



# Noncitizen Eligibility and Verification Issues in the Health Care Reform Legislation

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## Summary

Health care reform legislation raises a significant set of complex issues, and among the thornier for policy makers are the noncitizen eligibility and verification issues. That the treatment of foreign nationals complicates health care reform legislation is not surprising given that reform of immigration policy poses its own constellation of controversial policy options. This report focuses on this nexus of immigration law and health care reform in the major health care reform bills that have received committee action. These are the America's Affordable Health Choices Act of 2009 (H.R. 3200), as reported by the House Committees on Energy and Commerce, Ways and Means, and Education and Labor on October 14, 2009, and folded into the Affordable Health Care for America Act (H.R. 3962), which passed on November 7, 2009; the Affordable Health Choices Act (S. 1679), as reported by the Senate Committee on Health, Education, Labor, and Pensions (HELP) on September 17, 2009; and the America's Healthy Future Act (S. 1796), as ordered reported by the Senate Committee on Finance on October 13, 2009.

Legal permanent residents (LPRs) are treated similarly to U.S. citizens under all three major health care reform bills. They are mandated to obtain health insurance, are eligible to purchase insurance through the exchange, and are eligible for the premium and cost-sharing subsidies if they meet the other eligibility requirements. This consistency of treatment holds regardless of when they entered the United States or whether they came initially as refugees or asylees.

The proposed policies toward nonimmigrants (i.e., those in the United States temporarily, such as students and temporary workers) are more nuanced in large part because some classes of nonimmigrants reside legally in the United States for extended periods of time, some are employed and taxed as a result of those earnings, and some are on a track to become LPRs.

The treatment of unauthorized aliens varies across bills and across the three elements (the individual mandate, eligibility for the exchange, and eligibility for subsidies). Unauthorized aliens would not be eligible for the premium and cost-sharing credits in any of the bills. Only the Senate Finance bill *expressly* exempts them from the mandate to have health coverage and bars them from the health insurance exchange.

Another aspect of the legislation germane to the issue of noncitizens is the immigration and citizenship verification provisions of the bills. Under S. 1679, the Secretary of Health and Human Services (HHS) would be required to verify an individual's eligibility to enroll. In the Senate Committee on Finance legislation (S. 1796), three pieces of personal data would be used to verify citizenship and immigration status. The Social Security Administration would verify the name, social security number, and date of birth of the individual, and the Department of Homeland Security (DHS) would verify an individual's immigration status. While S. 1796's requirements are similar to and compatible with the DHS Systematic Alien Verification for Entitlements (SAVE) system established by §1137(d) of the Social Security Act (SSA), H.R. 3962 would expressly build on the statutory authority of the SAVE system to verify citizenship and immigration status.

None of the three major health care reform bills would alter the noncitizen eligibility laws pertaining to Medicaid or CHIP. Moreover, none of the three major health care reform bills would alter the Internal Revenue Code on the definitions of resident or nonresident aliens.

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## Policy Context

Health care reform legislation raises a significant set of complex issues, and among the thornier for policy makers are the noncitizen eligibility and verification issues. That the treatment of foreign nationals complicates health care reform legislation is not surprising given that reform of immigration policy poses its own constellation of controversial policy options. This report focuses on this nexus of immigration law and health care reform in the major health care reform bills that have received committee action.<sup>1</sup> These are the America's Affordable Health Choices Act of 2009 (H.R. 3200), as reported by the House Committees on Energy and Commerce, Ways and Means, and Education and Labor on October 14, 2009,<sup>2</sup> and folded into the Affordable Health Care for America Act (H.R. 3962), which passed on November 7, 2009; the Affordable Health Choices Act (S. 1679), as reported by the Senate Committee on Health, Education, Labor, and Pensions (HELP) on September 17, 2009;<sup>3</sup> and the America's Healthy Future Act (S. 1796), as reported by the Senate Committee on Finance on October 19, 2009.<sup>4</sup>

A noncitizen is anyone who is not a citizen or national of the United States and is synonymous with the terms *alien* and *foreign national*. Noncitizens include those in the United States permanently (e.g., legal permanent residents, refugees), those in the country temporarily (e.g., students, temporary workers), and those who are in the country without authorization.<sup>5</sup> The Immigration and Nationality Act (INA) defines and proscribes who among the noncitizens are legally present in the United States.<sup>6</sup>

According to the March 2009 Current Population Survey (CPS), an estimated 21.3 million noncitizens were 7.1% of the U.S. population.<sup>7</sup> Of those, an estimated 23.4% of noncitizens were below the 100% threshold of the federal poverty level in 2008. An earlier Congressional Research Service (CRS) study found that 43.8% of noncitizens lacked any type of health insurance in 2007.<sup>8</sup> Researchers at the Pew Hispanic Center estimated that 24% of legal immigrants who were adults had no health insurance coverage and that 59% of unauthorized aliens who were adults had no health insurance in 2007.<sup>9</sup>

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<sup>1</sup> For a discussion of the treatment of noncitizens in the Republican alternative offered by House Minority Leader John Boehner, see CRS Report R40906, *Overview of Provisions in the Amendment in the Nature of a Substitute to H.R. 3962 Offered by Mr. Boehner of Ohio*, coordinated by Bernadette Fernandez, Amanda K. Sarata, and Erin D. Williams.

<sup>2</sup> For a more complete analysis of these provisions in H.R. 3200, see CRS Report R40773, *Treatment of Noncitizens in H.R. 3200*, by Alison Siskin and Erika K. Lunder.

<sup>3</sup> Available online at <http://www.congress.gov/cgi-lis/bdquery>.

<sup>4</sup> The legislative language is available online at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&dodid=f:s1796pcs.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&dodid=f:s1796pcs.txt.pdf).

<sup>5</sup> The three main components of the unauthorized resident alien population are (1) aliens who overstay their nonimmigrant visas, (2) aliens who enter the country surreptitiously without inspection, and (3) aliens who are admitted on the basis of fraudulent documents.

<sup>6</sup> 8 U.S.C. §1101 et seq.

<sup>7</sup> For a discussion of the CPS, see section below on "What Types of Health Coverage Do Noncitizens Currently Have?"

<sup>8</sup> For the complete analysis, see CRS Report R40772, *Noncitizen Health Insurance Coverage and Use of Select Safety-Net Providers*, by Alison Siskin.

<sup>9</sup> Jeffrey S. Passel and D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*, Pew Hispanic Eligibility in Major Health Care Reform Bills Center, April 14, 2009.

The report opens with a legislative analysis that summarizes the key elements of the major health care reform legislation in which noncitizen eligibility issues are especially germane. It follows with a comparative analysis of how the bills treat the main classes of noncitizens on the three key elements. The report then addresses four questions selected for their policy implications: What type of health coverage do noncitizens currently have? What is current law on noncitizen eligibility for federal means-tested health care coverage? What are the current employment rules for and tax obligations of noncitizens? How is immigration and citizenship status verified? This report builds on a set of CRS reports that analyze the tax obligations of noncitizens, noncitizen eligibility for federal benefits, trends in noncitizen poverty levels, and noncitizen health insurance coverage and use of select safety net providers.<sup>10</sup>

## Legislative Analysis

### Key Elements of the Legislation

Health care reform legislation in the 111<sup>th</sup> Congress has many important features, but three elements common to the major health care reform bills bear directly on how noncitizens are treated.<sup>11</sup> These key elements are as follows:

- an individual mandate to have health insurance,
- a health insurance exchange (to provide eligible individuals and small businesses with access to insurers' plans), and
- premium and cost-sharing subsidies based on income toward the required purchase of health insurance.

Whether and which noncitizens in the United States are eligible for these three elements have become contentious and perhaps misunderstood.

### Comparative Analysis of Key Elements

As the three tables below indicate, legal permanent residents (LPRs) are treated similarly to U.S. citizens under all three major health care reform bills. They are mandated to purchase health insurance, are eligible to purchase insurance through the exchange, and are eligible for the premium and cost-sharing subsidies if they meet the other eligibility requirements. This consistency of treatment holds regardless of when they entered the United States or whether they came initially as refugees or asylees.

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<sup>10</sup> CRS Report IS40257, CRS Issue Statement on Aliens' Rights, Benefits, and Responsibilities, coordinated by Margaret Mikyung Lee.

<sup>11</sup> For a full discussion of health care reform legislation in the 111<sup>th</sup> Congress, see CRS Report R40581, *Health Reform and the 111<sup>th</sup> Congress*, by Hinda Chaikind; CRS Report R40517, *Health Care Reform: An Introduction*, coordinated by Bernadette Fernandez; and CRS Report R40885, *Private Health Insurance Provisions of H.R. 3962*, by Hinda Chaikind et al.

The treatment of unauthorized aliens varies across bills and across the three elements.<sup>12</sup> For example, H.R. 3962 would mandate that as of 2013, all resident aliens (as defined in the Internal Revenue Code and discussed below) have health insurance, but would expressly bar those resident aliens who are not in a legal immigration status (i.e., unauthorized or “illegal” aliens) from eligibility for the premium and cost-sharing credit.<sup>13</sup> Only the Senate Finance bill *expressly* exempts them from the mandate to have health coverage and bars them from the health insurance exchange. Moreover, they would not be not eligible for the premium and cost-sharing credit in any of the major health care reform bills.

The proposed policies toward nonimmigrants (those admitted temporarily for a limited purposes, such as students, visitors, or temporary workers) are more nuanced, in large part because some classes of nonimmigrants reside legally in the United States for extended periods of time, some are employed and taxed as a result of those earnings, and some are on a track to become LPRs.

**Table I. Mandate for Noncitizens to Obtain Health Insurance**

Class of Noncitizen	Legislation Receiving Committee Action		
	H.R. 3962	Senate HELP Reported (S. 1679)	Senate Finance Reported (S. 1796)
Legal Permanent Residents (LPRs)			
—first five years in the United States	Yes	Yes	Yes
—after five years in the United States	Yes	Yes	Yes
—refugees, humanitarian and other excepted classes of LPRs	Yes	Yes	Yes
Nonimmigrants	Yes, if they meet the substantial presence test	Not expressly exempted	Yes
Unauthorized aliens	Yes, if they meet the substantial presence test	Not expressly exempted	Expressly exempted

**Source:** CRS analyses of H.R. 3962 as introduced, S. 1679 as reported and S. 1796 as reported.

**Notes:** The substantial presence test is met when the individual is present in the United States for at least 31 days during the current year and at least 183 days during the current year and previous two years. For computing the 183 days, a formula is used that counts all the qualifying days in the current year, one-third of the qualifying days in the immediate preceding year, and one-sixth of the qualifying days in the second preceding year. I.R.C. §§ 7701(b)(1)(A) and (b)(3).

<sup>12</sup> Unauthorized (“illegal”) aliens are those in the United States in violation of immigration law for whom no legal relief or recognition has been extended.

<sup>13</sup> Section 347 of H.R. 3962 states, “Nothing in this subtitle shall allow Federal payments for affordability credits on behalf of individuals who are not lawfully present in the United States.” See CRS Report R40773, *Treatment of Noncitizens in H.R. 3200*, by Alison Siskin and Erika K. Lunder.

**Table 2. Access of Noncitizens to Health Insurance Exchanges**

Legislation Receiving Committee Action

Class of Noncitizen	H.R. 3962	Senate HELP Reported (S. 1679)	Senate Finance Reported (S. 1796)
Legal Permanent Residents (LPRs)			
—first five years in the United States	Eligible to purchase	Eligible to purchase	Eligible to purchase
—after five years in the United States	Eligible to purchase	Eligible to purchase	Eligible to purchase
—refugees, humanitarian and other excepted classes of LPRs	Eligible to purchase	Eligible to purchase	Eligible to purchase
Nonimmigrants	Not expressly barred from purchasing	Not expressly barred from purchasing	Eligible to purchase
Unauthorized aliens	Not expressly barred from purchasing	Not expressly barred from purchasing	Expressly barred from purchasing

**Source:** CRS analyses of H.R. 3962 as introduced, S. 1679 as reported and S. 1796 as reported.

**Table 3. Eligibility of Noncitizens for Health Insurance Premium Subsidies Available to Low to Moderate Income Individuals Enrolled in Exchange Coverage**

Legislation Receiving Committee Action

Class of Noncitizen	H.R. 3962	Senate HELP Reported (S. 1679)	Senate Finance Reported (S. 1796)
Legal Permanent Residents (LPRs)			
—first five years in the United States	Eligible if otherwise eligible	Eligible if otherwise eligible	Eligible if otherwise eligible
—after five years in the United States	Eligible if otherwise eligible	Eligible if otherwise eligible	Eligible if otherwise eligible
—refugees, humanitarian and other excepted classes of LPRs	Eligible if otherwise eligible	Eligible if otherwise eligible	Eligible if otherwise eligible
Nonimmigrants	Not eligible, with certain exceptions	Eligible if otherwise eligible	Eligible if otherwise eligible
Unauthorized aliens	Not eligible	Not eligible	Not eligible

**Source:** CRS analyses of H.R. 3962 as introduced, S. 1679 as reported and S. 1796 as reported.

**Notes:** The exceptions for nonimmigrants who could obtain credits under H.R. 3962 would be those trafficking victims, crime victims, fiancées of U.S. citizens, and certain V visaholders who have had applications for LPR status pending for three years; these individuals are likely to remain in the United States permanently.



## Selected Policy Implications of the Proposals

Among other features, the major health care reform bills have elements based upon employer-provided health insurance, federal means-tested health care, individually obtained health coverage, and premium subsidies or cost sharing credits for low- and moderate-income people. When these elements are seen through the prism of immigration and citizenship status, the policy implications prompt at least four questions. What types of health coverage do noncitizens currently have? What is current law on noncitizen eligibility for federal means-tested health care coverage? What are the current employment rules for and tax obligations of noncitizens? How is immigration and citizenship status verified? This section of the report addresses these questions in light of the policy implications of the proposals and summarizes the germane legislative provisions.

### What Types of Health Coverage Do Noncitizens Currently Have?

One of the most comprehensive source of information on noncitizens is the U.S. Census Bureau's March Supplement to the Current Population Survey (CPS). The Census Bureau conducts the CPS each month to collect labor force data about the civilian noninstitutionalized population. The March Supplement of the CPS gathers additional data about income, education, household characteristics, and geographic mobility. Because the CPS is a sample of the U.S. population, the results are estimates. Additionally, while the CPS data distinguish between the foreign born who have naturalized and those who have not, they do not distinguish between types of noncitizens (e.g., permanent, temporary, illegal).

### Noncitizens: Coverage and Poverty Levels

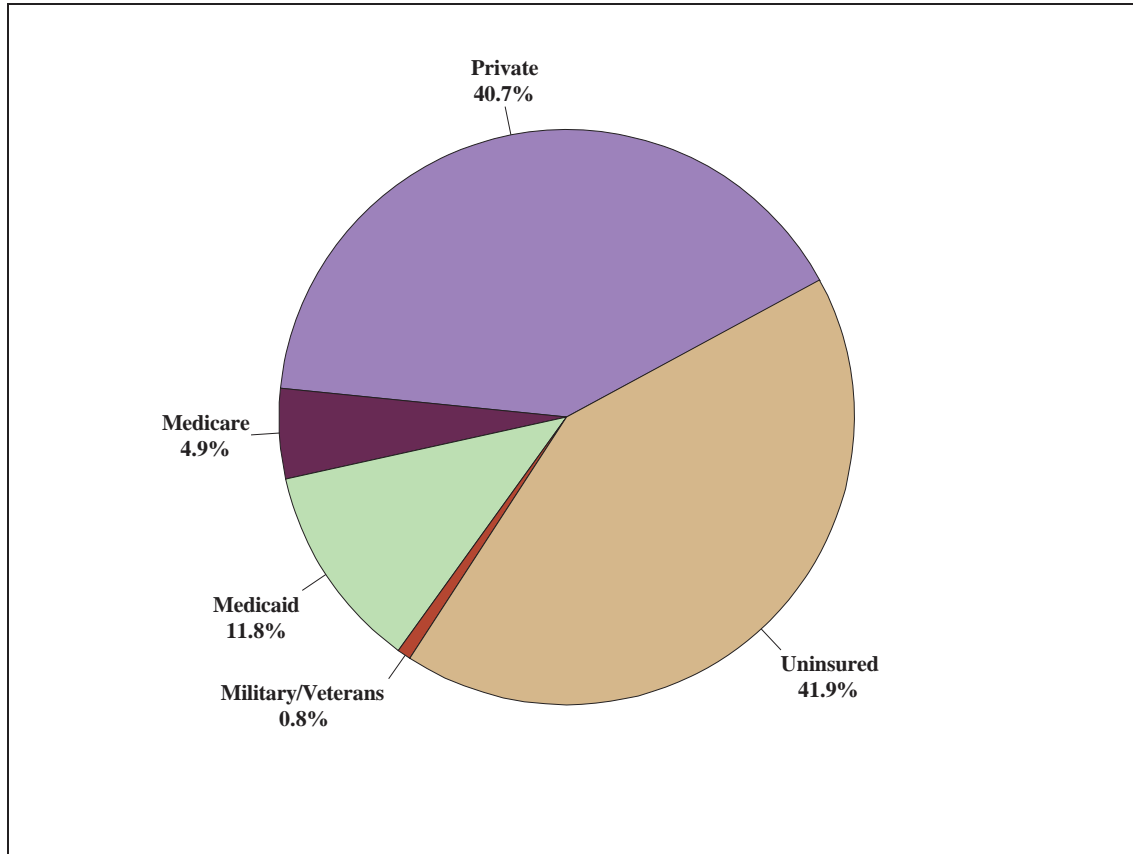
CRS recently published an extensive analysis of noncitizen health insurance coverage, which used the 2008 March CPS. Among the study's findings were that noncitizens were more than three times as likely as native-born U.S. citizens, and more than two times as likely as naturalized U.S. citizens, to be uninsured in 2007. It also found that 43.8% of noncitizens lacked any type of health insurance, compared with 12.7% of native-born and 17.6% of naturalized populations. Similarly, noncitizens had the lowest rate of private insurance coverage (42.5%), while native-born citizens had a slightly higher rate of private health insurance than naturalized citizens (69.9% and 63.9%, respectively). The noncitizen population also had the lowest rate of Medicare coverage in 2007, which was likely due to the relatively young age of noncitizens and the decreased likelihood that they would meet the eligibility requirements for Medicare. Noncitizens were slightly less likely to have Medicaid coverage (12.3%) than native-born citizens (13.4%), while naturalized citizens were the least likely to have Medicaid coverage (10.7%). Lastly, because noncitizens, in general, must be LPRs to join the armed forces, the noncitizen population had much lower rates of military/veterans coverage (0.8%) than the naturalized (2.3%) and native-born citizen (4%) populations in 2007.<sup>14</sup> **Figure 1** presents a summary of types of coverage for noncitizens from this CRS analysis.<sup>15</sup>

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<sup>14</sup> The CPS interviews the civilian population, not active duty military.

<sup>15</sup> For the complete analysis, see CRS Report R40772, *Noncitizen Health Insurance Coverage and Use of Select Safety-Net Providers*, by Alison Siskin.

**Figure 1. Noncitizens, by Type of Health Insurance Coverage, 2007**

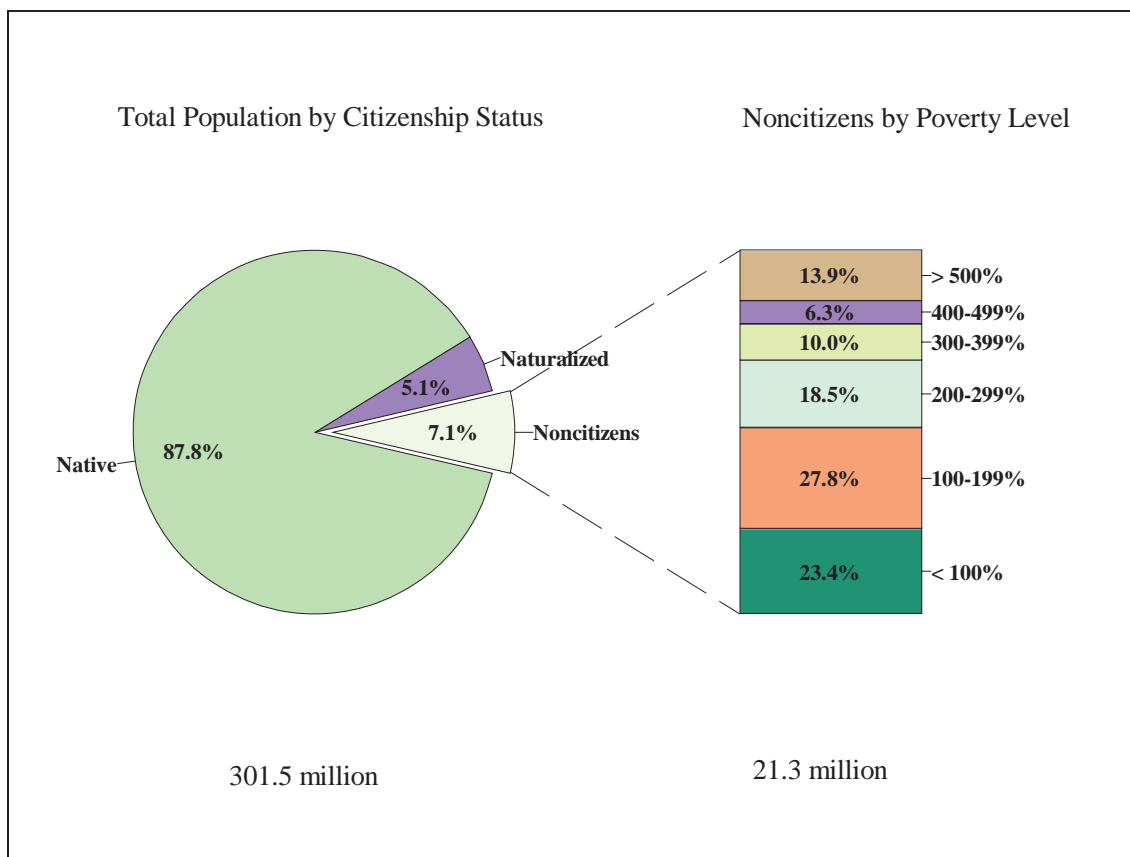


**Source:** CRS analysis of the CPS March Supplement, 2008, from CRS Report R40772, *Noncitizen Health Insurance Coverage and Use of Select Safety-Net Providers*, by Alison Siskin.

Using the March Supplement of the 2009 CPS, CRS estimated that in the beginning of 2009, there were approximately 36.8 million foreign-born persons in the United States. The foreign-born population comprised approximately 15.5 million naturalized U.S. citizens and 21.3 million noncitizens.<sup>16</sup> As **Figure 2** illustrates, noncitizens composed an estimated 7.1% of the U.S. population at the beginning of 2009.

<sup>16</sup> According to the CRS analysis, the 2009 CPS data show an increase in the number of foreign-born residents who have naturalized, as well as flattening in the overall number of newly arriving foreign-born residents. For CRS analysis of foreign born residents in the 2008 CPS, see CRS Report RL31114, *Noncitizen Eligibility for Major Federal Public Assistance Programs: Policies and Legislation*, by Ruth Ellen Wasem, and CRS Report R40772, *Noncitizen Health Insurance Coverage and Use of Select Safety-Net Providers*, by Alison Siskin.

**Figure 2. Citizenship Status and Noncitizen Poverty Levels, 2008**



**Source:** CRS analysis of the CPS March Supplement, 2009.

**Notes:** The population estimates are calculated as of January 2009, but the poverty data are based upon income reported for 2008.

As **Figure 2** shows, 23.4% of noncitizens are below the threshold of 100% of the federal poverty level. Another 27.8% fall between 100% and 199% of the federal poverty level. Because the health insurance premium subsidies available to low- to moderate-income individuals enrolled in exchange coverage would likely be based on the federal poverty level, the portion of noncitizens with low- or moderate-incomes is a factor. As **Table 3** indicates, however, eligibility for the subsidies is also based on immigration status, a piece of information not available in the CPS data or any other surveys of the U.S. population.

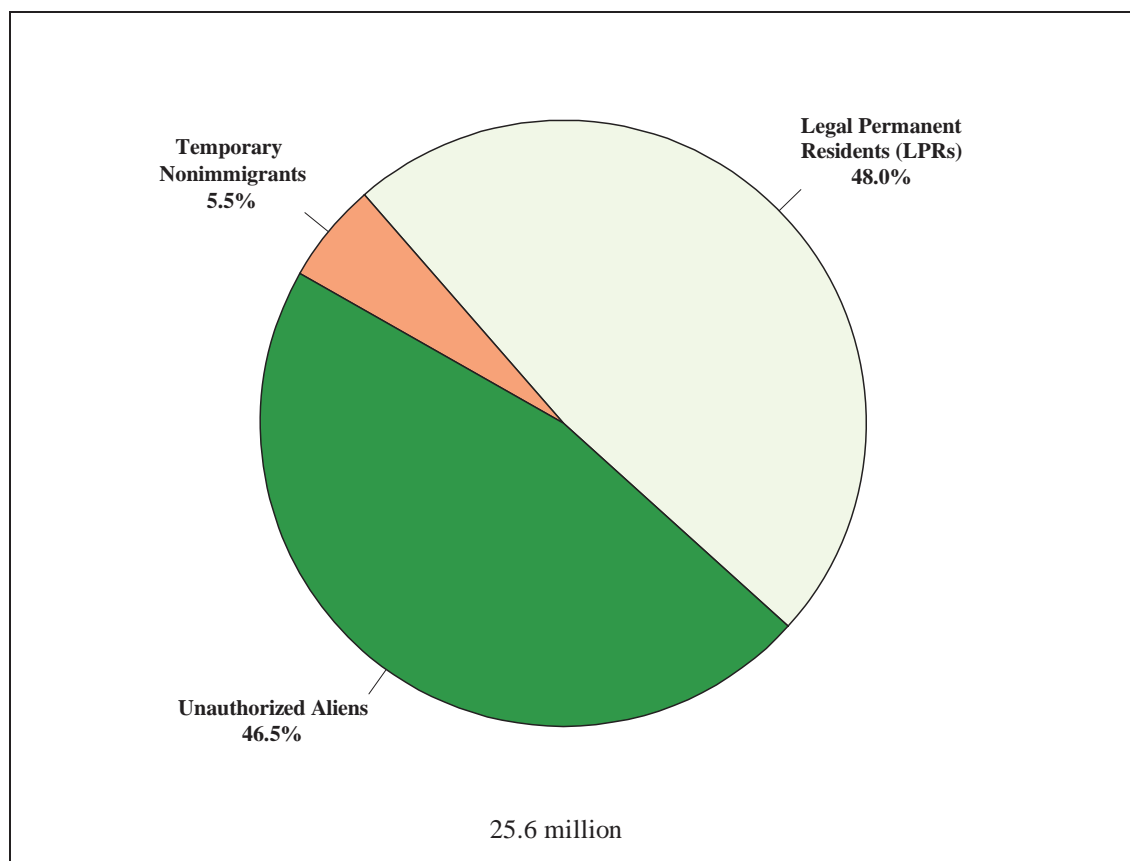
### Immigration Status: Coverage and Poverty Levels

To explore the immigration status of noncitizens, Jeffrey Passel and his co-author D’Vera Cohn of the Pew Hispanic Center have published the most commonly cited estimates of the immigration status of the noncitizen resident population, the most recent of which are based on the 2008 March CPS.<sup>17</sup> Passel and Cohn imputed the number of LPRs, nonimmigrants, and unauthorized

<sup>17</sup> For a full analysis of these data, see CRS Report RL33874, *Unauthorized Aliens Residing in the United States: Estimates Since 1986*, by Ruth Ellen Wasem.

aliens among an estimated 25.6 million noncitizen residents in 2008.<sup>18</sup> As shown in **Figure 3**, the researchers at the Pew Hispanic Center estimated that there were 11.9 million unauthorized immigrants living in the United States in 2008.<sup>19</sup>

**Figure 3. Imputed Immigration Status for Noncitizens, 2008**



**Source:** CRS presentation of analysis of March 2008 CPS data conducted by Jeffrey Passel and D'Vera Cohn (2009).

**Notes:** Percentages estimated using a residual methodology to impute immigration status and not actual reports of immigration status.

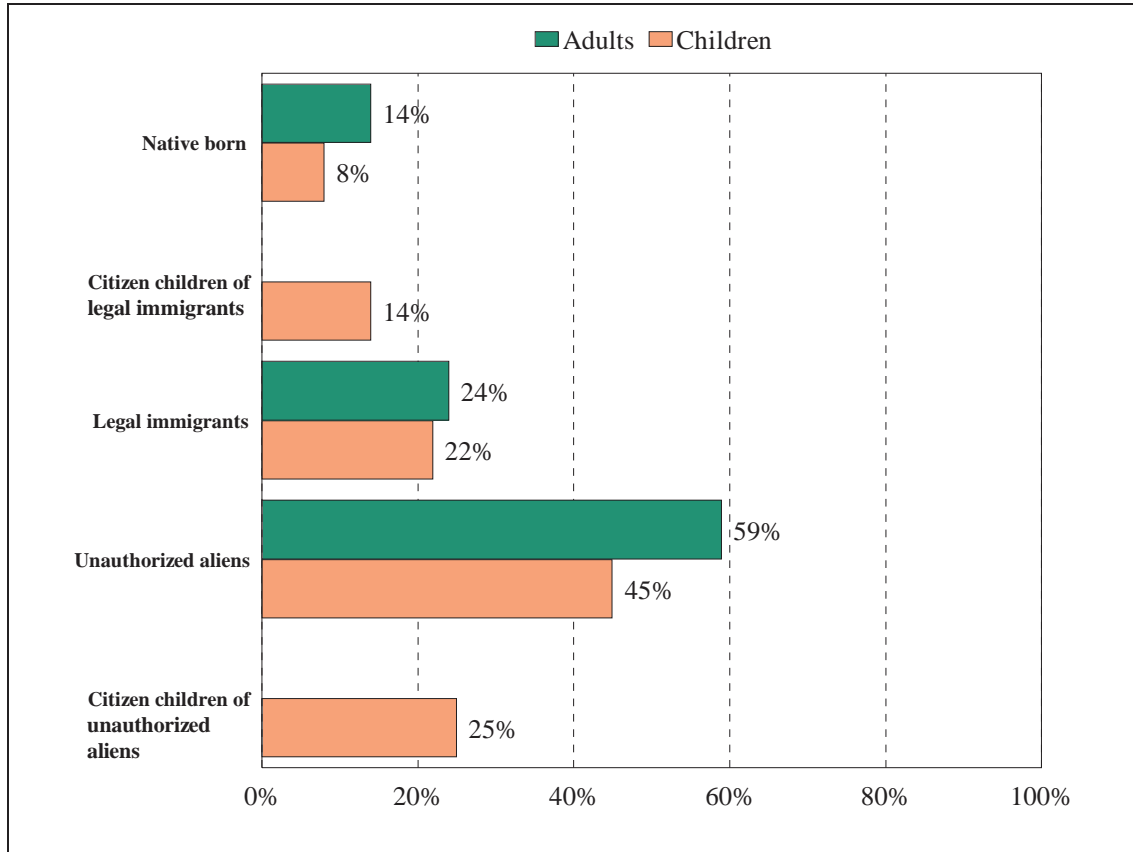
Passel and Cohn analyzed health insurance coverage by imputed immigration status, the results of which are depicted in **Figure 4**. They estimated that three-fourths of legal immigrants had health insurance coverage. They found that most unauthorized aliens who were adults (59%) had no health insurance in 2007, more than twice the uninsured share among legal immigrants who were adults (24%) and four times the uninsured share among U.S.-born adults (14%). They estimated that the children of unauthorized aliens were less likely than their parents to lack insurance, but

<sup>18</sup> The researchers at the Pew Hispanic Center made adjustments in the population estimates for an assumed undercount of noncitizens. The demographers who conducted these analyses use a residual methodology to estimate the population (i.e., the estimated population remaining after citizens and authorized aliens are accounted for). Jeffrey S. Passel and D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*, Pew Hispanic Center, April 14, 2009.

<sup>19</sup> The size of the unauthorized population appears to have declined from an estimated 12.1 million in 2007. Jeffrey S. Passel and D'Vera Cohn, *Trends in Unauthorized Immigration: Undocumented Inflow Now Trails Legal Inflow*, Pew Hispanic Center, October 2, 2008.

that their uninsured rate was higher than that of U.S.-born children. An estimated 45% of unauthorized alien children whose parents are unauthorized aliens did not have health insurance, according to Passel and Cohn. One-quarter of U.S.-born children of unauthorized aliens were uninsured.<sup>20</sup>

**Figure 4. Individuals Without Health Insurance, by Imputed Immigration Status, 2007**



**Source:** CRS presentation of analysis of March 2008 CPS data conducted by Jeffrey Passel and D'Vera Cohn (2009).

**Notes:** Percentages estimated using a residual methodology to impute immigration status and not actual reports of immigration status.

Passel and Cohn further drew on the March 2008 CPS to estimate poverty levels according to imputed immigration status, and offered this analysis:

Poverty rates are much higher among unauthorized immigrants than for either U.S.-born or legal immigrant residents. Among adults who are unauthorized immigrants, one-in-five (21%) is poor. In contrast, the poverty rate is 13% for legal immigrant adults and 10% for U.S.-born adults.... Unauthorized immigrants are notably overrepresented in the poverty population. Undocumented immigrants and their U.S.-born children account for 11% of

<sup>20</sup> The population estimates are calculated as of January 2008, but the health coverage data are based upon data for 2007. Jeffrey S. Passel and D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*, Pew Hispanic Eligibility in Major Health Care Reform Bills Center, April 14, 2009, p. 18.

people with incomes below the poverty level. This is twice their representation in the total population (5.5%).<sup>21</sup>

Passel and Cohn's analysis indicating that unauthorized aliens make up a disproportionate share of noncitizens who are in poverty and of noncitizens who lack health insurance coverage poses policy implications for health care reform. Those households headed by unauthorized individuals who have U.S. citizen children, as well as spouses who may be LPRs or unauthorized aliens, referred to as *mixed-immigration status families*, further complicate the issue, as discussed below.<sup>22</sup>

### **Eligibility for New Provisions in Major Health Care Reform Bills**

As noted in **Tables 1, 2 and 3** above, LPRs would be treated similarly to U.S. citizens in the three major health care reform bills. Beginning in 2013, S. 1796 would require all U.S. citizens, legal permanent residents, and all other aliens lawfully present to purchase coverage through (1) the individual market through a public program such as Medicare, Medicaid, the Children's Health Insurance Program, Veteran's Health Care Program, or through an employer (or as a dependent of a covered employee) in the small group market, or (2) in the large group market. It expressly limits access to the health insurance exchange to "a citizen or national of the United States, an alien lawfully admitted to the United States for permanent residence, or an alien lawfully present in the United States."<sup>23</sup>

S. 1796 further states that "an individual is disqualified from participation in the exchange or from receiving any premium credit or cost-sharing subsidy because the individual is not, or is not reasonably expected to be for the entire plan year for which enrollment is sought, a citizen or national of the United States, an alien lawfully admitted to the United States for permanent residence, or an alien lawfully present in the United States."<sup>24</sup> Similarly, §163 of S. 1679 would amend title XXXI of the Public Health Service Act to create §3116, which would limit eligibility for the premium credit through the health exchange to citizens or nationals of the United States or to "an alien lawfully admitted to the United States for permanent residence or an alien lawfully present in the United States."<sup>25</sup>

H.R. 3962 would exempt nonresident aliens from the individual mandate to obtain health insurance; however, H.R. 3962 would require all noncitizens who meet the Internal Revenue Code definition of resident alien (i.e., nonimmigrants, and unauthorized aliens who meet the substantial presence test) to obtain health insurance. The House bill contains no express restrictions on noncitizens—whether legally or illegally present, or in the United States temporarily or permanently—accessing and paying for coverage available through the health insurance exchange. As noted above, unauthorized aliens would be barred from the health insurance exchange in S. 1796.

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<sup>21</sup> Jeffrey S. Passel and D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*, Pew Hispanic Eligibility in Major Health Care Reform Bills Center, April 14, 2009, p.17.

<sup>22</sup> For further discussion and population estimates for mixed status families, see CRS Report RL34500, *Unauthorized Aliens' Access to Federal Benefits: Policy and Issues*, by Ruth Ellen Wasem, pp. 2-3.

<sup>23</sup> Section 2232(c) of S. 1796 as reported by the Senate Committee on Finance.

<sup>24</sup> Section 2236 of S. 1796 as reported by the Senate Committee on Finance.

<sup>25</sup> For analysis of the provisions in S. 1679, see CRS Report R40861, *Private Health Insurance Provisions of S. 1679*, by Hinda Chaikind et al.

Unauthorized aliens would not be eligible for the premium and cost-sharing credit in any of the three major bills. They would not be among those eligible for the cost-sharing credit in S. 1679. Section 347 of H.R. 3962 states, “Nothing in this subtitle shall allow Federal payments for affordability credits on behalf of individuals who are not lawfully present in the United States.” Similarly, unauthorized aliens would be excluded from receiving the premium credit or cost-sharing subsidy in S. 1796.<sup>26</sup>

As alluded to above, §36B of S. 1796 provides further specification on how mixed status families would be treated in calculating the premium credit. It states:

If any individual for whom the taxpayer is allowed a deduction under section 151 (relating to allowance of deduction for personal exemptions) for the taxable year is an undocumented alien—(A) no credit shall be allowed under subsection (a) with respect to any portion of any premium taken into account under clause (i) or (ii) of subsection (b)(2)(A) which is attributable to the individual, and (B) the individual shall not be taken into account in determining the family size involved but the individual’s modified gross income shall be taken into account in determining household income.<sup>27</sup>

## **What Is Current Law on Noncitizen Eligibility for Federal Means-Tested Health Care?**

More than a decade ago, Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (P.L. 104-193) established comprehensive restrictions on the eligibility of all noncitizens for federal means-tested public assistance, with exceptions for LPRs with a substantial U.S. work history or military connection. Prior to 1996, LPRs were not categorically barred from federal assistance programs.<sup>28</sup>

Under current law, most newly arriving LPRs are barred from Medicaid and the state Children’s Health Insurance Program (CHIP) for the first five years after entry. After five years, LPRs are eligible for CHIP, but their subsequent coverage for Medicaid becomes the state’s option. Longtime LPRs resident as of August 22, 1996, are allowed Medicaid at state option. Those LPRs with a substantial work history—generally 10 years (40 quarters) of work documented by Social Security or other employment records—or a military connection (active duty military personnel, veterans, and their families) are also eligible. Medicaid coverage is required for all otherwise qualified Supplemental Security Income (SSI) recipients, so long as they meet SSI noncitizen eligibility tests.

Aliens who arrive as refugees or who become asylees are an exception to the five-year bar for LPRs. Refugees and asylees are eligible for Medicaid until they have been in the United States

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<sup>26</sup> Section 2236 of S. 1796 as reported by the Senate Committee on Finance.

<sup>27</sup> Section 36B(e) of S. 1796 as reported by the Senate Committee on Finance.

<sup>28</sup> For further discussion of legal permanent residents’ eligibility, see CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*, by Ruth Ellen Wasem, and CRS Report RL34500, *Unauthorized Aliens’ Access to Federal Benefits: Policy and Issues*, by Ruth Ellen Wasem. For analysis of noncitizens in the context of Medicaid and CHIP, see CRS Report R40772, *Noncitizen Health Insurance Coverage and Use of Select Safety-Net Providers*, by Alison Siskin; CRS Report R40773, *Treatment of Noncitizens in H.R. 3200*, by Alison Siskin and Erika K. Lunder; and CRS Report R40144, *State Medicaid and CHIP Coverage of Noncitizens*, by Ruth Ellen Wasem.



for seven years. After the initial seven years for refugees and asylees, states have the option to continue to provide Medicaid. For further details, see **Appendix A**.

The Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA 2009, P.L. 111-3) gives states the option of providing Medicaid and CHIP to certain children and pregnant women who are LPRs during the first five years that they are living in the United States, and to battered individuals (described in section 431(c) of PRWORA) lawfully residing in the United States during their first five years in the United States.

Regarding nonimmigrants and unauthorized aliens, §401 of PRWORA bars them from any federal public benefit except the emergency services and programs expressly listed in §401(b) of PRWORA. Treatment under Medicaid for emergency medical conditions (other than those related to an organ transplant) is one of the statutory exceptions to the bar.<sup>29</sup> PRWORA mandated that unauthorized alien women be ineligible for prenatal care under Medicaid. In *Lewis v. Thompson*, the court found that citizen children of unauthorized alien mothers must be accorded automatic eligibility on terms as favorable as those available to the children of citizen mothers.<sup>30</sup> CHIP is considered a federal public benefit that unauthorized aliens and nonimmigrants are statutorily barred from receiving.<sup>31</sup>

### **Eligibility for Existing Federal Means-Tested Health Care Coverage in Major Health Care Reform Bills**

None of three major health care reform bills would alter the noncitizen eligibility laws pertaining to Medicaid or CHIP.<sup>32</sup>

### **What are the Current Employment Rules for and Tax Obligations of Noncitizens?**

All LPRs are permitted to work and are classified for tax purposes as *resident aliens*. There are categories of aliens who are not LPRs but who may be working and residing in the United States for periods of time sufficient to qualify under the Internal Revenue Code’s “substantial presence” test (and thus would generally be classified for tax purposes as a *resident alien*).<sup>33</sup> The main

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<sup>29</sup> §401(c) of PRWORA, 8 U.S.C. 1611.

<sup>30</sup> *Lewis v. Thompson*, 252 F.3d 567, 588 (2d. Cir. 2001). For a complete analysis, see CRS Report RS21470, *Noncitizen Eligibility For Major Federal Public Assistance Programs: Legal Concepts*, by Alison M. Smith.

<sup>31</sup> § 401(c) of PRWORA [8 U.S.C. 1611 ] defines federal public benefit as “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 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.” See also U.S. Department of Health and Human Services and Department of Justice, “Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA): Federal Benefit Interpretation; Notice of Eligibility for Federal Public Benefits Verification,” 63 *Federal Register* 41658, August 4, 1998

<sup>32</sup> In H.R. 3962, LPRs who are barred from Medicaid and below 150% of the poverty level would be eligible for the affordability credits in 2013, but the credit would be based upon 150% of poverty. In S. 1796, LPRs who are barred from Medicaid and below 100% of the poverty level would be eligible for premium and cost-sharing subsidies beginning in 2014.

<sup>33</sup>The substantial presence test is met when the individual is present in the United States for at least 31 days during the (continued...)



classes of employment-authorized noncitizens are listed in **Appendix C**. The Internal Revenue Code does not use Immigration and Nationality Act definitions for the various classes of noncitizens in the United States. Instead, the Code treats all foreign nationals in the same manner—they are subject to federal taxes and classified for tax purposes as either resident or nonresident aliens. An unauthorized individual who has been in the United States long enough to qualify under the “substantial presence” test is classified for tax purposes as a resident alien.<sup>34</sup> For further details, see **Appendix A**.

Noncitizens who are authorized to work in the United States are eligible for Social Security numbers (SSNs). There are statutory evidentiary requirements to receive an SSN. The Social Security Amendments of 1972 (P.L. 92-603) required the SSA to establish age, citizenship (or alien status), and identity of the applicant.

Resident aliens are generally eligible to claim refundable tax credits. In an attempt to prevent unauthorized individuals who are resident aliens from claiming the earned income tax credit (EITC) and the recovery rebates included in the Economic Stimulus Act of 2008, taxpayers are required to provide SSNs for themselves, their spouses (if filing joint returns), and their qualifying children.<sup>35</sup> There is no similar requirement for other refundable credits, such as the additional child tax credit, and it appears that some unauthorized aliens claim that credit.<sup>36</sup> There is no indication that the IRS generally considers refundable tax credits to be federal public benefits that unauthorized migrants are barred from receiving.<sup>37</sup>

## **Obligations and Eligibility for Existing Federal Tax Provisions in Major Health Care Reform Bills**

None of the three major health care reform bills would alter the laws that authorized the employment of noncitizens, nor would the bills revise the Internal Revenue Code’s definitions of resident or nonresident aliens.

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(...continued)

current year and at least 183 days during the current year and previous two years. For computing the 183 days, a formula is used that counts all the qualifying days in the current year, one-third of the qualifying days in the immediate preceding year, and one-sixth of the qualifying days in the second preceding year. I.R.C. §§ 7701(b)(1)(A) and (b)(3). For a full discussion, see CRS Report RS21732, *Federal Taxation of Aliens Working in the United States and Selected Legislation*, by Erika K. Lunder.

<sup>34</sup> CRS Report RS21732, *Federal Taxation of Aliens Working in the United States and Selected Legislation*, by Erika K. Lunder.

<sup>35</sup> The EITC provision is in §451 of PRWORA, P.L. 104-193 (8 U.S.C. 1161). The recovery rebates provision is in §101(a) of the Economic Stimulus Act of 2008, P.L. 110-185.

<sup>36</sup> See Treasury Inspector General for Tax Administration, *The Internal Revenue Service’s Individual Taxpayer Identification Number Creates Significant Challenges for Tax Administration*, Report No. 2004-30-023, at 3 (January 2004) (stating that “unauthorized resident aliens are eligible for the Additional Child Tax Credit (ACTC), which is one of only two major credits that can result in a Federal Government payment above the tax liability. In TY 2001, \$160.5 million was given to approximately 203,000 unauthorized resident aliens, with about 190,000 of these filers having no tax liability and receiving \$151 million”).

<sup>37</sup> CRS congressional distribution memorandum, *Legal Analysis of Whether Section 401 of the Personal Responsibility and Work Opportunity Reconciliation Act Prohibits Unauthorized Resident Aliens from Receiving Refundable Tax Credits*, by Erika Lunder and Edward Liu, July 28, 2008 (available on request).

## How Is Immigration and Citizenship Status Verified?

Determining a person's immigration and citizenship status is not always easy; however, foreign nationals legally in the United States have documents issued by the federal government that may be used to establish legal immigration status. The U.S. Department of Homeland Security (DHS) maintains various databases that record the immigration and citizenship status of foreign nationals in the United States. This section describes the most common documents and databases used to confirm immigration and citizenship status. **Appendix D** provides a more comprehensive list of immigration documents that foreign-born persons in the United States may use to establish identity and/or legal immigration status.

### Documents Used to Establish Immigration and Citizenship Status

#### *Citizenship Documents*

The United States does not require its citizens to have legal documents that verify their citizenship and identity (i.e., national identification cards). The U.S. passport and government-issued certificates of birth, naturalization, and citizenship are the main documents provided to verify U.S. citizenship. In some instances, a state-issued driver's license (or other identity document for which the state has verified the citizenship of the holder) or a military record showing place of birth may be submitted as evidence of citizenship. Additional documents that may be used to confirm citizenship include an adoption decree that shows a child's name and place of birth or a document that provides evidence of civil service employment before 1976.

#### *Biometric Visas*

All persons seeking admission to the United States must demonstrate to a DHS Customs and Border Protection (CBP) inspector that they are either a foreign national with a valid visa or passport or that they are a U.S. citizen.<sup>38</sup> For well over a dozen years, the consensus has been that immigration documents also should include biometric identifiers. Congress imposed a statutory requirement for the biometric border crossing card (known as the laser visa) for visitors from Mexico in 1996<sup>39</sup> and added requirements for biometric visas in 2001 and 2002.<sup>40</sup> Consular officers use the Consular Consolidated Database (CCD) to electronically store data on visa applicants, with some records dating back to the mid-1990s.<sup>41</sup> Since February 2001, the CCD has stored the photographs of all visa applicants in electronic form, and more recently the CCD has begun storing fingerprints of the right and left index fingers. Since October 2004, all visas issued by the United States use biometric identifiers (e.g., finger scans) in addition to a photograph,

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<sup>38</sup> There are special exceptions under the Western Hemisphere Travel Initiative established by §7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458).

<sup>39</sup> The laser visa, which includes a photograph and both index fingers as biometric identifiers, is issued to citizens of Mexico to gain short-term entry (up to six months) for business or tourism into the United States. The Mexican laser visa has traditionally been called a border crossing card (BCC). It may be used for multiple entries and is good for at least 10 years.

<sup>40</sup> §414 of the USA Patriot Act (P.L. 107-56) and §303 of the Enhanced Border Security and Visa Reform Act (P.L. 107-173) require that visas and other travel documents contain a biometric identifier and are tamper-resistant.

<sup>41</sup> According to the Department of State Office of Legislative Affairs, consular officers have stored photographs of nonimmigrant visa applicants in an electronic database for many years. These data are now in the CCD.

which has been collected for some time. More recently, CBP inspectors have begun 10-digit fingerprint scans of foreign nationals entering the United States.

### *Permanent Resident Cards*

The permanent resident card, often called a “green card” because it once had been printed on green stock, is a plastic document similar to a credit card. It is the card that documents the person as a legal permanent resident (LPR) of the United States. Since April 1998, the card has incorporated security features, including digital images, holograms, micro-printing, and an optical memory stripe. It has digital photograph and fingerprint images, which are an integral part of the card and, therefore, tamper-resistant. It features a hologram depicting the Statue of Liberty, the letters “USA” in large print, an outline of the United States, and a government seal.

On the reverse side of the permanent resident card is an optical memory stripe—similar to CD-ROM disk technology—with an engraved version of the information contained on the front of the card, including the cardholder’s photograph, name, signature, date of birth, and alien registration number. This laser-etched information cannot be erased or altered. In addition, this same information, along with the cardholder’s fingerprint, is digitally encoded in the stripe and can be read only by a specially designed scanner.

### *Employment Eligibility Documents*

Aliens who are temporarily in the United States and eligible to work may file a request for an employment authorization document (EAD). All LPRs are permitted to work, so they do not need to have EADs. The EAD is often confused with “green card” because the document provides a foreign national with the authority to work in the United States. Nonimmigrants who have temporary worker visas, such as H-1Bs or H-2A visaholders, do not need to have EADs because permission to work is inherent in their nonimmigrant visa. Other aliens who are authorized to work in the United States without restrictions also apply to U.S. Citizenship and Immigration Service (USCIS) for EADs. Examples of aliens who may obtain EADs are refugees, asylum applicants and asylees with cases pending, aliens who are covered under Temporary Protected Status (TPS), certain aliens who have approved LPR petitions and are waiting for an LPR visa to become available, aliens for whom an immigration judge or the Attorney General has granted relief from removal, and specified nonimmigrants.<sup>42</sup> The EAD has incorporated security features, including digital images, holograms, and micro-printing, since 1998.

## **Databases Used to Verify Immigration and Citizenship Status**

### *Social Security Numbers and Citizenship Status*

The Social Security Act requires applicants for many federal benefits programs, including Medicaid,<sup>43</sup> to provide their Social Security number (SSNs) as a condition of eligibility for

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<sup>42</sup> Such as a foreign student on an F visas who obtains special permission to work off-campus.

<sup>43</sup> §1137(b) of the Social Security Act states: “The programs which must participate in the income and eligibility verification system are—(1) any State program funded under part A of title IV of this Act; (2) the medicaid program under title XIX of this Act; (3) the unemployment compensation program under section 3304 of the Internal Revenue Code of 1954; (4) the supplemental nutrition assistance program under the Food and Nutrition Act of 2008; and any (continued...)”

benefits.<sup>44</sup> The applicants are also required to declare in writing—under penalty of perjury—“whether the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.”<sup>45</sup> For the purposes of determining Medicaid eligibility, individuals who declare that they are citizens also must present documentation that proves citizenship.<sup>46</sup> States have the option of submitting the name and SSN of an applicant to the Social Security Administration (SSA). The SSA in turn checks the information received from the states against the SSA database to determine whether the name and SSN match and whether the applicant is a citizen according to the SSA database.<sup>47</sup> **Table A-1** presents classes of foreign-born persons according to their eligibility to obtain SSNs and their eligibility to receive Medicaid.

As stated above, the SSA must obtain evidence to establish age, citizenship (or alien status), and identity of the applicant. As of November 2008, the SSA requires applicants to present for identification a document that shows name, identifying information, and preferably a recent photograph.<sup>48</sup> The SSA also requires that all documents be either originals or copies certified by the issuing agency.<sup>49</sup>

Importantly, the SSN issued to a noncitizen does not automatically change to reflect an expired visa (e.g., a nonimmigrant worker remains in the United States after his or her temporary visa expires), when the noncitizen adjusts immigration status (e.g., a person who is in the United States temporarily may marry a U.S. citizen and become an LPR), or when the LPR naturalizes as a U.S. citizen. Although people are supposed to report any change of status to SSA, this reporting does not always occur.

Social Security cards issued to noncitizens who are residing permanently in the United States are identical to those issued to U.S. citizens. Social Security cards issued to noncitizens who are temporarily in the United States bear the inscription “VALID FOR WORK ONLY WITH DHS AUTHORIZATION.” The SSA also issues SSNs to noncitizens who are not authorized to work if the noncitizen is legally in the United States and needs an SSN to receive state or federal benefits or services.<sup>50</sup> Social Security cards issued for this purpose bear the legend “NOT VALID FOR

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State program under a plan approved under title I, X, XIV, or XVI of this Act.” These cited programs are the Temporary Assistance to Needy Families (TANF) Program, the Medicaid Program, and certain Territorial Assistance Programs (U.S. Department of Health and Human Services); the Unemployment Compensation Program (U.S. Department of Labor); Title IV Educational Assistance Programs (U.S. Department of Education); and certain Housing Assistance Programs (U.S. Department of Housing and Urban Development).

<sup>44</sup> §1137 of the Social Security Act; 42 U.S.C. 1320b-7.

<sup>45</sup> §1137(d) of the Social Security Act; 42 U.S.C. 1320b-7.

<sup>46</sup> This requirement, found in §1903(x) of the Social Security Act, lists four documents that meet the statutory requirements: a U.S. Passport, a Certificate of Naturalization, a Certificate of United States Citizenship, or a state-issued driver’s license or other identity document for which the state has verified the citizenship of the holder. The Secretary may by regulation specify other documents, in addition to the four principal documents, so long as the documents provide both proof of U.S. citizenship and a reliable means of documentation of personal identity.

<sup>47</sup> §1903(x) of the SSA as amended by §211 of the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA 2009), P.L. 111-3. CRS Report RS22629, *Medicaid Citizenship Documentation*, by Ruth Ellen Wasem.

<sup>48</sup> Implementing §7213 of the Intelligence Reform and Terrorism Prevention Act of 2004, P.L. 108-458.

<sup>49</sup> Social Security Administration, *New Rules for Getting a Social Security Number and Card*, SSA Publication No. 05-10120, November 2008.

<sup>50</sup> See 20 C.F.R. 422.104. Prior to late 2003, the policy for assignment of nonwork SSNs was less restrictive, and noncitizens could be assigned an SSN for a variety of nonwork purposes, such as to obtain a driver’s license.

EMPLOYMENT.” It is possible that some naturalized U.S. citizens have Social Security cards with the inscription “VALID FOR WORK ONLY WITH DHS AUTHORIZATION” if they originally obtained the SSN and card before they became an LPR and subsequently a U.S. citizen.<sup>51</sup>

### ***Systematic Alien Verification for Entitlements (SAVE) System***

As an alternative to relying on the inspection of documents to determine immigrant eligibility for federal benefits, the Systematic Alien Verification for Entitlements (SAVE) system provides federal, state, and local government agencies access to data on immigration status that are necessary to determine noncitizen eligibility for public benefits. The USCIS does not determine benefit eligibility; rather, SAVE enables the specific program administrators to ensure that only those noncitizens and naturalized citizens who meet their program’s eligibility rules actually receive public benefits. According to USCIS, SAVE draws on the Verification Information System (VIS) database, which is a nationally accessible database of selected immigration and naturalization status information that contains over 60 million records.<sup>52</sup>

SAVE’s statutory authority dates back to the Immigration Reform and Control Act of 1986 (IRCA).<sup>53</sup> The IRCA, as amended, mandates the following programs and agencies to participate in the verification of an applicant’s immigration status: the Temporary Assistance to Needy Families (TANF) Program; the Medicaid Program; Supplemental Nutrition Assistance Program (formerly the Food Stamp program); the Unemployment Compensation Program; Title IV Educational Assistance Programs; and certain Housing Assistance Programs. In 1996, PRWORA required the Attorney General to establish procedures for a person seeking benefits to provide citizenship information in a fair, nondiscriminatory manner.<sup>54</sup>

According to USCIS, state and local agencies may access SAVE through several different Web-based Internet technologies or by a manual verification (by submitting a formal document verification request). SAVE charges fees to the agencies using Web-based Internet access. These agencies must have a Memorandum of Understanding (MOU) and a purchase order with the SAVE program contractor to pay the transaction fees.

The SAVE system does not require a SSN. The key to SAVE is the immigration document number (e.g., number from the individual’s permanent resident card, employment authorization document, or I-94 document) and the person’s name, date of birth, and nationality. According to officials at USCIS, accessing SAVE through Web-based Internet technologies takes about 3-5 seconds. If the initial electronic search comes up “no match,” the next step is an additional verification that takes 3-5 days because a DHS staffer manually does electronic searches through

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<sup>51</sup> CRS Report RL32004, *Social Security Benefits for Noncitizens: Current Policy and Legislation*, by Dawn Nuschler and Alison Siskin.

<sup>52</sup> The VIS database is also used for the E-Verify system that employers may use to check whether an alien is authorized to work in the United States. CRS Report R40446, *Electronic Employment Eligibility Verification*, by Andorra Bruno, discusses evaluations of the accuracy of the electronic verification databases.

<sup>53</sup> § 1137 of the SSA, as amended by P.L. 99-603.

<sup>54</sup> P.L. 104-193, § 432. It is unclear whether this responsibility of the Attorney General was transferred to the Secretary of Homeland Security in 2003 by the Homeland Security Act of 2002 (P.L. 107-296).



the various DHS databases.<sup>55</sup> If this step does not yield verification, then the G-845 Document Verification Request form is submitted along with the relevant immigration documents.

## **Verification Provisions in Major Health Care Reform Bills**

Under S. 1679, the Secretary of Health and Human Services (HHS) would be required to verify an individual's eligibility to enroll in the premium credits available through the exchange.<sup>56</sup> Although §151 of S. 1679 would provide the option of conducting income verification according to §1137 of the Social Security Act, it does not specify using §1137 for the eligibility determinations.<sup>57</sup>

In S. 1796, three pieces of personal data would be used to verify citizenship and immigration status. The Social Security Administration would verify the name, social security number, and date of birth of the individual. For those claiming to be U.S. citizens, the claim will be considered substantiated if the claim of citizenship is consistent with SSA data. For individuals who do not claim to be U.S. citizens but claim to be lawfully present in the United States, the claim will be considered substantiated if the claim of lawful presence is consistent with Department of Homeland Security (DHS) data. Although this language mirrors the SAVE process, the legislation does not expressly reference SAVE. Individuals whose claims of citizenship or immigration status are verified with federal data would be allowed substantial opportunity to provide additional documentation or to correct federal data related to their cases.<sup>58</sup>

H.R. 3962 would expressly require the Health Choices Commissioner to verify citizenship and immigration status. Indeed, §341 of H.R. 3962 references §1137(d) of the SSA, which is the statutory authority for the SAVE system. In other words, the House bill would extend, with modifications, the citizenship verification procedures as well as the noncitizen verification procedures that currently apply to Medicaid and other federal means-tested programs to the citizenship and immigration determination for the proposed premium and cost-sharing credit.<sup>59</sup> Among the modifications to §1137(d) would be to enable the Health Choices Commissioner to make the eligibility determination. H.R. 3962 would add the citizenship and immigration status verification procedures to the provisions of the bill pertaining to federal grants to state "high risk" pools.<sup>60</sup>

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<sup>55</sup> Telephone conversation of author with USCIS officials on September 14, 2009.

<sup>56</sup> Section 151 of S. 1679 would create §3111(d)(3)(A)(i) in Title XXXI of the Public Health Service Act to require this verification.

<sup>57</sup> §1137 of the Social Security Act provides the statutory authority requiring Medicaid to participate in the Systematic Alien Verification for Entitlements (SAVE) system. For more on this issue in the context of Medicaid, see CRS Report R40144, *State Medicaid and CHIP Coverage of Noncitizens*, by Ruth Ellen Wasem, and CRS Report RS22629, *Medicaid Citizenship Documentation*, by Ruth Ellen Wasem.

<sup>58</sup> Section 2238 of S. 1796, as reported by the Senate Committee on Finance.

<sup>59</sup> For further discussion of current law on Medicaid citizenship verification, see CRS Report RS22629, *Medicaid Citizenship Documentation*, by Ruth Ellen Wasem.

<sup>60</sup> For further discussion of "high risk" pools, see CRS Report RL31745, *Health Insurance: State High Risk Pools*, by Bernadette Fernandez.

## **Closing Observations**

Addressing the policy questions of coverage, eligibility, and verification that arise directly from the nexus of immigration policy and health care reform is both complicated and controversial. In addition to these first-order policy questions, second-order questions come to mind. For example, if unauthorized aliens are exempted from the mandate to purchase health insurance, will they be potentially able to underbid their U.S. counterparts in the labor market, particularly among private contractors and the self-employed? Will health care providers be less likely to provide medical treatment to uninsured people whom they presume are likely to be unauthorized aliens? Will citizen children in mixed-status families be negatively affected in the premium subsidy calculations if their unauthorized parent is ineligible? Should the “five-year bar” on federal means-tested benefits include the premium subsidies for low- and moderate-income LPRs who would be otherwise eligible during their first five years in the United States? Should U.S. residents who sponsor immigrants to the United States be required to assume some financial responsibility for the health insurance coverage of newly arriving LPRs? These are among the vexing questions that might arise in subsequent debates.

## Appendix A. Classes of Noncitizens and Their Eligibility to Obtain Social Security Numbers, to Qualify as a Resident Alien, and to Receive Medicaid

**Table A-1. Classes of Noncitizens and Their Eligibility to Obtain Social Security Numbers, to Qualify as a Resident Alien, and to Receive Medicaid**

Class of Alien	Social Security Numbers	Resident Alien for Tax Purposes	Medicaid
<b>Legal permanent residents (LPRs):</b> —during first five years	Eligible.	Yes	Generally ineligible, except states have the option of providing Medicaid to certain children and pregnant women who are LPRs.
—after five years	Eligible.	Yes	Eligible only at state option until LPR has substantial (generally 10-year) work history, <sup>a</sup>
—without a substantial (generally 10-year) work history, <sup>a</sup>	Eligible.	Yes	Eligibility required for persons with a military connection. Plus coverage required for SSI recipients. (Note: all aliens are eligible for emergency medical services.)
—with a substantial (generally 10-year) work history. <sup>a</sup>	Eligible.	Yes	Eligible.
<b>Military connection:</b> aliens with a military connection (active duty military personnel, honorably discharged veterans, and their immediate families).	Eligible. <sup>b</sup>	Yes	Eligible. <sup>b</sup>
<b>Humanitarian cases:</b> —asylees, refugees, Cuban/Haitian entrants, Iraqi and Afghan special immigrants, certain aliens whose deportation/removal is being withheld for humanitarian reasons, and Vietnam-born Amerasians fathered by U.S. citizens. <sup>c</sup>	Eligible.	Yes, if they are LPRs or they meet the substantial presence test. <sup>d</sup>	Eligible for 7 years after entry/grant of such status. Eligible at state option after 7 years.
<b>Special Cases:</b> —noncitizen “cross-border” American Indians, <sup>e</sup>	Eligible.	Yes, if they are LPRs or they meet the substantial presence test.	Eligible.



Class of Alien	Social Security Numbers	Resident Alien for Tax Purposes	Medicaid
—Hmong/Highland Laotians, <sup>f</sup>	Eligible.	Yes, if they are LPRs or they meet the substantial presence test.	Eligible only if individual meets eligibility criteria for another noncitizen category—e.g., as a legal permanent resident, asylee, refugee, person with a military connection. (Note: LPRs eligible under conditions noted above for Medicaid treatment of LPRs.)
—parolees and conditional entrants, <sup>g</sup>	Eligible.	Yes, if they meet the substantial presence test.	Eligible if resident as of August 22, 1996. Ineligible for 5 years after entry, if entry is post-August 22, 1996. Otherwise eligible at state option.
—cases of abuse (battery or extreme cruelty), <sup>h</sup>	Eligible.	Yes, if they are LPRs or they meet the substantial presence test.	Eligible if resident as of August 22, 1996. Ineligible for 5 years after entry, if entry is post-August 22, 1996. Otherwise eligible at state option.
—victims of trafficking in persons, <sup>i</sup>	Eligible.	Yes, if they meet the substantial presence test.	Eligible for 7 years after entry. Eligible at state option after 7 years.
—aliens in temporary protected status, in extended voluntary departure (EVD) status, or deferred enforced departure (DED) status.	Eligible.	Yes, if they meet the substantial presence test.	Eligible only for emergency services.
<b>Nonimmigrants<sup>j</sup></b>	Ineligible, except if nonimmigrant visa expressly permits the alien to work in the United States.	No, except those who meet the substantial presence test <sup>k</sup> .	Eligible only for emergency services, provided individual meets other eligibility requirements.
<b>Unauthorized aliens<sup>l</sup></b>	Ineligible.	No, except those who meet the substantial presence test.	Eligible only for emergency services, provided individual meets other eligibility requirements.

**Source:** CRS.

- a. A substantial work history consists of 40 “qualifying quarters” of work (credits) calculated as they would be for Social Security eligibility purposes—including work not covered by Social Security and work credited from parents and spouses, but not including work performed after 1996 while receiving federal means-tested benefits like TANF, food stamps, or Medicaid. A qualifying quarter is a three-month period of full or part-time work with sufficient income to qualify the earner for credit toward eligibility for Social Security benefits. The qualifying quarter income amount is increased annually; no more than four credit quarters can be earned in any one year. The qualifying quarter test takes into account work by an alien’s parent before the alien became 18 (including work before the alien was born/adopted) and by the alien’s spouse (provided the alien remains married to the spouse or the spouse is deceased).

- b. Eligible military personnel, veterans, and immediate family members also must be a legal permanent resident, or an asylee, refugee, Cuban/Haitian entrant, alien whose deportation/removal is being withheld, parolee, or conditional entrant.
- c. Includes Amerasians admitted as immigrants who were born in Vietnam during the Vietnam era and fathered by a U.S. citizen—as well as their spouses, children, and certain other immediate family members.
- d. Substantial presence test: is met when the individual is present in the United States for at least 31 days during the current year and at least 183 days during the current year and previous two years. For computing the 183 days, a formula is used that counts all the qualifying days in the current year, one-third of the qualifying days in the immediate preceding year, and one-sixth of the qualifying days in the second preceding year. I.R.C. §§ 7701(b)(1)(A) and (b)(3). A nonresident alien may elect, under certain circumstances, to be treated as a resident alien if the substantial presence test is met in the year following the election. I.R.C. § 7701(b)(4). A dual-status or nonresident alien married to a U.S. citizen or resident may qualify to be treated as a resident alien for the entire year. I.R.C. §§ 6013(g) and (h).
- e. Noncitizen “cross-border” American Indians (from Canada or Mexico) are noncitizens who belong to a federally recognized tribe or who were born in Canada and have the right to cross the Canadian-U.S. border unhindered (so-called “Jay Treaty” Indians).
- f. Members of a Hmong or Highland Laotian tribe when the tribe assisted U.S. personnel by taking part in military/rescue missions during the Vietnam era—including spouses and unmarried dependent children.
- g. Eligible parolees must be paroled for at least one year.
- h. Eligibility in abuse cases is limited to aliens who have been abused (subject to battery or extreme cruelty) in the U.S. by a spouse or other family/household member, aliens whose children have been abused, and alien children whose parent has been abused—where the alien has been approved for, or has pending an application/petition with a prima facie case for, immigration preference as a spouse or child or cancellation of removal. The alien cannot be residing with the individual responsible for the abuse, and the agency providing benefits must determine that there is a substantial connection between the abuse and the need for benefits.
- i. Eligible for treatment as refugees under the provisions of Section 107 of the Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386). Eligible victims of trafficking in persons are those subjected to (1) sex trafficking where the act is induced by force, fraud, or coercion, or the person induced to perform the act is under age 18, or (2) involuntary servitude. If age 18 or older, they must be “certified” as willing to assist in the investigation and prosecution of the trafficker(s) and have made an application for a nonimmigrant “T” visa (or be in the U.S. to ensure the effective prosecution of the trafficker[s]).
- j. Nonimmigrants are those admitted temporarily for a limited purpose (e.g., students, visitors, or temporary workers).
- k. Most nonimmigrants enter as visitors for business or tourism and thus would not meet the substantial presence test, which is described above in table note d. Many of the nonimmigrants who enter as temporary workers of intracompany transfers would meet the substantial presence test. Resident aliens who are employees of foreign governments and international organizations may qualify to exempt their compensation from taxation. I.R.C. § 893.
- l. Unauthorized (“illegal”) aliens are those in the U.S. in violation of immigration law for whom no legal relief or recognition has been extended.

## Appendix B. Deeming and Sponsorship

For LPRs (but not refugees and asylees), the law links the income of the person who sponsored the alien to immigrate to the United States with the immigrant's income calculations when determining eligibility for most federal benefits. The basis of this policy is that the Immigration and Nationality Act excludes immigrants who appear "likely at any time to become a public charge."<sup>61</sup> This exclusion is implemented by provisions on deeming sponsors' income and binding affidavits of support. Not all prospective LPRs are required to have affidavits of support to demonstrate that they will not become a public charge, and most exceptions are statutory (e.g., refugees or employment-based LPRs).<sup>62</sup>

The affidavit of support is a legally binding contract that requires the sponsor to ensure that the new immigrant will not become a public charge and to make the sponsor financially responsible for the new immigrant, as codified in §213A of the Immigration and Nationality Act (INA).<sup>63</sup> Sponsors must demonstrate the ability to maintain an annual income of at least 125% of the federal poverty line (100% for sponsors who are on active duty in U.S. Armed Forces), or share liability with one or more joint sponsors, each of whom must independently meet the income requirement. Current law also directed the federal government to include "appropriate information" regarding affidavits of support in the SAVE system. Congress has required the establishment of an automated record of the sponsors' social security numbers (SSN) in order to implement this policy.<sup>64</sup>

According to administrative guidance issued in 1999, the receipt of Medicaid or CHIP does not trigger the deportation or removal of a noncitizen beneficiary. It also does not categorically prevent a noncitizen beneficiary from sponsoring a potential LPR. The cash benefit, however, cannot be included in the calculation of the beneficiary's income if he or she signs an affidavit of support for a potential LPR.<sup>65</sup>

Under the deeming rules, all of the income and resources of a sponsor (and a sponsor's spouse) may be deemed available to the sponsored applicant for assistance until the noncitizen becomes naturalized or meets a work test.<sup>66</sup> The INA requires states to seek reimbursement of the costs of federal means-tested benefits from the sponsors. The sponsor's liability ends when the sponsored

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<sup>61</sup> The colony of Massachusetts enacted legislation in 1645 prohibiting the entry of paupers, and in 1700 excluding the infirm unless security was given against their becoming public charges. New York adopted a similar practice. A bar against the admission of "any person unable to take care of himself or herself without becoming a public charge" was included in the act of August 3, 1882, the first general federal immigration law. It is now §212 (a)(4) of the INA; 8 U.S.C. 1182.

<sup>62</sup> Employment-based LPRs, for example, meet the public charge ground by means of the job offer and need an affidavit of support only if the prospective employer is a relative. 8 C.F.R. § 213a.1.

<sup>63</sup> § 213A of INA; 8 U.S.C. 1631. *Fed. Reg.*, v, pp. 54346-56. Oct. 20, 1997.

<sup>64</sup> § 213A of INA; 8 U.S.C. 1631.

<sup>65</sup> A 1999 memorandum stated that the "receipt of Medicaid or CHIP benefits will not be considered in making a public charge determination, except in the case of an alien who is primarily dependent on the government for subsistence as demonstrated by institutionalization for long-term care at government expense. This exception will not include short-term rehabilitation stays in long-term care facilities." The guidance further provided that the receipt of Medicaid or CHIP benefits would not disqualify an LPR from sponsoring other immigrants (i.e., signing an affidavit of support for a prospective LPR). U.S. Department of Health and Human Services, Health Care Financing Administration, Center for Medicaid and State Operations, letter to State Health Officials, May 26, 1999.

<sup>66</sup> § 421 of PRWORA. Also in 8 USC 1631.

alien is no longer subject to deeming, either through naturalization or meeting a work test.<sup>67</sup> CHIP was enacted after the list of programs meeting the PRWORA designation of federal means-tested programs was proposed.<sup>68</sup> CHIPRA 2009 provided an exception to this rule in the cases of children and pregnant women who are LPRs, and battered individuals lawfully residing in the United States, during the first five years. More precisely, §214 of CHIPRA 2009 states that “no debt shall accrue under an affidavit of support against any sponsor of such an alien on the basis of provision of assistance to such category and the cost of such assistance shall not be considered as an unreimbursed cost.”<sup>69</sup>

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<sup>67</sup> § 213A of INA; 8 U.S.C. 1631.

<sup>68</sup> *Fed. Reg.* v. 62, pp. 45256-58, Aug. 26, 1997.

<sup>69</sup> According to the legislative language, the provision applies only to LPRs provided CHIP and Medicaid under §214 of this Act.

## Appendix C. Selected Categories of Non-LPR Aliens Who Are Permitted to Work

There are categories of aliens who are not LPRs but who may be working and residing in the United States for periods of time sufficient to qualify under the Internal Revenue Code's "substantial presence" test (and thus are classified for tax purposes as *resident aliens*, unless there are specific treaty agreements between the United States and their country of citizenship).

The classes of nonimmigrants who are expressly permitted to work in the United States include the following:

- E treaty traders and investors.
- H temporary workers.
- NAFTA temporary workers.
- Certain F foreign students who have obtained permission.
- J and Q cultural exchange visitors.
- L intracompany transfers.
- K fiancées of U.S. citizens.
- O and P extraordinary athletes, entertainers, and performers.
- R religious workers.
- U crime victims.
- V family members waiting for more than three years.<sup>70</sup>

In addition to the nonimmigrants specified above, the following classes of unauthorized aliens have acquired a "quasi-legal" status that often enables them to work:

- Aliens who have been granted temporary protected status (TPS), extended voluntary departure (EVD) status, or deferred enforced departure (DED) status by the Attorney General or Secretary of Homeland Security.
- Aliens with petitions pending to adjust to LPR status who have been given employment authorization by the U.S. Citizenship and Immigration Services.
- Aliens with asylum cases or relief from removal cases pending before the courts who have been given employment authorization by the Executive Office for Immigration Review.

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<sup>70</sup> For a complete listing of nonimmigrants who may work in the United States, see Table 2 in CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Chad C. Haddal and Ruth Ellen Wasem.

## **Appendix D. Major Immigration Documents That Foreign-Born Persons in the United States May Use to Establish Identity and/or Legal Immigration Status**

- Permanent Resident Card I-551 (identity and status).
- Foreign passport with temporary I-551 stamp or temporary I-551 noted on a machine-readable visa (identity and status).
- Employment authorization with photograph I-766 (identity and status).
- Temporary Resident Employment Authorization Card I-688B.
- Passports from the Federated States of Micronesia and the Republic of the Marshall Islands (identity and status).
- Refugee Travel Document I-571.
- Arrival-Departure Record I-94 containing an expiration date that has not passed and a notation indicating refugee or asylum status granted pursuant to §207 or §208 of Immigration and Nationality Act.
- Advance Parole Document I-512L.
- Permit to Reenter the United States I-327.
- Certification of Birth Abroad issued by the State Department FS-540 or FS-545.
- Certification of Report of Birth Abroad issued by the State Department DS-1350.
- Certificate of Citizenship N-560 or N-561.
- Naturalization Certificate N-550 or N-570.

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