

Noncitizens and Eligibility for the 2020 Recovery Rebates

May 1, 2020

Some policymakers have expressed concern that certain individuals, including [some immigrants](#) (referred to as [noncitizens](#), [foreign nationals](#), or [aliens](#) in law and throughout this Insight), are ineligible for direct payments under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136). The statute refers to these payments as 2020 recovery rebates. The Internal Revenue Service (IRS) refers to these payments issued in 2020 as [Economic Impact Payments](#). For more detailed information on these payments, 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)*.

There are three main categories [of individuals who are ineligible](#) for these payments (not necessarily mutually exclusive):

1. [children over 16 years old and adult dependents](#);
2. certain noncitizens who have individual taxpayer identification numbers (ITINs) or are nonresident aliens; and
3. [higher-income taxpayers](#) (generally with income over \$99,000 if single, \$198,000 if married, with higher thresholds for those with qualifying children).

Generally, receipt of these payments in 2020 will be based on individuals' eligibility using information from 2019 (or, if unavailable, 2018).

This Insight provides an overview of one category of individuals who are ineligible for the 2020 recovery rebates—[certain noncitizens](#) who have ITINs or are nonresident aliens.

How are noncitizens classified for federal tax purposes?

The [2020 recovery rebates](#) are structured as refundable tax credits. Hence, to understand how the eligibility rules of these benefits will affect certain noncitizens, this Insight first examines how [the federal tax code classifies noncitizens](#).

Under U.S. immigration law, noncitizens are generally admitted into the United States as [immigrants](#) to live permanently or as [nonimmigrants](#) to stay on a temporary basis. Like citizens, noncitizens may be required to file a federal tax return (or other documents with the IRS) or even if not required, may find it

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IN11376

advantageous to do so (e.g., to get back excess taxes withheld from their paychecks). For federal tax purposes, however, noncitizens are classified as either resident or nonresident aliens, *regardless* of their status as immigrants or nonimmigrants, or whether they are [in the United States unlawfully](#). This classification is for federal tax purposes only and does not affect the individual's immigration status. Resident and nonresident aliens are generally [taxed differently and subject to different tax filing requirements](#).

Like U.S. citizens, noncitizens must have a taxpayer identification number to file their federal tax returns or other documentation with the IRS, pay taxes, and otherwise comply with federal tax law. For many noncitizens, their taxpayer ID will be a Social Security number (SSN). Those who are ineligible for an SSN (see below) are required to use an individual taxpayer identification number (ITIN) instead.

Nonresident Aliens

A noncitizen will typically be classified as a nonresident alien if he or she is *not* a [lawful permanent resident](#) or is *not* in the United States for a substantial period of time—at least 31 days in the current year and 183 or more days in the past three years, weighted toward the present year (called the “[substantial presence](#)” test). There are numerous exceptions that result in individuals who pass the substantial presence test still being classified as nonresident aliens for tax purposes. For example, foreign students, teachers, diplomats, au pairs, and other types of [exempt individuals](#) are generally considered nonresident aliens. In addition, noncitizens who pass the substantial presence test can still be deemed a *nonresident alien* if they have a [closer connection to a foreign country](#).

Nonresident aliens generally file a [Form 1040-NR income tax return](#). (In contrast, resident aliens use the same federal income tax return as U.S. citizens, the Form 1040.) In 2017, [771,809 Form 1040-NRs](#) were filed with the IRS. As reference, [in 2017](#) more than 150 million Form 1040s were filed. Data are not available on how many 1040-NRs were filed using an ITIN.

Individual Taxpayer Identification Number (ITIN) Filers

Individuals who are ineligible for an SSN are required to use an [individual taxpayer identification number \(ITIN\)](#) when filing their tax returns and other documents with the IRS. ITINs are issued by the IRS and are for federal tax purposes only. Thus, ITINs enable noncitizens who do not have SSNs to comply with federal tax law.

SSNs are issued by the Social Security Administration (SSA) to U.S. citizens and certain groups of noncitizens—specifically, lawful permanent residents (green card holders), [asylees](#), [refugees](#), and aliens who are authorized to temporarily work in the United States. This Insight refers to these SSNs collectively as “work-authorized SSNs.” (The SSA also issues SSNs to a [small share of aliens without work authorization](#) who need an SSN to receive certain public benefits.) [Deferred Action for Childhood Arrivals \(DACA\) recipients](#) and those with [temporary protected status \(TPS\)](#) generally have work-authorized SSNs.

Use of an [ITIN does not necessarily mean an individual is unlawfully present](#). The IRS and the Treasury Inspector General for Tax Administration believe, however, that [a large proportion of ITIN filers are unlawfully present aliens](#) working in the United States. There is [limited publically available](#) data on other characteristics of ITIN filers.

While some taxpayers using ITINs may be living and working in the country unlawfully, not all noncitizens who are unlawfully present or unauthorized to work file their taxes using an ITIN. For example, some may file using an SSN they lawfully received at one time (e.g., they may have been lawfully present and authorized to work but [overstayed their visa](#)).

In 2017, 3,892,194 Form 1040 tax returns were filed that included at least one ITIN (i.e., for the taxpayer, spouse, and/or dependent). On these returns, a total of 7,512,076 ITINs were used. (Data provided to CRS by the IRS.) These do not include ITIN filers who used IRS Form 1040-NR. Even if all 1040-NRs (almost 800,000) were filed using ITINs, the vast majority of ITIN filers use a Form 1040, suggesting that most ITIN filers are resident aliens.

Which noncitizens are ineligible for the 2020 recovery rebates?

Noncitizens who are ineligible for the 2020 recovery rebates include

1. nonresident aliens; and
2. ITIN filers, who by definition do not have a work-authorized SSN (defined [for the child tax credit](#)) as well as aliens whose SSNs are associated with public benefits. For married joint filers, both spouses *must* have work-authorized SSNs, unless one is a member of the Armed Forces. A taxpayer must generally provide a qualifying child's SSN (or [adoption taxpayer identification number \[ATIN\]](#)) for the taxpayer to qualify for the additional \$500 amount. Failure to provide the SSN (or ATIN) of an otherwise eligible qualifying child listed on a tax return could lead to the entire household being denied the payment.

Nonresident aliens

As a result of limiting eligibility to noncitizens who are resident aliens, certain noncitizens in the United States for limited periods—including [au pairs, foreign students and teachers, and diplomats](#)—are generally ineligible for these payments.

ITIN Filers

As a result of limiting eligibility to those with work-authorized SSNs, many noncitizens who are unlawfully present or unauthorized to work in the United States (and thus may use ITINs) are ineligible for these payments.

Mixed-Status Families

Mixed-status married couples who file their taxes jointly—where one spouse has a work-authorized SSN and the other an ITIN—are ineligible for the payment. Mixed-status married joint filers with U.S. citizen children (who hence have work-authorized SSNs) are also ineligible for the payment, even if their children are otherwise eligible.

Are there legislative proposals to modify these eligibility requirements?

In the House, the Coronavirus Immigrant Families Projection Act (H.R. 6437) would expand the definition of taxpayer ID required to claim the 2020 recovery rebate to include ITINs. (To date, [proposed Senate legislation](#) has not been introduced.) Similar legislation includes H.R. 6438. The Recovery Rebates Improvement Act (H.R. 6485) would allow eligible married joint filers with at least one work-authorized SSN to receive the direct payments, expanding eligibility to mixed-status couples.

The Take Responsibility for Workers and Families Act (H.R. 6379) also proposed [direct payments](#), although they differed from the CARES Act's 2020 recovery rebates. The payments in H.R. 6379 would have been available to taxpayers with both SSNs and ITINs (nonresident aliens were ineligible for these payments).

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