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Unauthorized Immigrants' Eligibility for COVID-19 Relief Benefits: In Brief

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Introduction

Of the 44.4 million foreign-born individuals¹ residing in the United States in 2017, about one-quarter (10.5 million)² were estimated to be unauthorized immigrants.³ Nearly two-thirds of unauthorized immigrants have resided in the United States for over 10 years.⁴ The degree to which unauthorized immigrants should be accorded certain rights and privileges as a result of their residence in the United States has long been the subject of congressional interest, which has been heightened amidst the coronavirus pandemic and the congressional response to its impact on the economy.

Prior to 1996, there was no uniform rule governing which categories of foreign nationals (i.e., *aliens*⁵) residing in the United States were eligible for which government-provided benefits and services. Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193) established comprehensive restrictions on the eligibility of noncitizens for federal public benefits. These restrictions applied to the majority of non-naturalized (i.e., non-U.S. citizen) foreign-born persons, including lawful permanent residents (also known as *green card holders*), asylees and refugees, nonimmigrants, and unauthorized immigrants. This report focuses exclusively on the unauthorized population;⁶ it outlines their eligibility for federal benefits generally, and for benefits included in the Families First Coronavirus Response Act (FFCRA; P.L. 116-127) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136) specifically.

Eligibility for Federal Benefits

Unauthorized immigrants are not eligible for most federal benefits. This includes programs such as non-emergency Medicaid, the Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income (SSI), Temporary Assistance to Needy Families (TANF), and most housing assistance programs.

In some instances, unauthorized immigrants are eligible for specific types of federal benefits, including the following statutory exceptions outlined in PRWORA:

- treatment under Medicaid for emergency medical conditions (other than those related to an organ transplant);

¹ The foreign-born population encompasses anyone who is not a U.S. citizen at birth, including those who become U.S. citizens through naturalization.

² Jynnah Radford, “Key findings about U.S. immigrants,” *Pew Research Center*, June 17, 2019, at <https://www.pewresearch.org/fact-tank/2019/06/17/key-findings-about-u-s-immigrants/>. This is the most recently available data.

³ Unauthorized immigrants are foreign nationals who enter without inspection, enter with fraudulent documents, or enter legally but overstay the terms of their temporary visas.

⁴ Jens Manuel Krogstad, Jeffrey S. Passel, and D’Vera Cohn, “5 facts about illegal immigration in the U.S.,” *Pew Research Center*, June 17, 2019, at <https://www.pewresearch.org/fact-tank/2019/06/17/key-findings-about-u-s-immigrants/>. This is the most recently available data.

⁵ An alien is a non-U.S. citizen or national.

⁶ This report does not address individuals with Temporary Protected Status or Deferred Action for Childhood Arrivals, or others with discretionary deferral of removal. For more information on these statuses, see CRS Report R45995, *Unauthorized Childhood Arrivals, DACA, and Related Legislation*; CRS Report RS20844, *Temporary Protected Status: Overview and Current Issues*; and CRS Report R45993, *Legalization Framework Under the Immigration and Nationality Act (INA)*.

- short-term, in-kind emergency disaster relief;
- immunizations against immunizable diseases and testing for and treatment of symptoms of communicable diseases;
- services or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelters) designated by the Attorney General as (1) delivering in-kind services at the community level, (2) providing assistance without individual determinations of each recipient's needs, and (3) being necessary for the protection of life and safety; and
- to the extent that aliens were receiving assistance on the dates of enactment, programs administered by the Secretary of Housing and Urban Development, programs under Title V of the Housing Act of 1949, and assistance under Section 306C of the Consolidated Farm and Rural Development Act.

Additionally, PRWORA states that individuals who are eligible for public education benefits under state and local law shall remain eligible to receive benefits under the National School Lunch Program and School Breakfast Program. (PRWORA does not address a state's obligation to grant free public education to children who are unauthorized immigrants under the Supreme Court's decision in *Plyler v. Doe*.⁷) Beyond these nutrition programs, Section 742 of the act neither prohibits nor requires a state to provide food assistance to unauthorized immigrants through certain laws; this applies to programs such as the Child and Adult Care Food Program; the Summer Food Service Program; the Special Supplemental Nutrition Program for Women, Infants, and Children; The Emergency Food Assistance Program; the Commodity Supplemental Food Program; and the Food Distribution Program on Indian Reservations.

Eligibility for Selected Federal COVID-19 Relief Benefits

In response to the coronavirus pandemic, Congress passed the FFCRA and the CARES Act in March 2020. The remainder of this report discusses unauthorized immigrants' access to selected programs in these acts.

Healthcare

The CARES Act provides \$1.32 billion⁸ in funding to Community Health Centers (CHCs).⁹ Unauthorized immigrants are able to access healthcare at CHCs, as these facilities fall under the PRWORA exceptions outlined above.¹⁰

⁷ This case requires states to provide free education to children regardless of immigration status.

⁸ U.S. Department of Health and Human Services (HHS), "HHS Awards \$1.3 Billion to Health Centers in Historic U.S. Response to COVID-19," press release, April 8, 2020, at <https://www.hhs.gov/about/news/2020/04/08/hhs-awards-billion-to-health-centers-in-historic-covid19-response.html>.

⁹ For more information on Community Health Centers, see CRS Report R43937, *Federal Health Centers: An Overview*.

¹⁰ U.S. Department of Justice, "Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation," 66 *Federal Register* 3613, January 16, 2001, at <https://www.govinfo.gov/content/pkg/FR-2001-01-16/pdf/01-1158.pdf>.

The FFCRA provides free coronavirus testing and related services to many uninsured individuals¹¹ through the National Disaster Medical System (NDMS) and Medicaid, the latter of which excludes unauthorized immigrants due to PRWORA. Notably, nearly half (45%) of unauthorized immigrants in the United States are uninsured.¹² This is, in part, because they have limited access to healthcare coverage; for example, they are excluded from Medicaid (as mentioned above), Affordable Care Act (ACA) healthcare subsidies,¹³ and the ability to purchase unsubsidized healthcare on ACA exchanges.¹⁴

The Emergency Medical Treatment and Active Labor Act (EMTALA)¹⁵ generally requires Medicare participating hospitals with emergency departments to provide an appropriate medical screening examination and stabilization care without regard for a patient's ability to pay. This obligation generally extends to individuals who come to the emergency department who are suspected to have COVID-19.¹⁶ EMTALA does permit hospitals to bill individuals for services provided pursuant to their EMTALA obligation. Regarding COVID-19 testing and related services, the FFCRA and the CARES Act provide some payments to hospitals for care provided to uninsured individuals. This funding is provided regardless of the immigration status of the uninsured individuals whom the hospitals treat.

Nutrition Assistance

The FFCRA authorizes the U.S. Department of Agriculture (USDA) to approve states' requests for certain increases to SNAP benefits as well as administrative flexibilities, and the CARES Act provides funding to cover such participation and benefit increases. Unauthorized immigrants are not eligible for SNAP benefits and therefore do not qualify for this aid. The FFCRA also created a new program option allowing USDA to grant states' requests to provide electronic benefit transfer (EBT) benefits, redeemable for groceries like SNAP benefits, to households with children who normally receive free or reduced-price school meals but whose schools are closed. Both SNAP and non-SNAP households can be authorized to receive the benefits. Neither the FFCRA nor USDA has set citizenship requirements for the non-SNAP households, and some state plans have explicitly stated that there are no citizenship restrictions.¹⁷

During the pandemic, children in many areas have continued to receive meals through child nutrition programs, and the FFCRA and the CARES Act provide new funding and authorities for such programs. These meals are largely being served through the Summer Food Service Program

¹¹ For more information, see CRS Report R46316, *Health Care Provisions in the Families First Coronavirus Response Act*, P.L. 116-127.

¹² Samantha Artiga and Maria Diaz, "Healthcare Coverage and Care of Undocumented Immigrants," *Kaiser Family Foundation*, July 15, 2019, at <https://www.kff.org/disparities-policy/issue-brief/health-coverage-and-care-of-undocumented-immigrants/>.

¹³ [Healthcare.gov](https://www.healthcare.gov/glossary/subsidized-coverage/), *Subsidized Coverage*, at <https://www.healthcare.gov/glossary/subsidized-coverage/>.

¹⁴ [Healthcare.gov](https://www.healthcare.gov/immigrants/coverage/), *Immigrants: Healthcare Coverage for Immigrants*, at <https://www.healthcare.gov/immigrants/coverage/>.

¹⁵ 42 U.S.C. §1395dd.

¹⁶ Department of Health and Human Services, Center for Medicare and Medicaid Services, "Emergency Medical Treatment and Labor Act (EMTALA) Requirements and Implications Related to Coronavirus Disease 2019 (COVID-19)," memorandum, March 9, 2020, at <https://www.cms.gov/files/document/qso-20-15-emtala-requirements-and-coronavirus-0311-updated-003pdf.pdf-1>.

¹⁷ Michigan Department of Education, Office of Health and Nutrition Services, *Pandemic Electronic Benefit Transfer Program (P-EBT): Frequently Asked Questions*, at https://www.michigan.gov/documents/mde/COVID-19_P-EBT_FAQs_688075_7.pdf.

(SFSP), which can also operate during unanticipated school closures. As noted above, while PRWORA guarantees that children who receive a free public education also remain eligible for school lunch and breakfast benefits, it does not require states to serve children who are unauthorized immigrants under SFSP and other child nutrition programs. However, states typically do not set citizenship requirements for these programs.

The FFCRA and the CARES Act also provide additional funding for other nutrition assistance programs such as the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and The Emergency Food Assistance Program (TEFAP). PRWORA neither prohibits nor requires states to serve unauthorized immigrants through these programs. In practice, states typically do not set citizenship requirements for WIC and TEFAP recipients.¹⁸

Paid Leave

The FFCRA created two new, temporary leave benefits for eligible employees: emergency Family and Medical Leave Act (FMLA) leave and paid sick leave for certain COVID-19 related needs.¹⁹ The FFCRA does not explicitly exclude unauthorized immigrants from eligibility for these benefits, and the U.S. Department of Labor has not specified any immigration restrictions in its guidance.

Unemployment Insurance

The CARES Act has three provisions for unemployment insurance benefits : (1) Pandemic Unemployment Assistance (PUA), which provides unemployment insurance (UI) benefits to individuals not otherwise eligible for UI benefits (e.g., self-employed, independent contractors, gig economy workers); (2) Pandemic Emergency Unemployment Compensation (PEUC), which provides additional weeks of benefits; and (3) Federal Pandemic Unemployment Compensation (FPUC), which provides an additional \$600 in federal weekly compensation.²⁰ Unauthorized immigrants are not eligible for any of these programs because they require U.S. work authorization.²¹

Small Business Paycheck Protection Program (PPP) Loans

The CARES Act created PPP loans to provide short-term, economic relief to certain small businesses and nonprofits.²² These loans can be used to cover payroll expenses and other enumerated operating costs (e.g., rent, utilities). Under pre-CARES Act regulations (still in effect), a foreign-owned entity can be eligible for U.S. Small Business Administration (SBA) assistance (including a PPP loan) if it is (1) organized for profit; (2) has a place of business in the United States; and (3) contributes to the U.S. economy by paying taxes or using American

¹⁸ For more information on support for USDA nutrition assistance programs within the FFCRA and the CARES Act, see CRS Insight IN11250, *USDA Domestic Food Assistance Programs' Response to COVID-19: P.L. 116-127, P.L. 116-136, and Related Efforts*.

¹⁹ For more information, see CRS In Focus IF11487, *The Families First Coronavirus Response Act Leave Provisions*.

²⁰ For more information, see CRS In Focus IF11475, *Unemployment Insurance Provisions in the CARES Act*.

²¹ For more information, see CRS Legal Sidebar LSB10442, *Recovery Rebates and Unemployment Compensation under the CARES Act: Immigration-Related Eligibility Criteria*.

²² For more information, see CRS Report R46284, *COVID-19 Relief Assistance to Small Businesses: Issues and Policy Options*.

products, materials, or labor.²³ Pre-CARES Act guidance indicates that the SBA also provides financial assistance to businesses that are at least 51% owned and controlled by persons who are not citizens of the United States, provided they are “lawfully in the United States and have an appropriate work visa.”²⁴ The SBA has not explicitly mentioned immigration-based limitations in its PPP guidance, leaving some uncertainty about which categories of immigrant-owned borrowers qualify.

The CARES Act does not impose any citizenship requirements on borrowers, but it prohibits the use of loans for “any compensation of an employee whose principal place of residence is outside of the United States.” On April 24, 2020, the SBA issued guidance stating that borrowers and lenders “may consider IRS regulations (26 CFR §1.121-1(b)(2)),” which use a facts and circumstances approach to determining residency.²⁵ Under regulations, the SBA has stated that for determining whether a business is “small” enough to be eligible for a PPP loan, a business with both U.S. and overseas operations may exclude any employees whose principal place of residence is outside the United States (e.g., employees in overseas operations).²⁶ These workers would also be excluded from the calculation of “payroll costs” used to determine the size of the borrower’s loan.

Education

The CARES Act includes funding for new and existing elementary, secondary, and postsecondary education programs administered by the Department of Education (ED) and authorizes temporary modifications of and waivers from the requirements of existing ED education programs.²⁷ Unauthorized immigrant students may benefit from the services provided to all students at schools receiving CARES Act education funding or benefiting from temporary program modifications and waivers. However, unauthorized immigrant postsecondary students are not eligible for the emergency financial aid grants from the Higher Education Emergency Relief Fund established in the CARES Act.²⁸

Tax Benefits

Direct Payments to Individuals

The CARES Act created the 2020 recovery rebate, which is a direct payment to individuals structured as a one-time refundable tax credit.²⁹ This rebate equals \$1,200 per eligible individual

²³ 13 C.F.R. §121.105.

²⁴ U.S. Small Business Administration (SBA), Office of Financial Assistance, *Lender and Development Company Loan Programs*, pp. 117-122, at <https://www.sba.gov/sites/default/files/2019-02/SOP%2050%2010%205%28K%29%20FINAL%202.15.19%20SECURED%20copy%20paste.pdf>.

²⁵ U.S. Treasury, *Paycheck Protection Program Loans: Frequently Asked Questions (FAQs)*, April 26, 2020, at <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>.

²⁶ U.S. Small Business Administration (SBA), *13 CFR Part 120 Business Loan Program Temporary Changes: Paycheck Protection Program*, at <https://home.treasury.gov/system/files/136/PPP—IFRN%20FINAL.pdf>.

²⁷ For more information, see CRS In Focus IF11509, *CARES Act Elementary and Secondary Education Provisions*; and CRS In Focus IF11497, *CARES Act Higher Education Provisions*.

²⁸ U.S. Department of Education, Office of Postsecondary Education, *CARES Act: Higher Education Emergency Relief Fund, Frequently Asked Questions*, at <https://www2.ed.gov/about/offices/list/ope/heerfstudentfaqs.pdf>

²⁹ For more information, see CRS Insight IN11282, *COVID-19 and Direct Payments to Individuals: Summary of the 2020 Recovery Rebates/Economic Impact Payments in the CARES Act (P.L. 116-136)*.

(\$2,400 for married taxpayers filing a joint tax return) and \$500 per eligible child. The recovery rebate is not available to nonresident aliens³⁰ and requires that taxpayers provide a social security number (SSN), which is typically issued to U.S. citizens, lawful permanent residents, and noncitizens with work authorization. Many unauthorized immigrants do not have an SSN; rather, they file taxes using an individual taxpayer identification number (ITIN).³¹ These individuals are not eligible for the recovery rebate. Unauthorized immigrants who have an SSN (e.g., a noncitizen who had a visa that allowed him or her to work in the United States but remained in the country after it expired) would generally receive the recovery rebate, assuming they met the other eligibility requirements. Married couples filing jointly in which one spouse has an SSN and the other has an ITIN are not eligible for the recovery rebate (unless one spouse is a member of the Armed Forces). U.S. citizen children do not receive the recovery rebate if their parent(s) lack SSNs.

Sick and Family Leave Tax Credit for the Self-Employed

The FFCRA created a tax credit for self-employed workers, including gig workers, to cover the cost of qualifying paid sick and family leave during the COVID-19 pandemic.³² The law is silent on the taxpayer ID requirement for this tax credit; thus, unlike the 2020 recovery rebate, a taxpayer with an ITIN would generally be eligible.

State Benefits

The PRWORA eligibility restrictions and exceptions at the federal level generally extend to state and local benefits. However, states have some authority to affirmatively make unauthorized immigrants eligible for benefits paid with state or local funds, which is occurring during the COVID-19 pandemic. For example, New York City, in partnership with the Open Society Foundation, established the New York City COVID-19 Immigrant Emergency Relief program to provide cash assistance to unauthorized immigrants.³³ California is also reportedly providing one-time cash payments to unauthorized immigrants.³⁴

³⁰ Nonresident aliens are non-U.S. citizens or nationals that have not passed the Internal Revenue Service's "green card test" or "substantial presence test." For more information on these tests and the nonresident alien status, see Internal Revenue Service (IRS), *Determining Alien Tax Status*, at <https://www.irs.gov/individuals/international-taxpayers/determining-alien-tax-status>.

³¹ ITINs enable noncitizens who do not have SSNs to comply with federal tax law. For more information on ITINs, see Internal Revenue Service (IRS), *Nonresident Aliens*, <https://www.irs.gov/individuals/international-taxpayers/nonresident-aliens>; and CRS Report R43840, *Federal Income Taxes and Noncitizens: Frequently Asked Questions*.

³² For more information, see CRS Insight IN11243, *Tax Credit for Paid Sick and Family Leave in the Families First Coronavirus Response Act (H.R. 6201) (Updated)*.

³³ New York City, Office of the Mayor, "Mayor de Blasio Announces New York City COVID-19 Immigrant Emergency Relief Program with Open Society Foundations," April 16, 2020, at <https://www1.nyc.gov/office-of-the-mayor/news/262-20/mayor-de-blasio-new-york-city-covid-19-immigrant-emergency-relief-program-open>.

³⁴ Rebecca Klar, "California offering \$500 in coronavirus relief to undocumented immigrants," *The Hill*, April 15, 2020, at <https://thehill.com/homenews/state-watch/493027-california-offering-500-in-coronavirus-relief-to-undocumented-immigrants>.

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