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## Informational Letter

### Section 1

<b>Transmittal:</b>	03 INF 14
<b>To:</b>	Local District Commissioners
<b>Issuing Division/Office:</b>	Temporary Assistance
<b>Date:</b>	April 2, 2003
<b>Subject:</b>	Food Stamp Program Eligibility for Aliens
<b>Suggested Distribution:</b>	Temporary Assistance Directors Food Stamp Directors CAP Coordinators TOP Coordinators Staff Development Coordinators
<b>Contact Person(s):</b>	Food Stamp Policy - Eastern Regional Team at 800-343-8859, extension 3-1469
<b>Attachments:</b>	"Non-Citizens' Eligibility for Food Stamp Benefits"; "Food Stamps for Immigrants" flyer; Federal Guide to Documents
<b>Attachment Available On – Line:</b>	<input checked="" type="checkbox"/>

### Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
03 ADM-1 02 ADM-7 02 ADM-4 98 ADM-4 97 ADM-25 97 ADM-5 01 INF-9			P.L. 107-171 P.L. 105-185 P.L. 104-193		GIS 03 TA/DC003 97 LCM-21 96 LCM-86

### Section 2

#### I. Purpose

This letter provides additional information and clarifications concerning changes in Food Stamp program eligibility for certain aliens.

#### II. Background

The Food Stamp Reauthorization Act of 2002 (P.L. 107-171) included three major changes in Food Stamp program eligibility for certain aliens. These changes were described in 02 ADM-7, section IV.C. This letter addresses questions received by this Office about the alien eligibility changes, and shares additional pertinent information recently provided by the United States Department of Agriculture (USDA). A chart, which summarizes non-citizens' eligibility for food stamp benefits, is attached. A copy of the federal "Guide to Selected U.S. Travel and Identity Documents" also is attached to assist districts in evaluating alien status documentation. An informational outreach flyer (in five languages) is attached, for districts to print and make available in their waiting areas and to immigrant community organizations. In addition, the LDSS-4579: "Alien Eligibility Desk Guide" (2/03) is being revised to include these food stamp policy changes, and will be provided in a separate letter.

### **III. Program Implications**

#### **A. General food stamp eligibility of aliens**

##### **1. Under what circumstances is an alien eligible for food stamp benefits?**

In general, most aliens must meet two requirements to be eligible for food stamps *in addition* to other program requirements such as limits on income and resources. They must:

- be in a **qualified alien** category; and
- meet a condition that allows qualified aliens to get food stamps.

##### **2. Who is a qualified alien?**

This has not changed. A qualified alien means an alien who at the time the alien applies for or receives food stamps is in one of the following categories as determined by the Bureau of Citizenship and Immigration Services (BCIS) of the Department of Homeland Security (formerly the Immigration and Naturalization Service in the Department of Justice):

- Lawfully admitted for permanent residence (LPR) in the United States (holders of green cards). This category also includes "Amerasian immigrants" as defined under section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1988;
- Refugee admitted to the United States under section 207 of the INA;
- Granted asylum under section 208 of the Immigration and Nationality Act (INA);
- Alien certified by the U.S. Department of Health and Human Services to be a victim of a severe form of trafficking in persons in accordance with the Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386);
- Paroled into the United States under section 212(d)(5) of the INA for at least 1 year;
- Deportation is being withheld under section 243(h) of the INA as in effect before 4/1/97, or removal is withheld under section 241(b)(3) of the INA;
- Granted conditional entry under section 203(a)(7) of the INA as in effect before 4/1/80;
- Cuban or Haitian entrant under section 501(e) of the Refugee Education Assistance Act of 1980; or
- Under certain circumstances, a battered immigrant spouse, battered immigrant child, immigrant parent of a battered child or an immigrant child of a battered parent with a petition pending under 204(a)(1)(A) or (B), 240A(b)(2) or 244(a)(3) of the INA.

### 3. Under what conditions is a qualified alien eligible for food stamp benefits?

To receive food stamp benefits, **qualified aliens** must also meet **ONE** of the following conditions:

- An LPR who can be credited with 40 qualifying quarters of work under the Social Security system. Credits may be earned individually, in combination with a spouse (including a common-law spouse if the couple holds themselves out to the community as husband and wife) and a parent through the quarter when the child turns 18;
- An elderly individual who was born on or before August 22, 1931 and who was lawfully residing in the United States on August 22, 1996;
- Children under 18 years of age who were lawfully residing in the United States on August 22, 1996. Beginning on October 1, 2003, qualified aliens under 18 years of age are eligible regardless of when they entered the United States;
- Blind or disabled individuals receiving benefits or assistance for their condition as defined under section 3(r) of the Food Stamp Act regardless of when they entered the United States (this criteria was effective October 1, 2002);
- Beginning on April 1, 2003, an individual who has lived in the United States as a qualified alien for five years from the date of entry;
- An individual who is lawfully residing in a State and is on active duty (other than for training) in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard (but not full-time National Guard) or is an honorably discharged veteran whose discharge is not because of alien status. This category includes the spouse (or surviving spouse who has not remarried) or unmarried dependent children of these individuals. A discharge “Under Honorable Conditions” does not meet this requirement;
- Refugee admitted under section 207 of the INA; \*
- Asylee granted asylum under section 208 of the INA; \*
- Alien who has been certified by the U.S. Department of Health and Human Services to be a victim of a severe form of trafficking in persons in accordance with the Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386), although they may not have been granted qualified alien status by BCIS, are eligible to receive food stamp benefits as described in 03 ADM-1; \*
- Deportation withheld under section 243(h) or removal withheld under section 241(b)(3) of the INA; \*
- Cuban or Haitian entrant under section 501(e) of the Refugee Education Assistance Act of 1980; \* or
- Amerasian immigrant under section section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1988; \*

\* These qualified aliens formerly were eligible to receive food stamp benefits during their first seven years after being admitted or gaining status. After April 1, 2003, these qualified aliens are eligible indefinitely.

### 4. Which categories of non-citizens are exempt from the alien eligibility limitation?

The following categories of non-citizens are eligible for food stamp benefits on the same basis as citizens (i.e., they do not have to be qualified aliens):

- Naturalized citizens. (These individuals are not considered aliens since they have the same status as citizens.)

- American Indians born in Canada living in the United States under section 289 of the INA or non-citizen members of a Federally-recognized Indian tribe under section 4(e) of the Indian Self-Determination and Education Assistance Act. This provision is intended to cover Native Americans who are entitled to cross the United States border into Canada or Mexico. It includes, among others, the St. Regis Mohawk Tribe in New York State.
- An individual lawfully residing in the United States who was a member of certain Hmong or Highland Laotian tribes that rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (August 5, 1964 – May 7, 1975). This category includes the spouse (or unremarried surviving spouse) or unmarried dependent children of these individuals.

**5. Which categories of aliens are ineligible for food stamp benefits?**

Individuals are prohibited from receiving food stamp benefits under any circumstances if they are:

- Lawfully residing in the United States in a non-qualified, non-exempt status, (such as students on visas) or
- Undocumented aliens (such as individuals who entered the country as temporary residents and overstayed their visas or who entered without a visa).

**6. Who determines if an alien is in a qualified status?**

The BCIS and the Bureau of Immigration and Customs Enforcement, both in the Department of Homeland Security; have sole responsibility for determining the immigration status of aliens. Please also see section III.J of this letter for information specific to aliens who are victims of abuse or trafficking in persons.

**7. Does participation in the Food Stamp program affect an alien’s immigration status?**

No. Receiving food stamp benefits does not make an alien a “public charge” – meaning an alien will not be deported, denied entry to the country, or denied permanent status or naturalization because he or she receives food stamp benefits.

**B. Eligibility based on receipt of disability benefits**

**1. How did P.L. 107-171 change eligibility for food stamp benefits based on disability?**

Beginning October 1, 2002, food stamp eligibility was restored to all qualified aliens who are receiving disability-related assistance or benefits (as defined in the Food Stamp Act) regardless of when they entered the United States. Prior to that time, these individuals were only eligible if they were lawfully residing in the United States on August 22, 1996.

**2. Who is considered to be in receipt of disability-related assistance or benefits?**

Persons are considered to be receiving disability-related assistance or benefits for food stamp purposes if they are receiving or certified to receive one of the following based on disability or blindness:

- Supplemental Security Income (SSI)
- State SSI supplemental assistance

- Social Security Disability
- Federal or State disability retirement benefits for a disability considered permanent under section 221(i) of the Social Security Act
- Railroad Retirement Disability
- Disability-related federal or State Medicaid
- Veteran's disability benefits for a disability rated as total
- A veteran who is considered in need of regular aid and attendance or permanently housebound under title 38 of U.S. Code
- A surviving spouse of a veteran and is considered in need of regular aid and attendance or permanently housebound under title 38 of U.S. Code
- A surviving spouse or a child of a veteran who is entitled to compensation for a service-connected death or pension benefits for a non-service-connected death under U.S. Code title 38 and has a disability considered permanent under section 221(i) if the Social Security Act
- A child of a veteran and is considered permanently incapable of self-support under section 414 of U.S. Code title 38

**3. Is an elderly person over 60 years old considered disabled?**

No. An elderly person is not considered disabled unless that individual is receiving a type of disability-related assistance described above.

**4. Must districts make disability determinations for individuals who are applying for food stamp benefits?**

The Food Stamp program does not require disability determinations. However, individuals who are also applying for or receiving Medicaid benefits, including applicants/recipients of temporary assistance and Medicaid, must have a Medicaid disability determination if there is indication that they may qualify for disability-related Medicaid. Disability-related Medicaid is a benefit that meets the food stamp eligibility criteria for qualified aliens.

**C. Eligibility based on the five-year residency requirement**

**1. What is the five-year requirement?**

The Food Stamp Reauthorization Act restored food stamp eligibility to legal aliens who have lived in the United States as qualified aliens for five years or longer.

**2. When does the five-year requirement go into effect?**

Qualified aliens meeting the five-year requirement and other program requirements can begin receiving food stamps on April 1, 2003.

**3. How will new applications be processed?**

Districts must timely process applications for eligible household members in households that include aliens who will become eligible on April 1, 2003, and rebudget their benefits to include the eligible aliens effective April 1. For example, a household of three citizens and one ineligible alien applies for food stamp benefits on March 14, 2003. The alien is a qualified alien whose date of entry is January 2, 1998. The district must determine

eligibility and provide benefits for the three eligible individuals effective March 14, recalculate the benefit to include the newly eligible alien effective April 1, 2003 and notify the household of the change.

Households consisting entirely of aliens who will become eligible effective April 1, 2003 may file applications at any time. If a household that consists entirely of aliens who will become eligible April 1, 2003 applies in March 2003, the district must use the March application to determine eligibility and benefits for April.

#### **4. How will newly-eligible aliens be added to already-participating food stamp households?**

As households recertify beginning in March 2003, districts will add the newly eligible aliens effective April 1, 2003 or when they meet the five-year residency requirement, if that date is later. Five examples illustrate this:

**Example 1:** A household that includes a qualified alien whose date of entry was January 12, 1998 recertifies in July 2003 (certification period ends July 31, 2003). The district was aware of the ineligible alien's presence in the household at the last (2002) recertification and has been budgeting a prorated portion of his income. The alien became eligible April 1, 2003 and is added to the case for August 2003. Restored benefits are issued for the increased monthly allotment for the months of April through July 2003. The district notifies the household of the change and the restored benefit.

**Example 2:** A household that includes a qualified alien whose date of entry was January 12, 1998 recertifies in July 2003. The district was aware of the ineligible alien's presence in the household at the last (2002) recertification. At their July 2003 recertification, the household reports that the now-eligible alien started working in February. The alien and his income are added effective August 1, resulting in a decrease in benefits. A "Notice of Action Taken on Your Recertification" is provided. The household is subject to six-month reporting rules and, because their total income remained below 130% of their poverty level, was not required to report the new earnings until their recertification. No overpayment claim is established for April through July 2003.

**Example 3:** A household recertifies in July 2003 and reports, for the first time, that a qualified alien with a January 12, 1998 date of entry joined their household in March 2003. The district adds the alien to the household effective August 2003, which is the first month after the district learned of his presence in the household and the household verified his eligibility. Restored benefits are not owed for any months prior to August because the household had not reported the presence of the new household member until July.

**Example 4:** A household that includes a qualified alien whose date of entry was February 15, 1999 recertifies in October 2003. The fact that the alien will have five years residency on February 15, 2004 is not a change that the household is required to report. Unless the household reports the change in alien eligibility status and verifies all of the information needed to re-determine their benefit amount during their certification period, the addition of the alien and budgeting of all of his income is pended until the household's next recertification. **NOTE: This policy is based on recent clarification received from the USDA, and replaces the policy provided in GIS 03 TA/DC003 (February 6, 2003), example #4.**

**Example 5:** A household is due to recertify in July 2003. The household's current food stamp benefit amount is based on three eligible members and an ineligible qualified alien. In May 2003, the household contacts the local district and requests that the alien be added to the case, based on his January 12, 1998 date of entry. The district adds him to the case effective June 2003, issues a restored benefit for the increased monthly allotment for April and May, and notifies the household of the change and the restored benefit.

**5. What about current one-person temporary assistance (TA) recipients who were denied food stamp benefits based on their alien status, who may be eligible after April 1, 2003?**

As non-participating households, they must apply in order to receive food stamp benefits. For TA recipients who do not apply for food stamp benefits before their next TA recertification, districts should advise them that they may be eligible and encourage them to check on their recertification form that they are applying for food stamp benefits. Their food stamp application date is the date the district receives the signed recertification form, which the district will use to determine their eligibility for food stamp benefits.

**6. When does the five-year waiting period begin?**

The five-year waiting period begins on the date the alien obtains status as a qualified alien through the BCIS. While it is possible for some refugees to have obtained a qualified alien status prior to entering the United States, these individuals are eligible upon entering the country without the five-year wait based on their refugee status.

**7. If qualified status is granted retroactively, does the retroactive time count toward the five-year requirement?**

Yes. In certain situations, the BCIS may grant an alien qualified status retroactively. That retroactive time counts toward the five-year requirement.

**8. What about qualified aliens who leave the U.S. for less than a year and then return: Is their time out of the U.S. subtracted when determining the time lapsed since the alien obtained qualified status?**

No.

**9. If a qualified alien is in an exempt category (e.g., asylee or refugee) and later adjusts to LPR status, does the qualified alien have to meet the five-year requirement?**

No. Asylees, refugees, Amerasians, Cuban/Haitian entrants, trafficking victims and aliens whose deportation or removal was being withheld are eligible for food stamp benefits during the first seven years they are admitted or granted status in one of these exempt categories regardless of later adjustment. An example of this is an alien who was initially granted asylum in January 2001 and then adjusted to LPR status in January 2002. Even though this alien has not been in a qualified alien status for five years on April 1, 2003 when the new law is effective, the qualified alien is eligible during the first seven years as an asylee. In addition, qualified aliens who are in one of the exempt categories for five years have automatically met the five-year requirement.

When an alien has adjusted to LPR status from another category, the green card will usually show the date of the adjustment of status rather than the date the previous status was granted. To obtain a history of an immigrant's status from the BCIS, districts will have to specifically ask for the information on BCIS' Forms G-845 and G-845-Supplement.

**10. If an alien has been in the United States in an undocumented status and later obtains status as a qualified alien, is the qualified alien automatically barred from receiving food stamp benefits because of the undocumented status?**

No. As long as the alien has been in status as a qualified alien for five years, the alien meets the five-year requirement.

**D. Eligibility for qualified alien children**

**1. How does eligibility change for children?**

Currently, qualified aliens under 18 years of age are eligible for food stamp benefits if they were lawfully residing in the United States on August 22, 1996. Beginning on **October 1, 2003**, all children who are qualified aliens AND who have not turned 18 years old are eligible regardless of when they came to the United States. Once a child turns 18 years old, the child may continue to be eligible for food stamp benefits if that child meets another eligibility criterion such as having status as a qualified alien for five years or being credited with parents' 40 work quarters. In addition, on October 1, 2003, eligible children will be exempt from all sponsor deeming requirements.

**2. If a child is receiving food stamps based on this criterion and turns 18 years old during a certification period, is the household required to report the change?**

The household is not required to report the change. If, however, the household reports a change in status, the district is required to act on the change under regular processing requirements.

**3. Does the district have to flag these cases to review eligibility during a certification period since it will know when a child turns 18 years old, or can it wait until the household's next recertification to make any change?**

Since the district is aware of the child's age and a potential change in eligibility at the time the household is last recertified, it would have to act on this change. The child's 18th birthday would be considered the date that the change is reported. Prior to decreasing benefits, the district must determine if the child remains eligible based on another food stamp criterion such as meeting the five-year requirement or being credited with parents' 40 work quarters. If the child is no longer eligible, the district must provide a notice of adverse action to the household if benefits will be decreased, and make the change effective for the month after the expiration of this adverse notice unless the household requests a fair hearing.

**4. Are some children eligible before October 1, 2003?**

Yes. For example, children who have qualified alien status and were lawfully residing in the United States on August 22, 1996 are eligible now. Beginning April 1, 2003, children



arriving after August 22, 1996 will be eligible if they have been in a qualified alien status for five years.

**5. Will children arriving in the United States after August 22, 1996 have to wait five years before they can start receiving food stamp benefits?**

No. Beginning on October 1, 2003, children are eligible once they attain status as a qualified alien.

**E. Food Assistance Program (FAP)**

**1. What will happen to the Food Assistance Program?**

After April 1, 2003, an individual who applies for the Food Assistance Program (FAP) in a participating district may be eligible for FAP if the individual meets *all* of the following criteria:

- Be otherwise fully eligible to receive federal food stamp benefits, including having qualified alien status, except for the provisions of section 402 of P.L. 104-193 (Section 402 of P.L. 104-193 makes qualified aliens ineligible for federal food stamp benefits unless they meet one of the exceptions listed in section III.A.3 of this INF); and
- On August 22, 1996, have been residing in the same district in which the individual is applying for FAP; and
- Be at least 60 years old but not have been 65 on August 22, 1996; or be identified as a victim of domestic violence through the Family Assistance domestic violence screening procedures or by the BCIS; and
- Not have been absent from the United States for more than 90 days within the 12 month period immediately preceding the date of application for the FAP; and
- Apply for citizenship within 30 days of applying for FAP (or within 30 days of becoming eligible to apply for citizenship, if later).

**2. Who would meet these FAP criteria?**

Two hypothetical examples would be individuals who have resided in the FAP district since prior to August 22, 1996, attained lawful permanent resident status less than five years ago, cannot be credited with 40 quarters, *and* are either:

- At least 60 years old, but born after August 22, 1931; or
- A victim of domestic violence.

**3. What about current FAP cases?**

Current New York City FAP participants will be converted automatically to federal food stamp participants effective April 1, 2003. Upstate FAP districts received lists of current FAP cases and must convert eligible FAP individuals and cases to federal food stamps effective April 1, 2003.

**F. Sponsor Deeming**

**1. How does sponsor-to-alien deeming affect food stamp eligibility?**

With some exceptions, the income and resources of an alien's sponsor (and the sponsor's spouse) who has signed a legally binding affidavit of support are required to be counted as belonging to the alien (or deemed), regardless of actual availability, when determining the sponsored alien's eligibility and benefit amount for food stamps.

**2. Which qualified aliens are subject to sponsor deeming requirements?**

The deeming requirements apply only to an eligible LPR whose sponsor has signed a legally binding affidavit of support (known as 213A affidavits—Form I-864 or I-864A) on or after December 19, 1997.

**3. Which qualified aliens have a legally binding affidavit of support?**

The only qualified aliens with legally enforceable affidavits are family-sponsored LPRs, including immediate relatives, and a few employment-based LPRs who came to the United States to work for relatives or in companies partially owned (more than five percent) by relatives AND who have filed for a visa application or applied for an adjustment to LPR status on or after December 19, 1997.

Note: Some family-based aliens who became LPRs after December 19, 1997 do not have binding affidavits of support, and therefore are not subject to deeming, because their application for LPR status was filed before that date.

**4. Which aliens are exempt from sponsor deeming requirements?**

The following groups are **not** subject to deeming rules:

- **Alien whose sponsor has not signed a legally binding affidavit of support** discussed in the preceding question. Aliens, such as refugees, who are sponsored by an organization or group also fall into this category.
- **Aliens without sponsors.** In general, qualified aliens who enter the country under provisions of immigration law other than the family-sponsored categories do not have sponsors of the type that incur a liability when the alien obtains means-tested benefits. Included in this group are refugees, asylees, persons granted withholding of deportation, Amerasians, and Cuban or Haitian entrants
- **Indigent Exception.** If the sum of the alien's household's own income and any cash or in-kind assistance provided by the sponsor or others is less than 130 percent of the poverty level for the alien's household, the alien is considered indigent. The amount of the income and resources deemed to an indigent alien cannot exceed the amount actually provided for up to a 12-month period. Each indigence determination is effective for 12 months and may be renewed for additional 12-month periods.
- **Battered Spouse or Child Exception.** Deeming also does not apply during any 12-month period if the alien is a battered spouse, battered child or parent, or child of a battered person providing the battered alien lives in a separate household from the person responsible for the battery. The exemption can be extended for additional 12-month periods if the alien demonstrates that the battery is recognized by a court, administrative order, or by the BCIS and if the district determines that the battery has a substantial connection to the need for benefits.
- **Sponsor in same food stamp household.** If the sponsor lives in the same household as the alien, deeming does not apply because the sponsor's income and resources are already

counted. There is, however, no deeming exemption if the sponsor receives food stamp benefits in another household.

- **Ineligible Member.** If the sponsored alien is ineligible for food stamp benefits because of immigration status (e.g., is not a qualified alien or is an LPR without five years of residency), the sponsor's income is not deemed to other eligible members of the alien's household.
- **Children.** Beginning on October 1, 2003, sponsor deeming is eliminated for children who are under age 18 regardless of when they entered the United States.
- **Alien whose deeming period has ended.** See next question for further information.

**5. How long does sponsor deeming last?**

Deeming of the sponsor's income and resources to the sponsored alien lasts until the sponsored alien:

- Becomes a naturalized citizen;
- Can be credited with 40 qualifying quarters of work;
- Is no longer an LPR and leaves the U.S.;
- Meets one of the exceptions listed in the preceding question; or
- Dies or the sponsor dies.

**6. If deeming applies, how much of the sponsor's resources are deemed to the alien?**

All but \$1,500 of the amount of resources (as defined according to regular food stamp rules) of the sponsor and the sponsor's spouse are deemed to the sponsored alien.

**7. If deeming applies, how much of the sponsor's income is deemed to the sponsored alien?**

The amount of the sponsor's income attributed to the sponsored alien is the total monthly earned and unearned income of the sponsor and sponsor's spouse, minus 20 percent of their earned income and minus 130 percent of the poverty level for a household equal in size to the sponsor's household: sponsor, sponsor's spouse if living with the sponsor, and any other person who is a dependent or receives support from the sponsor or sponsor's spouse. If the sponsor signs an affidavit of support for more than one alien, the sponsor's income is pro-rated among the sponsored aliens. Income is defined according to regular food stamp rules.

**8. What if the alien's sponsor refuses to provide information?**

Aliens who are exempt from deeming do not need to provide information about the sponsor's income and resources. An eligible alien who is subject to deeming and is receiving support from a sponsor, however, is responsible for obtaining the cooperation of the sponsor and for providing the district with the information and documentation necessary to calculate deemed income and resources at the time of application and recertification. The district must assist the household in obtaining the necessary verification. Districts are reminded that indigent aliens need to verify only the amount of the income and resources actually provided by their sponsors. Districts must not deny an alien's application for food stamp benefits on the basis of the sponsor's non-cooperation, if it can be determined that the sponsor is providing zero support to the alien.

**9. What is sponsor liability?**

A sponsor who has signed a legally binding affidavit of support on or after December 19, 1997 for an alien they sponsor may be liable for the value of food stamp benefits received by that sponsored alien during the period of time the affidavit of support is in effect. The sponsor or the sponsor's estate is liable to repay the cost of these benefits for ten years after benefits were last received, but is not liable for benefits received by the sponsored alien during any period of time that the sponsor receives food stamp benefits.

**10. What is the district's responsibility to enforce sponsor liability?**

Districts must request reimbursement from sponsors who have signed legally binding affidavits of support on or after December 19, 1997 for any food stamp benefits received by the alien during the period of time the affidavit is in effect (until the alien becomes a citizen, permanently leaves the country, or can be credited with 40 qualifying quarters of work or until the sponsor dies).

Prior to pursuing a request for reimbursement, the district must first verify that the alien's sponsor is subject to a liability by determining, for example, if the sponsor signed a binding affidavit of support, if the sponsor received food stamps while the sponsorship agreement was in effect, or if the affidavit-of-support period has ended.

**11. What if the liability is not paid?**

New York State districts do not pursue legal action against the sponsor in federal or State courts.

**12. Are sponsor liability claims subject to regular food stamp claims rules?**

No. Benefits issued correctly to sponsored aliens cannot be considered as food stamp overpayments under the Food Stamp Act. Districts may not keep any portion of liabilities recouped from sponsors.

**13. How can a district verify if an alien has a sponsor who has signed a legally binding affidavit of support?**

The district may verify whether an alien has a sponsor who has signed a binding affidavit of support by submitting to BCIS the "Document Verification Request and Supplement (BCIS Form G-845 and G-845 Supplement) and requesting completion of block #7 – Affidavit of Support. Information provided by the BCIS includes the name, social security number, and address of the alien's sponsor.

Pending verification, the district cannot delay, deny, reduce or terminate the individual's eligibility for benefits on the basis of the individual's immigration status.

**14. Can districts impose food stamp AFIS (Automated Finger Imaging System) requirements on alien sponsors?**

No, not unless the sponsors are members of food stamp households.

## **G. Treatment of ineligible aliens' income and resources**

### **1. How are income, resources and deductions handled for ineligible aliens?**

All of the resources of an ineligible alien are considered available in their entirety to the remaining household members. All but the ineligible alien's prorata share of income (after allowable exclusions) and deductible expenses is counted for the eligible household members. Income and resources of an ineligible alien's sponsor are not applied to the eligible household members.

### **2. How is income prorated if there are two or more ineligible aliens in the food stamp household?**

The income is prorated among all of the household members, and only the eligible members' share is counted. For example, in a household consisting of three eligible individuals and two ineligible aliens, three-fifths of the ineligible aliens' income is counted in determining the food stamp benefit amount for the three eligible household members.

## **H. Reporting illegal and indigent aliens**

### **1. What is a district's responsibility for reporting illegal aliens for food stamp purposes?**

A district should report to the BCIS when a household presents a formal order of deportation or removal during the application or recertification process.

### **2. Must districts report sponsors who do not reimburse food stamp benefits paid to sponsored aliens?**

No, sponsors would be reportable only if a final civil judgment against the sponsor had been obtained. Districts would not pursue such judgments.

### **3. What is a district's responsibility for reporting when it determines an alien "indigent"?**

Households that the district has determined indigent should be informed that the names and addresses of the indigent sponsored alien and the sponsor will be provided to the NYS OTDA, for reporting to BCIS. Districts should send the written notice, which should include the reference, "Determinations under 421(e) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996", to:

New York State Office of Temporary and Disability Assistance  
Division of Temporary Assistance  
40 North Pearl Street, 11<sup>th</sup> floor  
Albany, New York 12243

## **I. Verification of immigration status**

### **1. What are applicants' responsibilities for providing proof of immigration status?**

Most aliens who have entered the United States legally are in possession of documents issued by the BCIS which contain information about that individual's immigration status

and the date that individual entered the country or adjusted to the status shown on the card. In general, it is the responsibility of the applicant/recipient to provide these BCIS documents.

## 2. How can a district verify:

- **Immigration status.** Household members applying for food stamp benefits are required to provide their BCIS documentation as a condition of eligibility. The district is then required to verify the validity of those documents. If the district has electronic access to the Systematic Alien Verification for Entitlements (SAVE) database, the district must verify immigration status through that system. When the automated check cannot verify the documents or when there is a significant discrepancy between the automated data and the information provided by the applicant/recipient, the district must verify the validity of that documentation by submitting BCIS Form G-845 (Document Verification Request) to the BCIS with attached photocopies of the documentation. The district must also use this manual procedure when it does not have access to SAVE and the documents submitted by the alien are questionable.
- **Eligibility based on veteran or active duty status.** Verification of active duty can be established through the service member's current Military Identification Card or a copy of the member's military orders. Verification of honorable discharge status can be established through the veteran's discharge certificate showing "Honorable" discharge from active duty in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard. A discharge "Under Honorable Conditions" does not meet this requirement.
- **Exemption for certain Native Americans.** American Indians born in Canada to whom section 289 of the INA applies and members of a federally-recognized tribe are eligible for food stamp benefits on the same basis as citizens. Some American Indians born in Canada to whom section 289 of the INA applies may have BCIS documentation establishing LPR status which can be verified through SAVE or other procedures used to verify immigration status. Applicants without BCIS documents may present a letter or other tribal document certifying at least 50 percent Indian Blood, as required by section 289 of INA, combined with a birth certificate or other evidence of birth in Canada.

Applicants can establish membership in a federally-recognized tribe by presenting a membership card or other tribal document establishing membership in an Indian tribe. If an applicant has no documentation, the district can verify membership by contacting the applicable tribe.

- **Victims of trafficking.** The Office of Refugee Resettlement (ORR) of the U.S. Department of Health and Human Services has been given the authority to certify that an individual is a victim of a severe form of trafficking in persons and will issue a certification letter (or ORR letter for children) to such individuals. Applicants in this category must submit their original certification letter from ORR. Victims of severe forms of trafficking are not required to provide immigration documents to verify their status. The date of certification on the letter should be used as the "date of entry" for eligibility purposes, as well as the expiration date. Districts must call the "Trafficking Verification Line" at 1-866-401-5510 to confirm the validity of the certification letter.

### **3. How can a district verify how long an alien has been in a qualified status?**

BCIS documents generally contain the date an alien entered the country or was adjusted to the immigration status reflected on the document. If an alien does not have BCIS documentation, the district can verify the date of entry into the United States or date status was given by submitting BCIS Form G-845 and Form G-845 Supplement to the BCIS.

## **J. Aliens who are victims of abuse or trafficking in persons**

Individuals who are determined to be victims of certain violent acts such as battery, extreme cruelty, or trafficking in persons are provided special exceptions from the general restrictions governing non-citizen's eligibility for food stamp benefits. Food stamp eligibility of aliens who are victims of trafficking in persons was addressed in 03 ADM-1.

### **1. What are the rules regarding battered aliens?**

Certain aliens are qualified aliens because a family member with whom they resided has subjected them to battery or extreme cruelty in the U.S. Qualified alien status also extends to an alien whose child or an alien child whose parent has been abused. Additionally, this group of battered aliens is exempt from deeming requirements for a 12-month period. The exemption can be extended beyond the 12-month period if the alien demonstrates that the battery is recognized by a court, administrative order, or by the BCIS and if the district determines that the battery has a substantial connection to the need for benefits.

### **2. What conditions must be met to obtain qualified alien status in this category?**

An alien is a qualified alien if he/she meets the following four requirements. In general, these rules apply to abused immigrants who are (or were) married to LPRs or U.S. citizens, or whose parents are LPRs or citizens:

- a.** The battered alien must show that he/she has an approved or pending petition which makes a prima facie case for alien status in one of the following categories: 1) a Form I-130 filed by their spouse or the child's parent; 2) a Form I-130 petition as a widow(er) of a U.S. citizen; 3) an approved self-petition under the Violence Against Women Act (including those filed by a parent); **or** 4) an application for cancellation of removal or suspension of deportation filed as a victim of domestic violence;
- b.** The alien, the alien's child or the alien child's parent has been abused in the U.S. under one of the following circumstances:
  - The alien has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent of the alien, or by a member of the spouse's or parent's family residing in the same household if the spouse or parent consents to the battery or cruelty.
  - The alien's child has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent of the alien, or by a member of the spouse's or parent's family residing in the same household if the spouse or parent consents to the battery or cruelty, and the alien did not actively participate in the battery or cruelty.
  - The parent of an alien child has been battered or subjected to extreme cruelty in the U.S. by the parent's spouse, or by a member of the spouse's family residing in the same household as the parent, if the spouse consents to or acquiesces in such battery or cruelty.

- c. There is a substantial connection between the battery or extreme cruelty and the need for food stamps; **and**
- d. The battered alien, child, or parent no longer resides in the same household as the abuser.

**3. If an alien is determined to be a qualified alien under these conditions, is that person eligible for food stamp benefits?**

Not necessarily. The conditions discussed above only establish that the battered alien is a qualified alien. A qualified alien must meet the other conditions for eligibility such as a five-year residency requirement or an LPR with 40 qualifying quarters of work.

**4. When does the five-year waiting period begin for abused aliens?**

The five-year period begins when the prima facie case determination is issued or when the abused alien's I-130 visa petition is approved. In making its determination, a district should keep in mind that the relevant date for eligibility is the date the alien obtained qualified alien status as an abused alien, rather than the date of that individual's alien status, such as that of an LPR.

**5. How does a district determine whether the battery has a substantial connection to the need for benefits?**

Examples include the following situations where benefits are needed: to enable the applicant and the applicant's child or parent to become self-sufficient; to escape the abuser or community in which the abuser lives or to ensure the safety of the applicant; because of a loss of financial support, dwelling or source of income due to separation from the abuser; to alleviate nutritional risk; or for medical attention, mental health counseling, or because of a disability that resulted from the abuse.

**Issued By**

**Name: Patricia A. Stevens**

**Title: Deputy Commissioner**

**Division/Office: Temporary Assistance**



## Non-Citizens' Eligibility for Federal Food Stamp Benefits

*April 2003*

Status	WMS Code	Federal Food Stamp Eligibility			
Refugee	R	<b>Eligible</b>			
Cuban/Haitian Entrant	H				
Asylee	A				
Amerasian	R				
Deportation Withheld	J				
Certain Hmong/Highland Laotian	*				
Trafficking Victim	D (Upst) R (NYC)				
Qualified Alien Serving in U.S. Armed Forces	M				
Qualified Alien Honorably Discharged U.S. Veteran, and Qualified Alien Spouse and Children	V				
North American Indian Born in Canada/Member of Federally-Recognized Tribe	*				
Lawfully Admitted for Permanent Residence (LPR) <i>With 40 Quarters</i>	S				
LPR <i>Without 40 Quarters</i>	K			<b>Entered Before 8-22-96</b> Eligible with one of these:	<b>Entered On/After 8-22-96</b> Eligible with one of these:
Conditional Entrant	F			<ul style="list-style-type: none"> <li>• Disabled</li> <li>• Born before 8-22-31</li> <li>• Under 18</li> <li>• 5 years qualified status (eff. 4-1-03)</li> <li>• 40 qualifying quarters</li> </ul>	<ul style="list-style-type: none"> <li>• Receiving disability benefits (eff. 10-1-02)</li> <li>• Under 18 (eff. 10-1-03)</li> <li>• 5 years qualified status (eff. 4-1-03)</li> <li>• 40 qualifying quarters</li> </ul>
Certain Battered Aliens and Their Parents or Children	B				
Parolee for 1 Year or More	G				
Parolee for Less Than 1 Year	T	<b>No</b>			
Person Residing Under Color of Law (PRUCOL)	O (TA) N (MA)				
Undocumented Alien or Alien With Temporary Status	E				

\* Use code for status granted by BCIS