to in subsecs. (a)(2)(B)(ii)(I), (M)(i)(II), (3)(A) and (b)(2)(B)(ii)(I), (F), (3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles II, XVI, XIX, and XX of the Act are classified generally to subchapters II (§ 401 et seq.), XVI (§ 1381 et seq.), XIX (§ 1396 et seq.) and XX (§ 1397 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Food Stamp Act of 1977, referred to in subsec. (a)(2)(D)(ii)(I), (F)(ii), (3)(B), subsequently renamed the Food and Nutrition Act of 2008, is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. Section 3(l) of the Act, which defined “supplemental nutrition assistance program”, was classified to section 2012(l) of Title 7, prior to repeal by Pub. L. 113-79, title IV, § 4030(a)(3), Feb. 7, 2014, 128 Stat. 813. Such term is now defined in section 2012(t) of Title 7. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

This chapter, referred to in subsecs. (a)(3) and (b)(3), was in the original “this title” meaning title IV of Pub. L. 104-193, Aug. 22, 1996, 110 Stat. 2260, which enacted this chapter, section 1183a of this title, and sections 611a and 1437y of Title 42, The Public Health and Welfare, amended section 1383 of this title, sections 32 and 6213 of Title 26, Internal Revenue Code, and sections 1436a and 1471 of Title 42, and enacted provisions set out as notes under section 1183a of this title and section 32 of Title 26. For complete classification of title IV to the Code, see Tables.

Section 212(b) of Public Law 93-66, referred to in subsec. (a)(3)(A), is set out as a note under section 1382 of Title 42, The Public Health and Welfare.

Subsection (a)(2)(A)(i)(V) of this section, referred to in subsec. (b)(2)(A)(i)(V), (ii)(V), was redesignated section 1612(a)(2)(A)(v) of this title by Pub. L. 105-185, title V, § 503(2), (3), June 23, 1998, 112 Stat. 578.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2020—Subsec. (b)(2)(G). Pub. L. 116-260 added subpar. (G).

2008—Subsec. (a)(2)(F)(ii). Pub. L. 110-246, § 4115(c)(2)(D)(i), substituted “section 3(j)” for “section 3(r)”.

Subsec. (a)(2)(M). Pub. L. 110-328 added subpar. (M).

Subsec. (a)(3)(B). Pub. L. 110-246, § 4115(c)(2)(D)(ii), substituted “section 3(l)” for “section 3(h)”.

2002—Subsec. (a)(2)(F). Pub. L. 107-171, § 4401(a), added cl. (i), substituted “(ii) in the case” for “(II) in the case”, and struck out former cls. (i) and (ii)(I) which read as follows:

“(i) was lawfully residing in the United States on August 22, 1996; and

“(ii)(I) in the case of the specified Federal program described in paragraph (3)(A), is blind or disabled, as defined in section 1614(a)(2) or 1614(a)(3) of the Social Security Act; and”.

Subsec. (a)(2)(J). Pub. L. 107-171, § 4401(b)(1), substituted “who is under 18 years of age.” for “who—

“(i) was lawfully residing in the United States on August 22, 1996; and

“(ii) is under 18 years of age.”

Subsec. (a)(2)(L). Pub. L. 107-171, § 4401(c)(1), added subpar. (L).

1998—Subsec. (a)(2)(A). Pub. L. 105-185, § 503, struck out cl. (i) designation and heading after subpar. (A) heading, substituted “programs described in paragraph (3)” for “program described in paragraph (3)(A)” in introductory provisions, redesignated subcls. (I) to (V) as cls. (i) to (v), respectively, and realigned their margins, and struck out heading and text of former cl. (ii) which related to eligibility of certain aliens for the food stamp program.

Subsec. (a)(2)(F). Pub. L. 105-185, § 504(1), substituted “specified Federal programs described in paragraph (3)” for “program defined in paragraph (3)(A) (relating to the supplemental security income program)” in introductory provisions.

Subsec. (a)(2)(F)(ii). Pub. L. 105-185, § 504(2), designated existing provisions as subcl. (I), inserted “in the case of the specified Federal program described in paragraph (3)(A),” before “is blind”, substituted “; and” for period at end, and added subcl. (II).

Subsec. (a)(2)(G). Pub. L. 105-185, § 505, substituted “Exception” for “SSI exception” in subpar. heading and “specified Federal programs described in paragraph (3)” for “program defined in paragraph (3)(A) (relating to the supplemental security income program)” in introductory provisions.

Subsec. (a)(2)(I). Pub. L. 105-185, § 506, added subpar. (I).

Subsec. (a)(2)(J). Pub. L. 105-185, § 507, added subpar. (J).

Subsec. (a)(2)(K). Pub. L. 105-185, § 508, added subpar. (K).

1997—Subsec. (a)(2)(A). Pub. L. 105-33, § 5302(a), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: “Paragraph (I) shall not apply to an alien until 5 years after the date—

“(i) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act;

“(ii) an alien is granted asylum under section 208 of such Act; or

“(iii) an alien’s deportation is withheld under section 243(h) of such Act.”

Subsec. (a)(2)(A)(i)(III). Pub. L. 105-33, § 5562, substituted “section 243(h) of such Act (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such

Act (as amended by section 305(a) of division C of Public Law 104-208)” for “section 243(h) of such Act”.

Subsec. (a)(2)(A)(i)(V). Pub. L. 105-33, § 5306(a)(1), added subcl. (V).

Subsec. (a)(2)(A)(ii)(III). Pub. L. 105-33, § 5562, substituted “section 243(h) of such Act (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act (as amended by section 305(a) of division C of Public Law 104-208)” for “section 243(h) of such Act”.

Subsec. (a)(2)(A)(ii)(V). Pub. L. 105-33, § 5306(a)(2), added subcl. (V).

Subsec. (a)(2)(C)(i). Pub. L. 105-33, § 5563(c), inserted “, 1101, or 1301, or as described in section 107” after “section 101”.

Pub. L. 105-33, § 5563(a), inserted “and who fulfills the minimum active-duty service requirements of section 5303A(d) of title 38” after “alienage”.

Subsec. (a)(2)(C)(iii). Pub. L. 105-33, § 5563(b), inserted before period at end “or the unremarried surviving spouse of an individual described in clause (i) or (ii) who is deceased if the marriage fulfills the requirements of section 1304 of title 38”.

Subsec. (a)(2)(D)(i)(I). Pub. L. 105-33, § 5301(c)(1), substituted “September 30, 1998,” for “September 30, 1997,”.

Pub. L. 105-18, § 6005(a)(1), substituted “September 30, 1997” for “the date which is 1 year after August 22, 1996”.

Subsec. (a)(2)(D)(i)(III). Pub. L. 105-33, § 5301(c)(2), substituted “September 30, 1998” for “September 30, 1997,”.

Pub. L. 105-18, § 6005(a)(2), substituted “September 30, 1997,” for “the date of the redetermination with respect to such individual”.

Subsec. (a)(2)(E). Pub. L. 105-33, § 5301(a), added subpar. (E).

Subsec. (a)(2)(F). Pub. L. 105-33, § 5301(b), added subpar. (F).

Subsec. (a)(2)(G). Pub. L. 105-33, § 5303(a), added subpar. (G).

Subsec. (a)(2)(H). Pub. L. 105-33, § 5304, added subpar. (H).

Subsec. (b)(2)(A). Pub. L. 105-33, § 5302(b), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows:

“(i) An alien who is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act until 5 years after the date of an alien’s entry into the United States.

“(ii) An alien who is granted asylum under section 208 of such Act until 5 years after the date of such grant of asylum.

“(iii) An alien whose deportation is being withheld under section 243(h) of such Act until 5 years after such withholding.”

Subsec. (b)(2)(A)(i)(III). Pub. L. 105-33, § 5562, substituted “section 243(h) of such Act (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act (as amended by section 305(a) of division C of Public Law 104-208)” for “section 243(h) of such Act”.

Subsec. (b)(2)(A)(i)(V). Pub. L. 105-33, § 5306(b)(1), added subcl. (V).

Subsec. (b)(2)(A)(ii)(III). Pub. L. 105-33, § 5562, substituted “section 243(h) of such Act (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act (as amended by section 305(a) of division C of Public Law 104-208)” for “section 243(h) of such Act”.

Subsec. (b)(2)(A)(ii)(V). Pub. L. 105-33, § 5306(b)(2), added subcl. (V).

Subsec. (b)(2)(C)(i). Pub. L. 105-33, § 5563(c), inserted “, 1101, or 1301, or as described in section 107” after “section 101”.

Pub. L. 105-33, § 5563(a), inserted “and who fulfills the minimum active-duty service requirements of section 5303A(d) of title 38” after “alienage”.

Subsec. (b)(2)(C)(iii). Pub. L. 105-33, § 5563(b), inserted before period at end “or the unremarried surviving spouse of an individual described in clause (i) or (ii)

who is deceased if the marriage fulfills the requirements of section 1304 of title 38.”

Subsec. (b)(2)(E). Pub. L. 105-33, § 5303(b), added subpar. (E).

Subsec. (b)(2)(F). Pub. L. 105-33, § 5305(b), added subpar. (F).

1996—Subsec. (a)(2)(D)(ii)(I). Pub. L. 104-208 amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: “With respect to the specified Federal program described in paragraph (3)(B), during the period beginning on August 22, 1996, and ending on the date which is 1 year after August 22, 1996, the State agency shall, at the time of the recertification, recertify the eligibility of any individual who is receiving benefits under such program as of August 22, 1996, and whose eligibility for such benefits may terminate by reason of the provisions of this subsection.”

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

References to the food stamp program established under the Food and Nutrition Act of 2008, formerly known as the Food Stamp Act of 1977, considered to refer to the supplemental nutrition assistance program established under that Act, see section 4002(c) of Pub. L. 110-246, set out as a note under section 2012 of Title 7, Agriculture.

EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116-260, div. CC, title II, § 208(e), Dec. 27, 2020, 134 Stat. 2986, provided that: “The amendments made by this section [amending this section and sections 1613 and 1641 of this title and section 1308 of Title 42, The Public Health and Welfare] shall apply to benefits for items and services furnished on or after the date of the enactment of this Act [Dec. 27, 2020].”

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4115(c)(2)(D) of Pub. L. 110-246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110-246, set out as a note under section 1161 of Title 2, The Congress.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 4401(a) of Pub. L. 107-171 effective Oct. 1, 2002, except as otherwise provided, see section 4405 of Pub. L. 107-171, set out as an Effective Date note under section 1161 of Title 2, The Congress.

Amendment by section 4401(b)(1) of Pub. L. 107-171 effective Oct. 1, 2003, see section 4401(b)(3) of Pub. L. 107-171, set out as a note under section 2014 of Title 7, Agriculture.

Pub. L. 107-171, title IV, § 4401(c)(2), May 13, 2002, 116 Stat. 334, provided that: “The amendment made by paragraph (1) [amending this section] takes effect on April 1, 2003.”

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-185, title V, § 510(b), June 23, 1998, 112 Stat. 580, provided that: “The amendments made by sections 503 through 509 [amending this section and section 1613 of this title] take effect on November 1, 1998.”

EFFECTIVE DATE OF 1997 AMENDMENTS

Pub. L. 105-33, title V, § 5308, Aug. 5, 1997, 111 Stat. 603, provided that: “Except as otherwise provided, the amendments made by this subtitle [subtitle D (§§ 5301-5308) of title V of Pub. L. 105-33, enacting sections 1625 and 1646 of this title and amending this section and sections 1613, 1622, and 1641 of this title] shall be effective as if included in the enactment of title IV

of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104-193].”

Amendment by sections 5562 and 5563 of Pub. L. 105-33 effective as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5582 of Pub. L. 105-33, set out as a note under section 1367 of this title.

Pub. L. 105-18, title II, § 6005(b), June 12, 1997, 111 Stat. 191, provided that: “The amendment made by subsection (a) [amending this section] shall be effective as if included in the enactment of section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [this section].”

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-208, div. C, title V, § 510, Sept. 30, 1996, 110 Stat. 3009-673, provided that the amendment made by section 510 is effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193.

§ 1613. Five-year limited eligibility of qualified aliens for Federal means-tested public benefit

(a) In general

Notwithstanding any other provision of law and except as provided in subsections (b), (c), and (d), an alien who is a qualified alien (as defined in section 1641 of this title) and who enters the United States on or after August 22, 1996, is not eligible for any Federal means-tested public benefit for a period of 5 years beginning on the date of the alien's entry into the United States with a status within the meaning of the term “qualified alien”.

(b) Exceptions

The limitation under subsection (a) shall not apply to the following aliens:

(1) Exception for refugees and asylees

(A) An alien who is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 U.S.C. 1157].

(B) An alien who is granted asylum under section 208 of such Act [8 U.S.C. 1158].

(C) An alien whose deportation is being withheld under section 243(h) of such Act [8 U.S.C. 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act [8 U.S.C. 1231(b)(3)] (as amended by section 305(a) of division C of Public Law 104-208).

(D) An alien who is a Cuban and Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980.

(E) An alien admitted to the United States as an Amerasian immigrant as described in section 1612(a)(2)(A)(i)(V)¹ of this title.

(2) Veteran and active duty exception

An alien who is lawfully residing in any State and is—

(A) a veteran (as defined in section 101, 1101, or 1301, or as described in section 107 of title 38) with a discharge characterized as an honorable discharge and not on account of alienage and who fulfills the minimum active-duty service requirements of section 5303A(d) of title 38,

¹ See References in Text note below.

(B) on active duty (other than active duty for training) in the Armed Forces of the United States, or

(C) the spouse or unmarried dependent child of an individual described in subparagraph (A) or (B) or the unmarried surviving spouse of an individual described in clause (i) or (ii)² who is deceased if the marriage fulfills the requirements of section 1304 of title 38.

(3) Exception for citizens of freely associated states

An individual described in section 1612(b)(2)(G) of this title, but only with respect to the designated Federal program defined in section 1612(b)(3)(C) of this title.

(c) Application of term Federal means-tested public benefit

(1) The limitation under subsection (a) shall not apply to assistance or benefits under paragraph (2).

(2) Assistance and benefits under this paragraph are as follows:

(A) Medical assistance described in section 1611(b)(1)(A) of this title.

(B) Short-term, non-cash, in-kind emergency disaster relief.

(C) Assistance or benefits under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.].

(D) Assistance or benefits under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.].

(E) Public health assistance (not including any assistance under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]) for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

(F) Payments for foster care and adoption assistance under parts B and E of title IV of the Social Security Act [42 U.S.C. 620 et seq., 670 et seq.] for a parent or a child who would, in the absence of subsection (a), be eligible to have such payments made on the child's behalf under such part, but only if the foster or adoptive parent (or parents) of such child is a qualified alien (as defined in section 1641 of this title).

(G) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety.

(H) Programs of student assistance under titles IV, V, IX, and X of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq., 1101 et seq.,

1134 et seq., 1135 et seq.], and titles III, VII, and VIII of the Public Health Service Act [42 U.S.C. 241 et seq., 292 et seq., 296 et seq.].

(I) Means-tested programs under the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.].

(J) Benefits under the Head Start Act [42 U.S.C. 9831 et seq.].

(K) Benefits under title I of the Workforce Innovation and Opportunity Act [29 U.S.C. 3111 et seq.].

(L) Assistance or benefits provided to individuals under the age of 18 under the Food Stamp Act of 1977¹ (7 U.S.C. 2011 et seq.).

(d) Benefits for certain groups

Notwithstanding any other provision of law, the limitations under section 1611(a) of this title and subsection (a) shall not apply to—

(1) an individual described in section 1612(a)(2)(G) of this title, but only with respect to the programs specified in subsections (a)(3) and (b)(3)(C) of section 1612 of this title; or

(2) an individual, spouse, or dependent described in section 1612(a)(2)(K) of this title, but only with respect to the specified Federal program described in section 1612(a)(3)(B) of this title.

(Pub. L. 104-193, title IV, § 403, Aug. 22, 1996, 110 Stat. 2265; Pub. L. 105-33, title V, §§ 5302(c)(1), 5303(c), 5306(c), 5562, 5563, Aug. 5, 1997, 111 Stat. 599, 600, 602, 638; Pub. L. 105-185, title V, § 509, June 23, 1998, 112 Stat. 580; Pub. L. 105-277, div. A, § 101(f) [title VIII, § 405(d)(3)(A), (f)(3)(A)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-419, 2681-429; Pub. L. 106-78, title VII, § 752(b)(6), Oct. 22, 1999, 113 Stat. 1169; Pub. L. 107-171, title IV, § 4401(b)(2)(A), May 13, 2002, 116 Stat. 333; Pub. L. 113-128, title V, § 512(x), July 22, 2014, 128 Stat. 1716; Pub. L. 116-260, div. CC, title II, § 208(b), Dec. 27, 2020, 134 Stat. 2985.)

Editorial Notes

REFERENCES IN TEXT

Section 243 of such Act, referred to in subsec. (b)(1)(C), is section 243 of act June 27, 1952, which is classified to section 1253 of this title. Section 1253 of this title was amended generally by Pub. L. 104-208, div. C, title III, § 307(a), Sept. 30, 1996, 110 Stat. 3009-612, and, as so amended, no longer contains a subsec. (h). For effective date of section 307 of Pub. L. 104-208, see section 309 of Pub. L. 104-208, set out as an Effective Date of 1996 Amendments note under section 1101 of this title.

Section 501(e) of the Refugee Education Assistance Act of 1980, referred to in subsec. (b)(1)(D), is section 501(e) of Pub. L. 96-422, which is set out in a note under section 1522 of this title.

Section 1612(a)(2)(A)(i)(V) of this title, referred to in subsec. (b)(1)(E), was redesignated section 1612(a)(2)(A)(v) of this title by Pub. L. 105-185, title V, § 503(2), (3), June 23, 1998, 112 Stat. 578.

The Richard B. Russell National School Lunch Act, referred to in subsec. (c)(2)(C), is act June 4, 1946, ch. 281, 60 Stat. 230, which is classified generally to chapter 13 (§ 1751 et seq.) of Title 42. The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of Title 42 and Tables.

The Child Nutrition Act of 1966, referred to in subsec. (c)(2)(D), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, which is classified generally to chapter 13A (§ 1771 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of Title 42 and Tables.

² So in original. Probably should be "subparagraph (A) or (B)".

The Social Security Act, referred to in subsec. (c)(2)(E), (F), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Parts B and E of title IV and title XIX of the Act are classified generally to parts B (§620 et seq.) and E (§670 et seq.) of subchapter IV and subchapter XIX (§1396 et seq.), respectively, of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Higher Education Act of 1965, referred to in subsec. (c)(2)(H), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219. Titles IV, V, IX, and X of the Act are classified generally to subchapters IV (§1070 et seq.), V (§1101 et seq.), IX (§1134 et seq.), and X (§1135 et seq.), respectively, of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Public Health Service Act, referred to in subsec. (c)(2)(H), is act July 1, 1944, ch. 373, 58 Stat. 682. Titles III, VII, and VIII of the Act are classified generally to subchapters II (§241 et seq.), V (§292 et seq.), and VI (§296 et seq.), respectively, of chapter 6A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (c)(2)(I), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, which is classified generally to chapter 70 (§6301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The Head Start Act, referred to in subsec. (c)(2)(J), is subchapter B (§§ 635-657) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 499, which is classified generally to subchapter II (§9831 et seq.) of chapter 105 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of Title 42 and Tables.

The Workforce Innovation and Opportunity Act, referred to in subsec. (c)(2)(K), is Pub. L. 113-128, July 22, 2014, 128 Stat. 1425. Title I of the Act is classified generally to subchapter I (§3111 et seq.) of chapter 32 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 29 and Tables.

The Food Stamp Act of 1977, referred to in subsec. (c)(2)(L), subsequently renamed the Food and Nutrition Act of 2008, is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

AMENDMENTS

2020—Subsec. (b)(3). Pub. L. 116-260 added par. (3).

2014—Subsec. (c)(2)(K). Pub. L. 113-128 substituted “Benefits under title I of the Workforce Innovation and Opportunity Act” for “Benefits under the title I of the Workforce Investment Act of 1998”.

2002—Subsec. (c)(2)(L). Pub. L. 107-171 added subpar. (L).

1999—Subsec. (c)(2)(C). Pub. L. 106-78 substituted “Richard B. Russell National School Lunch Act” for “National School Lunch Act”.

1998—Subsec. (c)(2)(K). Pub. L. 105-277, §101(f) [title VIII, §405(f)(3)(A)], struck out “Job Training Partnership Act or” before “title I of”.

Pub. L. 105-277, §101(f) [title VIII, §405(d)(3)(A)], substituted “Job Training Partnership Act or title I of the Workforce Investment Act of 1998” for “Job Training Partnership Act”.

Subsec. (d). Pub. L. 105-185 substituted “Benefits for certain groups” for “SSI and medicaid benefits for certain Indians” in heading, designated provisions beginning “an individual” as par. (1), substituted “to—” for “to”, “(a)(3)” for “(a)(3)(A)”, and “; or” for period at end, and added par. (2).

1997—Subsec. (b)(1)(C). Pub. L. 105-33, §5562, substituted “section 243(h) of such Act (as in effect imme-

diately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act (as amended by section 305(a) of division C of Public Law 104-208)” for “section 243(h) of such Act”.

Subsec. (b)(1)(D). Pub. L. 105-33, §5302(c)(1)(A), added subpar. (D).

Subsec. (b)(1)(E). Pub. L. 105-33, §5306(c), added subpar. (E).

Subsec. (b)(2)(A). Pub. L. 105-33, §5563(c), inserted “, 1101, or 1301, or as described in section 107” after “section 101”.

Pub. L. 105-33, §5563(a), inserted “and who fulfills the minimum active-duty service requirements of section 5303A(d) of title 38” after “alienage”.

Subsec. (b)(2)(C). Pub. L. 105-33, §5563(b), inserted before period at end “or the unremarried surviving spouse of an individual described in clause (i) or (ii) who is deceased if the marriage fulfills the requirements of section 1304 of title 38”.

Subsec. (d). Pub. L. 105-33, §5303(c), added subsec. (d). Pub. L. 105-33, §5302(c)(1)(B), struck out heading and text of subsec. (d). Text read as follows: “The limitation under subsection (a) of this section shall not apply to refugee and entrant assistance activities, authorized by title IV of the Immigration and Nationality Act [8 U.S.C. 1521 et seq.] and section 501 of the Refugee Education Assistance Act of 1980, for Cuban and Haitian entrants as defined in section 501(e)(2) of the Refugee Education Assistance Act of 1980.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2020 AMENDMENT

Amendment by section 208(b) of Pub. L. 116-260 applicable to benefits for items and services furnished on or after Dec. 27, 2020, see section 208(e) of Pub. L. 116-260, set out as a note under section 1612 of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-128 effective on the first day of the first full program year after July 22, 2014 (July 1, 2015), see section 506 of Pub. L. 113-128, set out as an Effective Date note under section 3101 of Title 29, Labor.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 4401(b)(2)(A) of Pub. L. 107-171 effective Oct. 1, 2003, see section 4401(b)(3) of Pub. L. 107-171, set out as a note under section 2014 of Title 7, Agriculture.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by section 101(f) [title VIII, §405(d)(3)(A)] of Pub. L. 105-277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(3)(A)] of Pub. L. 105-277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105-277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

Amendment by Pub. L. 105-185 effective Nov. 1, 1998, see section 510(b) of Pub. L. 105-185, set out as a note under section 1612 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by sections 5302(c)(1), 5303(c), and 5306(c) of Pub. L. 105-33 effective, except as otherwise provided, as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5308 of Pub. L. 105-33, set out as a note under section 1612 of this title.

Amendment by sections 5562 and 5563 of Pub. L. 105-33 effective as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5582 of Pub. L. 105-33, set out as a note under section 1367 of this title.

§ 1614. Notification and information reporting

Each Federal agency that administers a program to which section 1611, 1612, or 1613 of this

title applies shall, directly or through the States, post information and provide general notification to the public and to program recipients of the changes regarding eligibility for any such program pursuant to this subchapter.

(Pub. L. 104-193, title IV, §404(a), Aug. 22, 1996, 110 Stat. 2267.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this subtitle”, meaning subtitle A of title IV of Pub. L. 104-193, Aug. 22, 1996, 110 Stat. 2261, which enacted this subchapter and sections 611a and 1437y of Title 42, The Public Health and Welfare, and amended section 1383 of Title 42. For complete classification of this subtitle to the Code, see Tables.

§ 1615. Requirements relating to provision of benefits based on citizenship, alienage, or immigration status under the Richard B. Russell National School Lunch Act, the Child Nutrition Act of 1966, and certain other Acts

(a) School lunch and breakfast programs

Notwithstanding any other provision of this Act, an individual who is eligible to receive free public education benefits under State or local law shall not be ineligible to receive benefits provided under the school lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) on the basis of citizenship, alienage, or immigration status.

(b) Other programs

(1) In general

Nothing in this Act shall prohibit or require a State to provide to an individual who is not a citizen or a qualified alien, as defined in section 1641(b) of this title, benefits under programs established under the provisions of law described in paragraph (2).

(2) Provisions of law described

The provisions of law described in this paragraph are the following:

(A) Programs (other than the school lunch program and the school breakfast program) under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(B) Section 4 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note).

(C) The Emergency Food Assistance Act of 1983 [7 U.S.C. 7501 et seq.].

(D) The food distribution program on Indian reservations established under section 2013(b) of title 7.

(Pub. L. 104-193, title VII, §742, Aug. 22, 1996, 110 Stat. 2307; Pub. L. 106-78, title VII, §752(b)(6), Oct. 22, 1999, 113 Stat. 1169.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (b)(1), is Pub. L. 104-193, Aug. 22, 1996, 110 Stat. 2105, known as the

“Personal Responsibility and Work Opportunity Reconciliation Act of 1996”. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 1305 of Title 42, The Public Health and Welfare, and Tables.

The Richard B. Russell National School Lunch Act, referred to in subsecs. (a) and (b)(2)(A), is act June 4, 1946, ch. 281, 60 Stat. 230, which is classified generally to chapter 13 (§1751 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of Title 42 and Tables.

The Child Nutrition Act of 1966, referred to in subsec. (b)(2)(A), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, which is classified generally to chapter 13A (§1771 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of Title 42 and Tables.

Section 4 of the Agriculture and Consumer Protection Act of 1973, referred to in subsec. (b)(2)(B), is section 4 of Pub. L. 93-86, which is set out as a note under section 612c of Title 7, Agriculture.

The Emergency Food Assistance Act of 1983, referred to in subsec. (b)(2)(C), is title II of Pub. L. 98-8, Mar. 24, 1983, 97 Stat. 35, which is classified generally to chapter 102 (§7501 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 7501 of Title 7, and Tables.

CODIFICATION

Section was enacted as part of title VII of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and not as part of title IV of that Act which comprises this chapter.

AMENDMENTS

1999—Pub. L. 106-78 substituted “Richard B. Russell National School Lunch Act” for “National School Lunch Act” in section catchline and in two places in text.

SUBCHAPTER II—ELIGIBILITY FOR STATE AND LOCAL PUBLIC BENEFITS PROGRAMS

§ 1621. Aliens who are not qualified aliens or nonimmigrants ineligible for State and local public benefits

(a) In general

Notwithstanding any other provision of law and except as provided in subsections (b) and (d), an alien who is not—

(1) a qualified alien (as defined in section 1641 of this title),

(2) a nonimmigrant under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], or

(3) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. 1182(d)(5)] for less than one year,

is not eligible for any State or local public benefit (as defined in subsection (c)).

(b) Exceptions

Subsection (a) shall not apply with respect to the following State or local public benefits:

(1) Assistance for health care items and services that are necessary for the treatment of an emergency medical condition (as defined in section 1396b(v)(3) of title 42) of the alien involved and are not related to an organ transplant procedure.

(2) Short-term, non-cash, in-kind emergency disaster relief.

(3) Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of