

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

**(a) In general**

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

**(b) Effective date**

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

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

CODIFICATION

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

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

**(a) In general**

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

**(b) Limitation**

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

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

CODIFICATION

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

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

A State or political subdivision of a State is authorized to require an applicant for State and

local public benefits (as defined in section 1621(c) of this title) to provide proof of eligibility.

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

EFFECTIVE DATE

Section effective, except as otherwise provided, as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5308 of Pub. L. 105-33, set out as an Effective Date of 1997 Amendment note under section 1612 of this title.

SUBCHAPTER III—ATTRIBUTION OF INCOME AND AFFIDAVITS OF SUPPORT

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

**(a) In general**

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

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

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

**(b) Duration of attribution period**

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

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

(2)(A) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act [42 U.S.C. 401 et seq.] or can be credited with such qualifying quarters as provided under section 1645 of this title, and (B) in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 1613 of this title) during any such period.

**(c) Review of income and resources of alien upon reapplication**

Whenever an alien is required to reapply for benefits under any Federal means-tested public benefits program, the applicable agency shall review the income and resources attributed to the alien under subsection (a).

**(d) Application**

(1) If on August 22, 1996, a Federal means-tested public benefits program attributes a sponsor's income and resources to an alien in determining the alien's eligibility and the amount of benefits for an alien, this section shall apply to any such determination beginning on the day after August 22, 1996.

(2) If on August 22, 1996, a Federal means-tested public benefits program does not attribute a sponsor's income and resources to an alien in determining the alien's eligibility and the amount of benefits for an alien, this section shall apply to any such determination beginning 180 days after August 22, 1996.

(3) This section shall not apply to assistance or benefits under the Food Stamp Act of 1977<sup>1</sup> (7 U.S.C. 2011 et seq.) to the extent that a qualified alien is eligible under section 1612(a)(2)(J) of this title.

**(e) Indigence exception**

**(1) In general**

For an alien for whom an affidavit of support under section 213A of the Immigration and Nationality Act [8 U.S.C. 1183a] has been executed, if a determination described in paragraph (2) is made, the amount of income and resources of the sponsor or the sponsor's spouse which shall be attributed to the sponsored alien shall not exceed the amount actually provided for a period beginning on the date of such determination and ending 12 months after such date.

**(2) Determination described**

A determination described in this paragraph is a determination by an agency that a sponsored alien would, in the absence of the assistance provided by the agency, be unable to obtain food and shelter, taking into account the alien's own income, plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor. The agency shall notify the Attorney General of each such determination, including the names of the sponsor and the sponsored alien involved.

**(f) Special rule for battered spouse and child**

**(1) In general**

Subject to paragraph (2) and notwithstanding any other provision of this section, subsection (a) shall not apply to benefits—

(A) during a 12 month period if the alien demonstrates that (i) the alien has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to or acquiesced to such battery or cruelty, (ii) the alien's child has been battered or subjected to extreme cruelty in the United States by the spouse or parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse's or parent's family residing in the same household as the alien when the spouse or parent consented or acquiesced to and the alien did not actively participate in such battery or cruelty, or (iii) the alien is a child whose parent (who resides in the same household as the alien child) has been battered or subjected to extreme cruelty in the United States by that parent's spouse, or by a member of the spouse's family residing in the same household as the parent and the

spouse consented to, or acquiesced in, such battery or cruelty, and the battery or cruelty described in clause (i), (ii), or (iii) (in the opinion of the agency providing such public benefits, which opinion is not subject to review by any court) has a substantial connection to the need for the public benefits applied for; and

(B) after a 12 month period (regarding the batterer's income and resources only) if the alien demonstrates that such battery or cruelty under subparagraph (A) has been recognized in an order of a judge or administrative law judge or a prior determination of the Immigration and Naturalization Service, and that such battery or cruelty (in the opinion of the agency providing such public benefits, which opinion is not subject to review by any court) has a substantial connection to the need for the benefits.

**(2) Limitation**

The exception under paragraph (1) shall not apply to benefits for an alien during any period in which the individual responsible for such battery or cruelty resides in the same household or family eligibility unit as the individual who was subjected to such battery or cruelty.

(Pub. L. 104-193, title IV, § 421, Aug. 22, 1996, 110 Stat. 2270; Pub. L. 104-208, div. C, title V, §§ 551(b)(1), 552, Sept. 30, 1996, 110 Stat. 3009-679, 3009-680; Pub. L. 105-33, title V, § 5571(d), Aug. 5, 1997, 111 Stat. 641; Pub. L. 107-171, title IV, § 4401(b)(2)(B), May 13, 2002, 116 Stat. 333.)

REFERENCES IN TEXT

Section 213A of the Immigration and Nationality Act (as added by section 423 and as amended by section 551(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996), referred to in subsec. (a)(1), is section 1183a of this title as added by section 423 of Pub. L. 104-193 and amended by section 551(a) of div. C of Pub. L. 104-208.

The Immigration and Nationality Act, referred to in subsec. (b)(1), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended. Chapter 2 of title III of the Act is classified generally to part II (§1421 et seq.) of subchapter III of chapter 12 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

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

The Food Stamp Act of 1977, referred to in subsec. (d)(3), subsequently renamed the Food and Nutrition Act of 2008, is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

AMENDMENTS

2002—Subsec. (d)(3). Pub. L. 107-171 added par. (3).

1997—Subsec. (f)(1)(A). Pub. L. 105-33 struck out “or” before “(ii) the alien's child” and substituted “or (iii) the alien is a child whose parent (who resides in the same household as the alien child) has been battered or subjected to extreme cruelty in the United States by that parent's spouse, or by a member of the spouse's family residing in the same household as the parent

<sup>1</sup> See References in Text note below.

and the spouse consented to, or acquiesced in, such battery or cruelty, and the battery or cruelty described in clause (i), (ii), or (iii)” for “and the battery or cruelty described in clause (i) or (ii)”.

1996—Subsec. (a)(1). Pub. L. 104-208, §551(b)(1), inserted “and as amended by section 551(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996” after “section 423”.

Subsecs. (e), (f). Pub. L. 104-208, §552, added subsecs. (e) and (f).

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-171 effective Oct. 1, 2003, see section 4401(b)(3) of Pub. L. 107-171, set out as a note under section 2014 of Title 7, Agriculture.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5582 of Pub. L. 105-33, set out as a note under section 1367 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 551(b)(1) of Pub. L. 104-208 applicable to affidavits of support executed on or after a date specified by the Attorney General, which date shall be not earlier than 60 days, and not later than 90 days after the date the Attorney General formulates the form for such affidavits, see section 551(c) of Pub. L. 104-208, set out as an Effective Date of 1996 Amendment; Promulgation of Form note under section 1183a of this title.

#### ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

### § 1632. Authority for States to provide for attribution of sponsors income and resources to the alien with respect to State programs

#### (a) Optional application to State programs

Except as provided in subsection (b), in determining the eligibility and the amount of benefits of an alien for any State public benefits, the State or political subdivision that offers the benefits is authorized to provide that the income and resources of the alien shall be deemed to include—

(1) the income and resources of any individual who executed an affidavit of support pursuant to section 1183a of this title (as added by section 423 and as amended by section 551(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) on behalf of such alien, and

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

#### (b) Exceptions

Subsection (a) shall not apply with respect to the following State public benefits:

(1) Assistance described in section 1621(b)(1) of this title.

(2) Short-term, non-cash, in-kind emergency disaster relief.

(3) Programs comparable to assistance or benefits under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.].

(4) Programs comparable to assistance or benefits under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.].

(5) Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

(6) Payments for foster care and adoption assistance.

(7) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General of a State, after consultation with appropriate agencies and departments, which (A) deliver in-kind services at the community level, including through public or private nonprofit agencies; (B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (C) are necessary for the protection of life or safety.

(Pub. L. 104-193, title IV, §422, Aug. 22, 1996, 110 Stat. 2271; Pub. L. 104-208, div. C, title V, §551(b)(1), Sept. 30, 1996, 110 Stat. 3009-679; Pub. L. 105-33, title V, §5581(b)(2), Aug. 5, 1997, 111 Stat. 643; Pub. L. 106-78, title VII, §752(b)(6), Oct. 22, 1999, 113 Stat. 1169.)

#### REFERENCES IN TEXT

Section 1183a of this title (as added by section 423 and as amended by section 551(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996), referred to in subsec. (a)(1), is section 1183a of this title as added by section 423 of Pub. L. 104-193 and amended by section 551(a) of div. C of Pub. L. 104-208.

The Richard B. Russell National School Lunch Act, referred to in subsec. (b)(3), is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§1751 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of Title 42 and Tables.

The Child Nutrition Act of 1966, referred to in subsec. (b)(4), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§1771 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of Title 42 and Tables.

#### AMENDMENTS

1999—Subsec. (b)(3). Pub. L. 106-78 substituted “Richard B. Russell National School Lunch Act” for “National School Lunch Act”.

1997—Subsec. (a). Pub. L. 105-33 struck out “(as defined in section 1622(c) of this title)” after “public benefits” in introductory provisions.

1996—Subsec. (a)(1). Pub. L. 104-208 inserted “and as amended by section 551(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996” after “section 423”.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5582 of Pub. L. 105-33, set out as a note under section 1367 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 applicable to affidavits of support executed on or after a date specified by the Attorney General, which date shall be not earlier than 60 days, and not later than 90 days after the date the Attorney General formulates the form for such affidavits, see section 551(c) of Pub. L. 104-208, set out as an