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Social Security Benefits and Unauthorized Alien Workers

“Are unauthorized alien workers eligible for Social Security benefits?” This In Focus addresses the frequently asked question in a summary format. A more detailed discussion is provided in CRS Report RL32004, *Social Security Benefits for Noncitizens*. An alien is “any person not a citizen or national of the United States” and is synonymous with noncitizen and foreign national. The terms are used interchangeably here. Note that an alien may be authorized to be in the United States, but not authorized to work. Therefore, an alien who does not have work authorization is not necessarily illegally present (i.e., an unauthorized alien). For example, an alien present in the United States on a B-2 tourist visa may remain in the U.S. for six months, but is not legally permitted to work.

Summary

Concerns about the number of unauthorized aliens (sometimes referred to as “illegal” aliens) residing in the United States have fostered considerable interest in the eligibility of noncitizens for U.S. Social Security benefits. Social Security provides monthly cash benefits to qualified retired or disabled workers, their dependents, and the survivors of deceased workers. In general, among other eligibility requirements, a worker must have 10 years of Social Security-covered employment to be eligible for retirement benefits. To qualify for disability and survivor benefits, less time in covered employment is required.

Most U.S. jobs are covered under Social Security. As a result, noncitizens authorized to work in the United States are eligible for a Social Security number (SSN). Noncitizens who work in Social Security-covered employment must pay Social Security payroll taxes, including those in the United States working temporarily or without authorization. Unauthorized aliens working and paying Social Security taxes may be fraudulently using another person’s SSN, for example.

There are some exceptions. In general, the work of aliens who are citizens of a country with which the United States has a *totalization agreement* is not covered if they work in the United States for fewer than five years. (Totalization agreements allow for the coordination of Social Security payroll taxes and benefits for workers who divide their careers between the United States and a foreign country.) In addition, by statute, the work of aliens under certain visa categories is not covered by Social Security (e.g., noncitizens who work under the F, J, M, Q, and H-2A visa categories are exempt from Social Security payroll taxes).

Earnings Suspense File

Earnings in Social Security-covered employment (i.e., earnings on which Social Security payroll taxes are paid) allow workers to qualify for Social Security benefits for themselves and their eligible family members and

determine the amount of benefits payable. In some cases, the Social Security Administration (SSA) cannot post earnings to individual work records because the names and SSNs on W-2 forms submitted by employers to SSA do not match SSA’s records. The mismatched information may be due to clerical errors, as well as the use of invalid or stolen SSNs by aliens working in the United States without authorization. In such cases, SSA posts the earnings to its *Earnings Suspense File* (ESF). The ESF has accumulated more than \$1.5 trillion in wages and 360 million wage items for tax years 1938 through 2016. In tax year 2016 alone, SSA posted about 8.9 million wage items, representing \$98 billion in wages. The ESF represents earnings on which Social Security payroll taxes have been paid, and, potentially, earnings on which Social Security benefits may not be payable.

Lawful Presence Requirement for Beneficiaries

In 1996, Congress prohibited the payment of Social Security benefits to aliens in the United States who are not *lawfully present*. The lawful presence requirement was added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208). Depending on the circumstances, alien workers, their dependents, and survivors may receive Social Security benefits while residing outside the United States (including benefits based on unauthorized work).

Work Authorization Requirement

Before 2004, noncitizens were not required to have work authorization to qualify for Social Security benefits. Noncitizens could qualify for benefits based solely on unauthorized work.

In an effort to limit the crediting of earnings from unauthorized work for purposes of qualifying for Social Security benefits, Congress passed a work authorization requirement for certain noncitizens as part of the Social Security Protection Act of 2004 (P.L. 108-203). Certain noncitizens must have authorization to work in the United States *at some point* to qualify for Social Security benefits. Specifically, an alien whose application for benefits is based on an SSN assigned *January 1, 2004, or later* must have work authorization at the time an SSN is assigned, or at some later time, to qualify for Social Security benefits (with some exceptions).

The work authorization requirement does not apply to an alien whose application for benefits is based on an SSN assigned *before January 1, 2004*. Such individuals may qualify for benefits without having had authorization to work in the United States at any point.

Can Noncitizens Qualify for Social Security Benefits for Themselves and Their Family Members Based on Unauthorized Work?

There are certain circumstances under which noncitizens who work in the United States without authorization can qualify for Social Security benefits for themselves and their eligible family members (see text box). Current law with respect to crediting earnings from unauthorized work for Social Security eligibility and benefit computation purposes becomes of interest when Congress considers legislation to legalize all or part of the unauthorized population residing in the United States.

Treatment of Earnings Based on Unauthorized Work

The treatment of earnings differs, depending on when a noncitizen is assigned a Social Security number (SSN).

Noncitizens Assigned an SSN Before 2004 *

With respect to benefit applications based on an SSN assigned before 2004, the individual is not required to have work authorization at any point. All Social Security-covered earnings are credited for purposes of qualifying for benefits, regardless of the individual's work authorization status.

Noncitizens Assigned an SSN in 2004 or Later *

With respect to benefit applications based on an SSN assigned on or after January 1, 2004, the individual must have work authorization when an SSN is assigned, or at any later time, to qualify for Social Security benefits. [Social Security Act, §214 and §223; 42 U.S.C. §414 and §423]

- If the individual has work authorization at some point, **all** of his or her Social Security-covered earnings (from authorized and unauthorized work) count toward qualifying for benefits.
- If the individual never obtains work authorization, **none** of his or her covered earnings count toward qualifying for benefits.

* Policy Regarding SSN Assignment for Noncitizens

Noncitizens authorized by the Department of Homeland Security to work in the United States can be assigned an SSN. Noncitizens not authorized to work can be assigned an SSN for a valid nonwork reason. Under regulations in effect since late 2003, the only valid nonwork reason for assignment of an SSN would be if a noncitizen needs an SSN to receive federal, state, or local government benefits to which he or she has otherwise established entitlement (20 C.F.R. §422.104). Previously, the policy for assignment of nonwork SSNs was less restrictive; noncitizens could be assigned an SSN for a variety of nonwork purposes, such as to obtain a driver's license.

Can Noncitizens in the U.S. Receive Social Security Benefit Payments If They Are Not Lawfully Present?

No. The Social Security Act requires noncitizens to be *lawfully present* to receive benefit payments while in the United States [Social Security Act, §202(y); 42 U.S.C. §402(y)]. The term *lawfully present alien* for purposes of the Social Security program is defined in 8 C.F.R. §1.3.

If a noncitizen is entitled to benefits, but does not meet the lawful presence requirement, his or her benefits are suspended. In such cases, a noncitizen may receive benefits while residing outside the United States indefinitely

(including benefits based on work performed in the United States without authorization) if he or she meets one of the exceptions to the *alien nonpayment provision* [Social Security Act, §202(t); 42 U.S.C. §402(t)].

Noncitizens Residing Outside the U.S.

When the Social Security program began paying benefits in 1940, there were no restrictions on benefit payments to noncitizens. Congress placed restrictions on benefit payments to *alien workers* living abroad as part of the Social Security Amendments of 1956 (P.L. 84-880) and to *alien dependents and survivors* living abroad as part of the Social Security Amendments of 1983 (P.L. 98-21).

Alien Nonpayment Provision

Under the alien nonpayment provision, a noncitizen's benefits are suspended if he or she remains outside the United States for more than six consecutive months. However, there are a number of exceptions that allow noncitizens to receive benefits while residing outside the United States indefinitely. For example, an alien may receive benefits outside the United States if he or she is a citizen of a country that has a social insurance or pension system that pays benefits to eligible U.S. citizens residing outside that country (such as Mexico). If an alien does not meet one of the exceptions, his or her benefit payments are suspended beginning with the seventh month of absence and are not resumed until he or she returns to the United States lawfully for a full calendar month. In addition, to receive payments outside the United States, alien dependents and survivors must have lived in the United States for at least five years previously (lawfully or unlawfully), and the relationship to the worker must have existed during that time. There are a number of exceptions. For example, the U.S. residency requirement does not apply if the alien is a citizen or resident of a country with which the United States has a totalization agreement (such as Canada).

Related Statistics from SSA

In 2013, SSA's Office of the Chief Actuary (OCACT) estimated that about 3.1 million unauthorized aliens were working and paying Social Security payroll taxes in 2010. Of those, SSA estimated that 0.6 million had temporary work authorized at some point in the past and overstayed their terms of admittance (e.g., visas); 0.7 million obtained fraudulent birth certificates at some point and used these birth certificates to obtain an SSN; and 1.8 million used an SSN that did not match their name (i.e., fraudulently used another person's SSN). OCACT estimated that \$13 billion in payroll taxes were from unauthorized immigrant workers and their employers in 2010. In addition, OCACT estimated that 3.9 million unauthorized workers worked in the "underground economy," for an estimated total 7.0 million unauthorized workers in 2010. (Source: SSA, OCACT, Actuarial Note, Number 151, *Effects of Unauthorized Immigration on the Actuarial Status of the Social Security Trust Funds*, April 2013.)

Audrey Singer, Coordinator, Specialist in Immigration Policy

William R. Morton, Analyst in Income Security

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