



THE POLICY PAGE

An update on state and federal action from

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May 1, 1998

No. 64

"Nonqualified" Immigrants Face September 1998 SSI Termination

A small group of elderly or disabled immigrants who are lawfully present and currently receiving Supplemental Security Income (SSI) cash assistance remain at risk of losing their SSI benefits at the end of the current federal fiscal year. After that date, "Nonqualified" legal immigrants will not be allowed to remain on the SSI rolls. In this vulnerable group, estimated to number about 1,660 in Texas, many may be able to retain those benefits through a

relatively simple adjustment in immigration status. State agencies, local community-based organizations, and legal resources are all needed to create an outreach campaign to inform this group about the change, to help as many as possible to hold on to their benefits, and to connect those who cannot retain benefits with resources they may need if their cash assistance and Medicaid are ultimately terminated.

What is SSI? SSI provides cash assistance to over 6.5 million persons with incomes at or below \$6,168 per year (about 77% of the federal poverty income level), who are also either (1) over age 65, or (2) under 65 and fully disabled. The 1998 maximum monthly benefit for an individual with no other income is \$494. Though many Americans are unaware of the program, SSI is the safety net that protects elderly Americans and Americans with disabilities from destitution. SSI is critical for elder Americans with inadequate work-related retirement benefits (Social Security, pension, or private retirement savings); nearly 75% of SSI recipients over age 65 are women. In addition, SSI provides an income floor for Americans with disabilities who have not accrued adequate work-related disability benefits. Texas is one of 32 states which automatically enrolls 100% of SSI beneficiaries in Medicaid; in the other states those beneficiaries are also fully entitled to Medicaid, but the states make them apply separately for the medical program.

Background

As many readers know, the August 1997 Balanced Budget Act (BBA) preserved SSI benefits for the majority of legal immigrants who were receiving benefits as of 8/22/96, the date when the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) was signed. The BBA provision also will make it possible for other "qualified" legal immigrants who were lawfully present in the U.S. as of 8/22/96 to obtain SSI benefits now or in the future if they meet the SSI disability standard. Unlike citizens, qualified immigrants in the latter group will *not* be able to access SSI on the basis of old age and a below-poverty income of about 77% of the federal income level; disability must be established (refugees and asylees are exceptions: see footnote). In Texas, these BBA changes prevented the loss of SSI for nearly 35,000 resident immigrants who are poor and either fully disabled or over age 65.¹

PRWORA introduced the new terms, "qualified" and "nonqualified" for purposes of categorizing lawful immigrants' eligibility for federal benefits. These new terms rendered obsolete the older term used in federal benefit eligibility — "PRUCOL" (permanently residing under color of law). A number of categories of immigration status which were previously included in the PRUCOL grouping are now included in the "nonqualified" group. This is a gravely important change for affected persons, since it means that they are to be treated the same as undocumented immigrants for purposes of eligibility for all federal benefit programs. "Nonqualified" is generally defined in law in terms of what it is not, but some examples include:

- Persons residing continuously in the U.S. since before 1/1/72 (who have not yet adjusted to legal permanent resident status),
- Lawful Temporary Residents under the amnesty laws,

- Temporary Protected Status,
- Certain persons in voluntary departure status, and
- Certain persons with specific sorts of stays and suspensions of deportation.

SSA Promotes Outreach to Nonqualified SSI Beneficiaries.

While the BBA protected SSI benefits for the “qualified” immigrant group, SSI enrollees whose immigration categories are now “nonqualified” were granted an extension of their eligibility only through September 30, 1998, the end of the federal fiscal year. However, currently nonqualified beneficiaries who can adjust their immigration status to a qualified immigration status will be able to remain on SSI. To encourage concerted outreach to the affected group, the Social Security Administration (SSA) sent letters at the end of February to the Governors of all 50 states, as well as to County officials in every county in which the SSA has identified 50 or more nonqualified immigrant SSI recipients. The letters offered to make the SSA’s relevant contact information for the affected clients within that official’s jurisdiction available for use in outreach (a privacy agreement must be signed in order to access the data). The letter and agreement also authorize the states or counties to deputize community-based organizations to assist in the outreach process, as long as all designated agents of the state or county sign and abide by the same privacy agreement.

As of early April, only Los Angeles County and New York City had actually begun active outreach campaigns. Here in Texas, discussion among interested groups regarding collaboration on outreach has been underway since February. At publication time, the Governor’s office had begun, but not finalized, assigning the outreach project to the Office of Immigrant and Refugee Affairs (OIRA) at the Texas Department of Human Services. As soon as the formal “green light” is given to TDHS, the agency will be able to access the SSA client data and begin intensive work on the outreach project. In the meantime, progress *is* being made. Both the Texas Department of Human Services (TDHS) and the Texas Department on Aging are expected to be actively involved in outreach. TDHS reports productive discussions with INS regarding ways to simplify the processing of immigrants’ adjustment of status, and certain statewide and community-based

groups have indicated a willingness to provide immigration or legal assistance. In the Rio Grande Valley, local advocates have already begun working with Cameron and Hidalgo counties to develop outreach programs.

Needed for the effort are persons or groups who are able to provide any of the following sorts of assistance:

- telephone and face-to-face outreach to the SSI clients,
- assistance to clients in completing necessary immigration paperwork, and/or
- legal or paralegal assistance with immigration issues in more complex cases.

First Step: Verifying Current Status

The information provided to states and counties by the Social Security Administration (SSA) includes the agency’s last-collected information on the immigration status of the SSI beneficiaries. However, the early experiences of Los Angeles County and New York City suggest that the SSA information may be found to be outdated in a large percentage of cases, and that Texas may discover that a substantial number of the group identified by SSA as nonqualified have, in fact, already adjusted to LPR status or naturalized. In many cases, SSI beneficiaries may have made changes to their immigration status in the years subsequent to their initial application for benefits. Prior to PRWORA, the precise nature of their immigration status did not affect their SSI eligibility (as long as they remained lawfully present), so immigrants had no reason to notify SSA of changes in immigration status, or even if they became a U.S. citizen. Immigrant SSI beneficiaries who have adjusted status or naturalized may nevertheless need help in locating and providing documentation to prove their changed status to the SSA.

The early New York and L.A. experiences also indicate that one-on-one contacts may be needed to ascertain the true status of some of the individuals in question. Given that the affected group includes persons of very advanced age and who have serious disabilities, it is clear that some individuals will need a great deal of help establishing or adjusting their immigration status.

Some Can Retain SSI...Others Cannot

SSA records for Texas indicate that 1,021 of Texas' 1,660 nonqualified SSI beneficiaries have been continuously residing in the U.S. since before 1/1/72. These individuals are therefore likely to qualify to adjust to Legal Permanent Resident status under the policy known as "registry," and thereby retain their SSI benefits. Persons in this group who are found upon outreach to still be nonqualified (that is, the SSA data is still accurate) will often need help documenting their continuous residence in the U.S. In addition, there are certain situations which can prevent a person from adjusting status under registry; screening for these will be an important function of outreach workers. Finally, in a classic "Catch-22," INS technically has discretion to deny registry adjustment based on "adverse factors" which could include past or current receipt of public benefits. At least one state has formally requested that INS issue clarifying guidance to assure that lawful receipt of SSI will not be used as the basis to disqualify immigrants from adjustment.

About one-third (537) of the Texas SSI clients identified as nonqualified by SSA are listed on their records as Lawful Temporary Residents under INA Section 245A. The remaining 102 Texas SSI clients are shown in several immigration categories, including voluntary departure status, humanitarian stays of deportation, *Silva v. Levi*, and miscellaneous categories for which INS does not contemplate enforcing departure from the U.S. Like those identified as potential registry candidates, many of these individuals may have long ago adjusted status or naturalized. Among those who have not taken such action, many are likely to be unable to adjust status and to retain SSI. Too little progress has been made to date on outreach in other states to predict the size of the group that may ultimately be unable to retain SSI.

More time may be needed

In addition to the time needed to contact clients and assemble needed documents, Texas INS offices currently have substantial backlogs for adjustment and citizenship interviews — typically 12 to 14 months. Unless INS makes special provisions for

processing these applications or Congress extends the deadline for termination of the benefits, even those elderly and disabled clients who are eligible for continued SSI will lose their benefits for a period of time. National and state organizations concerned with immigrants have begun to raise the possibility of extending the adjustment deadline in Washington.

Provisions Must be made for Those Who Remain Nonqualified

Even if Texas mounts a highly successful outreach campaign to this group, under current federal law those who are unable to achieve LPR status must lose their SSI cash assistance. It is critical that Texas identify promptly those who are at risk of becoming destitute. While other states have state-funded general (cash) assistance programs and medical assistance programs that will step in to serve those who are ineligible for the federal SSI and Medicaid programs, Texas has neither. Some of these individuals are likely to reside in nursing homes (which will have no source of payment after SSI and SSI-linked Medicaid are terminated); others may reside alone or with family members who may themselves be aged, disabled, or impoverished. Texas should develop a plan for ongoing support of the elderly and disabled immigrants who have no other means of support than SSI once the federal government terminates their benefits.

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¹ Note: Certain qualified immigrants must be treated just like citizens for purposes of SSI eligibility: (1) persons with 40 quarters of U.S. work history who entered the U.S. on or before 8/22/96 or who entered after 8/22/96 after 5 years have elapsed from date of entry; (2) honorably discharged or active duty U.S. military, and their spouses and unmarried dependents; (3) Refugees, asylees, Cuban and Haitian entrants, Amerasians, and persons granted withholding of deportation are eligible for up to 7 years; and (4) certain American Indians from tribes residing on the U.S. borders with Canada and Mexico.

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