

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

communicable diseases whether or not such symptoms are caused by a communicable disease.

(4) 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 (A) deliver in-kind services at the community level, including through public or private nonprofit agencies; (B) 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 (C) are necessary for the protection of life or safety.

(c) "State or local public benefit" defined

(1) Except as provided in paragraphs (2) and (3), for purposes of this subchapter the term "State or local public benefit" means—

(A) any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; 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 a State or local government or by appropriated funds of a State or local government.

(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 Secretary of State, after consultation with the Attorney General; 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.

(3) Such term does not include any Federal public benefit under section 1611(c) of this title.

(d) State authority to provide for eligibility of illegal aliens for State and local public benefits

A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) only through the enactment of a

State law after August 22, 1996, which affirmatively provides for such eligibility.

(Pub. L. 104-193, title IV, §411, Aug. 22, 1996, 110 Stat. 2268; Pub. L. 105-33, title V, §§5565, 5581(b)(1), Aug. 5, 1997, 111 Stat. 639, 642; Pub. L. 105-306, §5(b), Oct. 28, 1998, 112 Stat. 2927.)

Editorial Notes

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsecs. (a)(2) and (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.

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.

AMENDMENTS

1998—Subsec. (c)(2)(C). Pub. L. 105-306 added subpar. (C).

1997—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”.

Subsec. (c)(3). Pub. L. 105-33, §5581(b)(1), made technical amendment to reference in original act which appears in text as reference to section 1611(c) of this title.

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.

PILOT PROGRAMS ON LIMITING ISSUANCE OF DRIVER'S LICENSE TO ILLEGAL ALIENS

Pub. L. 104-208, div. C, title V, §502, Sept. 30, 1996, 110 Stat. 3009-671, provided that pursuant to guidelines by the Attorney General, all States could conduct pilot programs to determine the viability, advisability, and cost-effectiveness of denying driver's licenses to aliens not lawfully present in the United States and, not later than 3 years after Sept. 30, 1996, the Attorney General should submit a report to the Judiciary Committees of Congress.

§ 1622. State authority to limit eligibility of qualified aliens for State public benefits

(a) In general

Notwithstanding any other provision of law and except as provided in subsection (b), a State is authorized to determine the eligibility for any State public benefits of an alien who is a qualified alien (as defined in section 1641 of this title), a nonimmigrant under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], or 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.

(b) Exceptions

Qualified aliens under this subsection shall be eligible for any State public benefits.

(1) Time-limited 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] until 5 years after the date of an alien's entry into the United States.

(B) An alien who is granted asylum under section 208 of such Act [8 U.S.C. 1158] until 5 years after the date of such grant of asylum.

(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) until 5 years after such withholding.

(D) An alien who is a Cuban and Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980 until 5 years after the alien is granted such status.

(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) Certain permanent resident aliens

An alien who—

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

(B)(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.

(3) 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,

(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 unremarried 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.

(4) Transition for those currently receiving benefits

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

(Pub. L. 104-193, title IV, § 412, Aug. 22, 1996, 110 Stat. 2269; Pub. L. 105-33, title V, §§ 5302(c)(2), 5306(d), 5562, 5563, 5581(b)(3), Aug. 5, 1997, 111 Stat. 599, 602, 638, 643.)

Editorial Notes

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsecs. (a) and (b)(2)(A), 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.

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 Social Security Act, referred to in subsec. (b)(2)(B)(i), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title II of the Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1997—Subsec. (b)(1)(C). Pub. L. 105-33, § 5581(b)(3), substituted “withholding” for “with-holding”.

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)(1)(D). Pub. L. 105-33, § 5302(c)(2), added subpar. (D).

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

Subsec. (b)(3)(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)(3)(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”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by sections 5302(c)(2) and 5306(d) 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

¹ See References in Text note below.

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

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, 5563, and 5581(b)(3) 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.

§ 1623. Limitation on eligibility for preferential treatment of aliens not lawfully present on basis of residence for higher education benefits

(a) In general

Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident.

(b) Effective date

This section shall apply to benefits provided on or after July 1, 1998.

(Pub. L. 104-208, div. C, title V, § 505, Sept. 30, 1996, 110 Stat. 3009-672.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 which comprises this chapter.

§ 1624. Authority of States and political subdivisions of States to limit assistance to aliens and to distinguish among classes of aliens in providing general cash public assistance

(a) In general

Subject to subsection (b) and notwithstanding any other provision of law, a State or political subdivision of a State is authorized to prohibit or otherwise limit or restrict the eligibility of aliens or classes of aliens for programs of general cash public assistance furnished under the law of the State or a political subdivision of a State.

(b) Limitation

The authority provided for under subsection (a) may be exercised only to the extent that any prohibitions, limitations, or restrictions imposed by a State or political subdivision of a State are not more restrictive than the prohibitions, limitations, or restrictions imposed under comparable Federal programs. For purposes of this section, attribution to an alien of a sponsor's income and resources (as described in section 1631 of this title) for purposes of determining eligibility for, and the amount of, benefits shall be considered less restrictive than a prohibition of eligibility for such benefits.

(Pub. L. 104-208, div. C, title V, § 553, Sept. 30, 1996, 110 Stat. 3009-681.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 which comprises this chapter.

§ 1625. Authorization for verification of eligibility for State and local public benefits

A State or political subdivision of a State is authorized to require an applicant for State and local public benefits (as defined in section 1621(c) of this title) to provide proof of eligibility.

(Pub. L. 104-193, title IV, § 413, as added Pub. L. 105-33, title V, § 5307(a), Aug. 5, 1997, 111 Stat. 602.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section 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 an Effective Date of 1997 Amendment note under section 1612 of this title.

SUBCHAPTER III—ATTRIBUTION OF INCOME AND AFFIDAVITS OF SUPPORT

§ 1631. Federal attribution of sponsor's income and resources to alien

(a) In general

Notwithstanding any other provision of law, in determining the eligibility and the amount of benefits of an alien for any Federal means-tested public benefits program (as provided under section 1613 of this title), the income and resources of the alien shall be deemed to include the following:

(1) The income and resources of any person who executed an affidavit of support pursuant to section 213A of the Immigration and Nationality Act [8 U.S.C. 1183a] (as added by section 423 and as amended by section 551(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) on behalf of such alien.

(2) The income and resources of the spouse (if any) of the person.

(b) Duration of attribution period

Subsection (a) shall apply with respect to an alien until such time as the alien—

(1) achieves United States citizenship through naturalization pursuant to chapter 2 of title III of the Immigration and Nationality Act [8 U.S.C. 1421 et seq.]; or

(2)(A) 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 (B) 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.