



Proposed Rule Affecting Noncitizen Eligibility for Refundable Tax Credits

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On August 17, 2026, the U.S. Department of the Treasury proposed a [new rule](#) that would make some noncitizens ineligible for the portion of certain refundable tax credits that exceed the taxpayer's income tax liability. It would do so by applying the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA; [P.L. 104-193](#))—which makes certain noncitizens ineligible for federal public benefits—to certain tax credits. This In Focus describes the proposed change and examines its potential impacts on taxpayers and the federal budget.

PRWORA Overview

[Title IV of PRWORA](#) was designed to create a “national policy with respect to welfare and immigration.” Enacted on August 22, 1996, PRWORA, as amended, generally restricts noncitizens' eligibility for public benefits through its baseline eligibility rule: *Non-qualified aliens* are prohibited from receiving *federal public benefits*. (*Alien* is the term used in the [Immigration and Nationality Act](#) for any person who is not a citizen or national of the United States. In this report, the words *alien* and *noncitizen* are used interchangeably.)

Qualified aliens include lawful permanent residents, refugees, aliens granted parole for at least one year, aliens granted asylum or related relief, certain abused spouses and children, Cuban-Haitian entrants, and citizens of the Freely Associated States residing in the U.S. states and territories ([8 U.S.C. §1641](#)). *Non-qualified aliens* include unauthorized noncitizens as well as various classes of noncitizens granted temporary permission to remain in the United States.

PRWORA defines *federal public benefit* to include “any retirement, welfare, health, disability ... 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” ([8 U.S.C. §1611\(c\)\(1\)](#)). Historically, tax credits have not been considered *federal public benefits*, and thus PRWORA's noncitizen restrictions have not applied. Treasury and the Internal Revenue Service (IRS) have proposed a new regulation that would define four refundable individual tax credits as *federal public benefits* under PRWORA. Thus, non-qualified aliens would be ineligible to receive the refundable portion of those credits.

Tax Treatment of Noncitizens

The individual income tax applies to income “from whatever source derived” unless explicitly excluded in the U.S. Internal Revenue Code. Federal taxes that noncitizens may pay directly include income tax, as well as [payroll taxes](#), which apply to wages and fund specific programs such as Social Security, Medicare Hospital Insurance, and unemployment insurance. Noncitizens may also pay state and local taxes and may indirectly pay other federal taxes, such as the corporate income

tax and tariffs, to the extent such taxes impact the noncitizens' incomes or consumer prices.

Noncitizens may be subject to U.S. income taxes when, for example, they work in the United States. Similarly, payroll taxes typically apply to the wages of all U.S. employees, which generally include noncitizens working in the United States (with some [exceptions](#)).

Noncitizens can claim credits against their income tax liability unless expressly prohibited by law. Statute prohibits some taxpayers from claiming certain credits if they do not have [work-authorized Social Security numbers \(SSNs\)](#). Such credits include the Child Tax Credit (CTC), the Earned Income Tax credit (EITC), and the American Opportunity Tax Credit (AOTC).

Noncitizen Eligibility for Work-Authorized SSNs

Noncitizens with current employment authorization from the U.S. Department of Homeland Security (DHS) may obtain SSNs that indicate their employment authorization status at the time of their SSN applications. This is known as a “work-authorized SSN.” Work-authorized SSNs do not expire and may not indicate current citizenship, immigration, or employment authorization status. There are various types of work authorization, and a noncitizen may be issued an Unrestricted SSN Card or a Work SSN Card that is valid only with DHS work authorization.

While possession of an SSN is sometimes used as a proxy for lawful immigration status, it is not an exact one. Someone in a household that files a tax return may be in the country lawfully on a nonimmigrant visa but is not eligible to work (and thus not eligible for a work-authorized SSN) because he or she is a spouse or child of the principal visa holder. Others without work-authorized SSNs may be unlawfully present in the country, using Individual Taxpayer Identification Numbers instead of SSNs. Conversely, some unlawfully present noncitizens may file using work-authorized SSNs they lawfully received in the past (e.g., they may have been lawfully present and authorized to work but overstayed their authorized period of admission). Some people may also use work-authorized SSNs obtained fraudulently.

Proposed Rule

On August 19, 2026, Treasury released a [new proposed rule](#) that would deem the refundable portion of certain tax credits to be *federal public benefits* under PRWORA. The refundable portion of a tax credit is the portion paid to a taxpayer in excess of tax liability. The tax credits that the rule would impact are:

- the [CTC](#), which is worth a maximum of \$2,200 per qualifying child but for which \$1,700 per child can be received as a tax refund;

- the [EITC](#), a fully refundable tax credit that subsidizes the wages of low- and moderate-income workers, particularly those with children;
- the [adoption tax credit](#), which offsets up to \$17,280 (2026 value; adjusted annually for inflation) in qualifying expenses related to the adoption of a child, of which up to \$5,000 (not adjusted for inflation) can be received as a tax refund; and
- the [AOTC](#), which offsets up to \$2,500 of a household's expenses on higher education per qualifying student, of which up to \$1,000 per student can be received as a tax refund.

Existing statute requires taxpayers to have work-authorized SSNs to claim the CTC, the EITC, or the AOTC. Filers claiming the CTC must provide work-authorized SSNs for either themselves *or* their spouses (if filing jointly) as well as the children for whom they are claiming the credit. In contrast, for the EITC, a work-authorized SSN is required for the taxpayer, a spouse if married filing jointly, and any children for whom the taxpayer is claiming the credit. Those claiming the AOTC must provide work-authorized SSNs for themselves and the eligible students for whom they are claiming the credit, unless such student is the taxpayer's spouse. No such requirement exists for the adoption tax credit.

The proposed rule applies to only the refundable portion of these credits, meaning the portion that exceeds the amount of income tax liability. Therefore, it changes credit eligibility for non-qualified aliens with no income tax liability after claiming credits. Such aliens may still have federal payroll tax liability, which generally does not factor into the calculation of the refundable portion of a tax credit. Payroll tax liability generally applies to the first dollar a worker earns in wages or salary, without deductions or credits, meaning working taxpayers with no income tax liability generally have payroll tax liability.

Potential Impact of the Proposed Rule

The proposed rule reduces the value of credits for non-qualified aliens who claim refundable tax credits that exceed their income tax liability and who meet the work-authorized SSN requirements that apply to the credits. Such taxpayers would include all non-qualified aliens claiming the refundable portion of the adoption tax credit. They also include non-qualified aliens claiming the refundable portion of the CTC, EITC, or AOTC whose claims meet the applicable SSN requirements for such credits. Those who do not otherwise meet the SSN requirements for these credits are already ineligible.

The IRS estimates that the rule would make 200,000 to 700,000 filers (representing 0.8% to 2.8% of all taxpayers) ineligible for the credits in 2026. Because filing units contain both taxpayers and other individuals, such as children, the Center on Budget and Policy Priorities [estimated](#) that the changes to the CTC and EITC (the [two largest affected credits](#)) would impact roughly 1 million individuals (including U.S. citizen family members).

Because those whose credits exceed their income tax liability are generally lower-income taxpayers, this rule would reduce the financial resources of lower-earning households more than moderate or higher earning ones. Households with workers would also be affected disproportionately, as the CTC and EITC both phase in with a taxpayer's earned income and are thus already unavailable to those with no earned income. Households with children or other dependents are more likely to otherwise qualify for the affected credits—or qualify for larger credits—and therefore would be disproportionately affected by the rule.

Requiring taxpayers to affirm that they are qualified aliens (or otherwise eligible under PROWRA) on their tax returns may add an administrative burden to taxpayers, who may need to research the definition of *qualified alien* to make their claims. It could also dissuade some from filing their income taxes and claiming benefits or refunds to which they are entitled out of concern that the information will be used against them in immigration enforcement. While the IRS has not historically collected information on immigration enforcement or shared information systematically with enforcement agencies, last year it [agreed to share](#) tax return information with Immigration and Customs Enforcement, which uses the shared information to cross-reference individuals' identifying information for enforcement purposes. [Legal challenges](#) to this arrangement are delaying its implementation.

The rule could make households ineligible for state tax credits as well as these federal ones. Many states offer tax credits, such as state-level CTCs and earned income credits, with parameters that conform to the parameters of these federal credits in some ways. For example, [32 states and the District of Columbia](#) offer state earned income credits, and [all but three](#) determine the state credit as a percentage of the federal EITC. Making non-qualified aliens ineligible for the refundable portion of the federal EITC could thus reduce the amount of state credits for which they are eligible.

Implementation

The comment period for the proposed regulations closed on October 5, 2026. The IRS has not announced when it intends to issue final regulations.

The IRS has released a draft of a new form, [Schedule 3-A of Form 1040](#), on which taxpayers claiming the refundable portions of these four credits would affirm that they (or their spouses) are either U.S. citizens or qualified aliens for purposes of PROWRA. Such a form is necessary because historically the IRS has not collected information on the immigration status of taxpayers as part of the standard individual income tax filing process. The new form is in addition to a question on the IRS's [draft of the Form 1040 itself for the 2026 tax year](#), which would ask all filers whether they (and their spouses, if filing jointly) are U.S. citizens, nationals, or aliens lawfully authorized to work in the United States.

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