



Recovery Rebates and Unemployment Compensation under the CARES Act: Immigration-Related Eligibility Criteria

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This Legal Sidebar reviews the immigration-related eligibility requirements for two types of benefits established by the [CARES Act](#): (1) the recovery rebates under [Section 2201](#); and (2) the various forms of federally funded unemployment insurance (UI) benefits under [Title II, Subsection A](#). Both benefit types are the subject of other CRS products and have other eligibility rules not related to immigration status. This Legal Sidebar focuses only on the extent to which non-U.S. nationals (aliens) may qualify for the benefits. (For a general overview of the recovery rebates and unemployment compensation programs set forth by the CARES Act, see [here](#) and [here](#).)

The following [Table](#) provides an overview of the immigration-related restrictions for each benefit type.

Immigration-Related Restrictions

Recovery Rebates	<ol style="list-style-type: none">1. Must have social security number.2. Must not be a “nonresident alien” for tax purposes.
Unemployment Insurance	<ol style="list-style-type: none">1. Must have work authorization; state law may establish stricter requirements.2. <i>Possibly</i>: Must be a “qualified alien” (applicability of 8 U.S.C. § 1611 remains unclear).

Source: Provisions of the CARES Act and other federal laws analyzed by CRS.

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Recovery Rebates

Social Security Number Requirement: The CARES Act [prohibits](#) payment of the recovery rebate to anyone who does not include a social security number (SSN) on their tax return for the taxable year. Joint filers must include an SSN for both spouses, unless one spouse is in the [Armed Forces](#). For any qualifying child, parents must include the child's SSN or adoption taxpayer identification number. It appears from the language of the Act that a parent without an SSN may not claim a credit for a qualifying child, even if the child has an SSN, although to date the IRS has not published guidance on this issue.

The Social Security Administration (SSA) [issues SSNs to aliens who are authorized to work in the United States](#)—including aliens who apply for and receive employment authorization documents after obtaining Deferred Action for Childhood Arrivals (DACA), Temporary Protected Status (TPS), and other so-called “quasi-legal” statuses.

Although the SSA also [issues SSNs](#) to aliens who lack work authorization but need a number to obtain benefits or services, such non-work numbers do not fulfill the SSN requirement under the CARES Act. Specifically, the Cares Act [defines](#) the requirement in such a way (by reference to a [provision](#) in the Internal Revenue Code which, in turn, references a [provision](#) of the Social Security Act) as to allow it to be satisfied only by an SSN that the individual acquired on the basis of being a U.S. citizen, lawful permanent resident (LPR), or an alien [authorized to work](#) in the United States.

Nonresident Alien Exclusion: The CARES Act excludes “any nonresident alien individual” from eligibility for the recovery rebates. Under the [Internal Revenue Code](#), “nonresident alien” means any alien who does not satisfy one of two criteria: (1) the alien is an LPR; or (2) the alien satisfies the “substantial presence” test. The [IRS explains](#) the substantial presence test as follows:

To meet th[e] [substantial presence] test, you must be physically present in the United States (U.S.) on at least:

1. 31 days during the current year, and
2. 183 days during the 3-year period that includes the current year and the 2 years immediately before that, counting:
 - All the days you were present in the current year, and
 - 1/3 of the days you were present in the first year before the current year, and
 - 1/6 of the days you were present in the second year before the current year.

The substantial presence test has special rules for some aliens considered “[exempt individuals](#),” such as nonimmigrant diplomats and students, and other aliens who demonstrate a [closer connection to a foreign country](#).

Immigration lawyers sometimes use the term “nonresident alien” to mean an alien who is not an LPR, even though the Immigration and Nationality Act does not define the term. That colloquial usage does not apply to the eligibility criteria for recovery rebates under the CARES Act; instead, because the relevant provisions of the CARES Act amend the Internal Revenue Code, the definition of “nonresident alien” in the Internal Revenue Code governs.

Takeaway. Broad categories of work-authorized aliens living in the United States, including many DACA and TPS recipients, will be able to qualify for the recovery rebates because they have SSNs and are resident aliens for tax purposes. Aliens who do not have SSNs—including unlawfully present aliens who pay taxes using [individual taxpayer identification numbers](#) (ITINs)—are not eligible for the rebates.

Unemployment Insurance

Less clear are the immigration-related eligibility requirements for federally funded UI benefits under the CARES Act. Whereas eligibility for the recovery rebates depends on requirements set forth in the CARES Act, UI eligibility issues turn partly on the interaction between the CARES Act and other provisions of federal and state law.

Work Authorization Requirement and the Potential “Qualified Alien” Restriction

Under the baseline requirements established in the [Federal Unemployment Tax Act \(FUTA\)](#), aliens typically qualify for regular UI benefits if they are authorized to work (both at the time they perform qualifying work and when they apply for and receive benefits). States [may establish](#) stricter rules.

The baseline rule for regular unemployment benefits may change for CARES Act benefits, however. Regular UI benefits are [funded by state taxes](#). But the CARES Act establishes, among other provisions, federal funding for three major UI programs (Pandemic Unemployment Assistance, additional weeks of benefits, and additional \$600 in federal weekly compensation), as explained further in [another CRS product](#). Such federal funding may trigger the restriction in [8 U.S.C. § 1611](#), a provision of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which limits eligibility for “federal public benefits” to “[qualified aliens](#)”—a restrictive term that only covers certain groups enumerated in statute, such as LPRs, asylees, and refugees. If this restriction applies to the CARES Act programs, some categories of aliens who have work authorization and are generally eligible for regular UI benefits would not qualify for them. Examples include DACA recipients, TPS holders, and many applicants for asylum.

Executive branch agencies [have determined](#) that another federally funded unemployment benefit—Disaster Unemployment Assistance (DUA)—is [restricted](#) to “qualified aliens” under PRWORA. And on at least one occasion, in 1998, the Department of Labor [expressed the same conclusion](#) with respect to all UI benefits paid in part with federal funds. Yet there’s a dearth of federal caselaw to confirm that conclusion, and [more recent Department of Labor \(DOL\) guidance](#) about alien eligibility for UI does not mention PRWORA. Also, specific language in the CARES Act, such as the provision that makes Pandemic Unemployment Assistance available to people who are “[not eligible for regular compensation or extended benefits under State or Federal law](#),” might be interpreted to override PRWORA. Future DOL guidance about the CARES Act could clarify the agency’s position on this issue, although the [DOL guidance](#) issued thus far [does not address](#) it.

Nonimmigrant Issues

Many holders of nonimmigrant work visas, such as [H-1B visas for specialty occupations](#) and [L visas for intracompany transferees](#), face a unique bar to eligibility for unemployment benefits. If PRWORA applies to benefits under the CARES Act, such nonimmigrants would not be eligible because they are not “qualified aliens.” But even under the baseline work-authorization requirement for regular UI under FUTA, many nonimmigrant workers do not qualify under the case law in some states because they’re not considered “able and available to work” when they are unemployed. The terms of their visas authorize many nonimmigrant workers to work only for a single employer. Losing a job with that employer therefore means losing their work authorization, under the [analysis of some state cases](#). Even though H-1B and some other nonimmigrant workers have flexibility to change employers, [federal law](#) requires the new employer to file a new visa petition before the employee may work (and for some visa categories, the petition [must be approved first](#)). Thus, the analysis goes, if a nonimmigrant worker has lost a job and does not have a new visa petition filed by a new employer, the worker is not “able and available” to work and does not qualify for benefits.

Takeaway. The specific UI benefits made available under the CARES Act are federally funded and might therefore be restricted to “qualified aliens” – a term that PWRORA defines to exclude unlawfully present aliens as well as some aliens whose presence is authorized. Even so, states may continue to grant regular UI benefits to aliens with work authorization, but alien eligibility for such regular UI benefits may vary. For example, under the case law of some states, nonimmigrant workers whose visas allow them to work for only one employer may not qualify for regular UI benefits upon being permanently laid off.

Note about Public Charge

An alien’s receipt of the recovery rebate or unemployment compensation is not to be factored into determinations made under the new [Department of Homeland Security \(DHS\) public charge rule](#) about whether the alien is ineligible for LPR status due to likely future dependence on public benefits. That’s because neither type of benefit appears in the [exclusive list of benefit types](#) that count as “public benefits” under the rule. In the preamble to the rule, DHS explained that it considers unemployment compensation an “[earned benefit](#)” not appropriate for public charge consideration. DHS [also explained](#) its decision not to consider other types of tax credits under the rule, such as the Earned Income Tax Credit and the Child Tax Credit: “DHS is not including tax credits because many people with moderate incomes and high incomes are eligible for these tax credits, and the tax system is structured in such a way as to encourage taxpayers to claim and maximize all tax credits for which they are eligible.” That said, DHS could amend the rule in the future to add new types of benefits to the list of those considered for public charge purposes, but it seems unlikely to do so for unemployment benefits and tax credits given these recent statements. (On a related note, DHS [has stated](#) that “medical treatment or preventive services” related to COVID-19 “will not negatively affect any alien as part of a future Public Charge analysis.”) Also, in the past, when DHS has changed the public charge regulations to bring more benefit types under consideration, it has not made those changes retroactive.

Author Information

Ben Harrington
Legislative Attorney

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