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Social Security Benefits for Noncitizens

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Summary

Concerns about the number of unauthorized (illegal) aliens residing in the United States have fostered considerable interest in the eligibility of noncitizens for U.S. Social Security benefits. The Social Security program provides monthly cash benefits to qualified retired or disabled workers, their dependents, and survivors. Generally, a worker must have 10 years of Social Security-covered employment to be eligible for retirement benefits (less time in covered employment is required for disability and survivor benefits). Most U.S. jobs are covered under Social Security, and as a result, noncitizens authorized to work in the United States are eligible for a Social Security number (SSN). Noncitizens who work in Social Security-covered employment must pay Social Security payroll taxes, including those who are in the United States working temporarily or without authorization. There are some exceptions. In general, the work of aliens who are citizens of a country with which the United States has a "totalization agreement," coordinating the payment of Social Security taxes and benefits for workers who divide their careers between two countries, is not covered if they work in the United States for less than five years. In addition, by statute, the work of aliens under certain visa categories is not covered by Social Security.

The Social Security Protection Act of 2004 (P.L. 108-203) requires an alien whose application for benefits is based on an SSN assigned January 1, 2004, or later to have work authorization at the time an SSN is assigned, or at some later time, to gain insured status under the Social Security program. Aliens whose applications are based on SSNs assigned before January 1, 2004, may count all covered earnings toward insured status, regardless of work authorization. The Social Security Act also prohibits the payment of benefits to aliens in the United States who are not "lawfully present"; however, under certain circumstances, alien workers as well as their dependents and survivors may receive benefits while residing outside the United States (including benefits based on unauthorized work).

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Background

The Social Security program provides monthly cash benefits to retired or disabled workers and their dependents, and to the survivors of deceased workers.[1] To qualify for benefits, workers (whether citizens or noncitizens)[2] must work in Social Security-covered jobs for a specified period of time, among other requirements. Generally, workers need 40 earnings credits (also referred to as "quarters of coverage") to become "insured" for benefits (fewer credits are needed for disability and survivor benefits, depending on the worker's age). In 2017, a worker earns one credit for each $1,300 of covered earnings, up to a maximum of four credits for the year (i.e., with annual earnings of $5,200 or more).[3]

Social Security-Covered Employment

The Social Security program is financed primarily by mandatory payroll taxes levied on wages and self-employment income. Most jobs in the United States are covered under Social Security (about 94% of the work force is required to pay Social Security payroll taxes). In 2017, Social Security-covered workers and their employers each pay 6.2% of earnings up to $127,200 (this amount is increased annually according to average wage growth if a Social Security cost-of-living adjustment is payable). The self-employed pay 12.4% on net self-employment income up to $127,200 and may deduct one-half of payroll taxes from federal income taxes. The following workers are exempt from Social Security payroll taxes:

- State and local government workers who participate in alternative retirement systems.
- Election workers who earn less than $1,800 in 2017.
- Ministers who elect not to be covered, and members of certain religious sects.
- Most federal workers hired before 1984.
- College students who work at their academic institutions.
- Household workers who earn less than $2,000 in 2017, or those under age 18 for whom household work is not their principal occupation.
- Self-employed workers who have annual net earnings below $400.
- Noncitizens who work under the F, J, M, Q, and H-2A visa categories.

In 2014, an estimated 14 million noncitizens were in the U.S. labor force comprising approximately 8.9% of the labor force.[4] Foreign nationals who work in Social Security-covered

[1] The Social Security program is administered by the Social Security Administration (SSA). SSA also administers the Supplemental Security Income (SSI) program, a *means-tested* entitlement program. Eligibility requirements for noncitizens differ under Social Security and SSI. For more information on noncitizen eligibility for SSI, see CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*.

[2] An *alien* is "any person not a citizen or national of the United States" and is synonymous with *noncitizen* and *foreign national*. Aliens/Noncitizens include those who are legally present and those who are in violation of the Immigration and Nationality Act (INA).

[3] For an overview of the Social Security program, see CRS Report R42035, *Social Security Primer*.

[4] Calculations performed by the Congressional Research Service (CRS) using the American Community Survey (ACS) for 2014. The ACS does not include a variable on immigration status.

employment must pay Social Security payroll taxes, including those who are in the United States working temporarily and those who may be working in the United States without authorization.[5] There are some exceptions. In general, the work of aliens who are citizens of a country with which the United States has a "totalization agreement" (see below) is not covered by Social Security if they work in the United States for less than five years. In addition, by statute, the work of aliens under certain visa categories (such as H-2A agricultural workers, F and M students)[6] is not covered by Social Security.

An alien may be authorized to be in the United States, but not authorized to work. Therefore, a foreign national who does not have work authorization is not necessarily illegally present (i.e., an unauthorized alien).[7] The Social Security Administration (SSA) maintains an Earnings Suspense File that tracks wages that cannot be posted to individual work records because the names and Social Security numbers (SSNs) on W-2 forms submitted by employers to SSA do not match SSA records.[8] As of October 2016, through tax year 2014, the Earnings Suspense File included about 346 million wage items representing about $1.3 trillion in wages.[9] The mismatched information may be due to typographical or other clerical errors (such as a misspelled name or an individual's failure to report a new married name to SSA), as well as the use of invalid or stolen SSNs by aliens who are working in the United States without authorization.

In 2013, the SSA Office of the Chief Actuary (OCACT) estimated that about 3.1 million unauthorized aliens were working and paying Social Security taxes in 2010. Of those 3.1 million unauthorized foreign national workers, SSA estimated that 0.6 million had temporary work authorized at some point in the past and overstayed their terms of admittance (e.g., visas); 0.7 million obtained fraudulent birth certificates at some point and used these birth certificates to obtain an SSN; and 1.8 million used an SSN that did not match their name (i.e., fraudulently used another person's SSN). OCACT estimated that $13 billion in payroll taxes were from unauthorized immigrant workers and their employers in 2010.[10]

[5] For Social Security payroll taxes to be withheld from wages, a worker must provide a Social Security number (SSN) to his or her employer. An alien who is working in the United States without authorization (1) may have an SSN because he or she worked in the United States legally and then fell out of status; or (2) may have obtained an SSN fraudulently.

[6] Most of these nonimmigrant visa categories are defined in §101(a)(15) of the INA. These visa categories are commonly referred to by the letter and numeral that denotes their Subsection in §101(a)(15), e.g., B-2 tourists, E-2 treaty investors, F-1 foreign students, H-1B temporary professional workers, J-1 cultural exchange participants, or S-4 terrorist informants.

[7] For example, an alien present in the United States on a B-2 tourist visa may remain in the United States for six months, but is not legally permitted to work. In addition, the spouses of most temporary noncitizen workers do not have employment authorization. For more information on which categories of noncitizens are entitled to work in the United States, see CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*.

[8] Annually, SSA reviews W-2 forms and credits Social Security-covered earnings to workers. If a name or SSN on a W-2 form does not match SSA records, the earnings are posted to an Earnings Suspense File (rather than an individual work record) while SSA attempts to reconcile the discrepancy.

[9] Information provided to CRS by SSA in November 2016.

[10] SSA, Office of the Chief Actuary (OCACT), Actuarial Note, Number 151, *Effects of Unauthorized Immigration on the Actuarial Status of the Social Security Trust Funds*, April 2013, at https://www.ssa.gov/OACT/NOTES/pdf_notes/note151.pdf. In addition, OCACT estimated that 3.9 million unauthorized workers worked in the "underground economy," for an estimated total 7.0 million unauthorized workers in 2010. OCACT estimated that the number of unauthorized workers would increase to 9.6 million in 2020 due to projected improvement in the economy.

Social Security Payment Rules

Workers become *eligible* for Social Security benefits when they meet the insured status and age requirements specified in the Social Security Act.[11] They become *entitled* to benefits when they have met all of the eligibility requirements and filed an application for benefits. Because Social Security is an *earned* entitlement program, there are few restrictions on benefit payments once a worker becomes entitled to benefits. The Social Security Act does prohibit the payment of benefits to individuals residing in certain countries;[12] individuals confined to a jail, prison, or certain other public institutions for commission of a crime; most individuals removed from the United States (i.e., deported);[13] aliens residing in the United States unlawfully; and in some cases, aliens residing outside the United States for more than six months at a time.

Social Security Protection Act of 2004

On March 2, 2004, President George W. Bush signed into law the Social Security Protection Act of 2004 (P.L. 108-203, H.R. 743). Among other changes, P.L. 108-203 restricts the payment of Social Security benefits to certain noncitizens who file an application for benefits based on an SSN assigned on or after January 1, 2004. Specifically, a noncitizen who files an application for benefits based on an SSN assigned *on or after* January 1, 2004, is required to have work authorization at the time an SSN is assigned, or at some later time, to gain insured status under the Social Security program.[14] If the individual had work authorization *at some point*, *all* of his or her covered earnings count toward insured status (and for benefit computation purposes). If, however, the individual *never* had authorization to work in the United States, *none* of his or her covered earnings count toward insured status (and therefore benefits would not payable based on his or her work record).[15]

A noncitizen who files an application for benefits based on an SSN assigned *before* January 1, 2004, is not subject to the work authorization requirement under P.L. 108-203. All of the individual's Social Security-covered earnings are counted toward insured status (and for benefit computation purposes), regardless of his or her work authorization status.

The treatment of earnings based on unauthorized work for Social Security purposes is often an issue when Congress considers legislation to legalize all or part of the unauthorized population residing in the United States. For example, the most recent example of a comprehensive immigration reform bill (S. 744 as passed by the Senate in the 113th Congress) contained provisions that would have prohibited most persons legalized under the bill from counting earnings obtained before the person legalized toward insured status under the program or for

[11] In the case of disability benefits, a worker is eligible for benefits when he or she has met insured status requirements and established a period of disability.

[12] U.S. Department of the Treasury regulations or Social Security restrictions prohibit payments to individuals living in certain countries, including Cuba, North Korea, and some former republics of the Soviet Union. See the SSA Program Operations Manual System (POMS), Section RS 02650.001: *Treasury Department Restrictions*, at https://secure.ssa.gov/apps10/poms.nsf/lnx/0302650001, and Section RS 02650.020: *SSA Restrictions on Payments to the Former Republics of the Soviet Union*, at https://secure.ssa.gov/apps10/poms.nsf/lnx/0302650020.

[13] One exception would be aliens who are removed on status violations (i.e., removed from the United States because they are illegally present, not because they have committed a crime).

[14] See Social Security Act, §214(c). The 2004 law provides exceptions to the work authorization requirement for certain noncitizens (i.e., noncitizens who are admitted to the United States under a B visa (for business purposes) or D visa (for service as a crew member) at the time quarters of coverage are earned).

[15] Before enactment of P.L. 108-203, all Social Security-covered earnings counted toward insured status and for benefit computation purposes, regardless of a person's work authorization status.

benefit computation purposes. In addition, in the 114th Congress, H.R. 1996 would prohibit those who received work authorization under the Deferred Action for Childhood Arrivals (DACA) program from receiving SSNs and receiving Social Security benefits.[16]

The following table summarizes the treatment of earnings based on unauthorized work for Social Security purposes under current law.

Treatment of Earnings Based on Unauthorized Work for Social Security Purposes

Current Law

- The treatment of earnings based on unauthorized work for Social Security purposes differs, depending on when an individual is assigned a Social Security number (SSN). Individuals assigned an SSN before 2004 are not required to have authorization to work in the United States at any point to qualify for Social Security benefits. Individuals assigned an SSN in 2004 or later are required to have work authorization at some point to qualify for benefits.

Individuals Assigned an SSN Before 2004

- All Social Security-covered earnings are credited for purposes of qualifying for benefits, regardless of an individual's work authorization status (an individual is not required to have work authorization at any point to count all earnings for Social Security purposes).

Individuals Assigned an SSN in 2004 or Later

- With respect to benefit applications based on an SSN assigned on or after January 1, 2004, an individual must have work authorization when an SSN is assigned, or at any later time, to gain insured status under the Social Security program.

  If an individual has work authorization at some point, *all* of his or her Social Security-covered earnings count toward qualifying for benefits (all earnings from authorized and unauthorized work).

  If an individual never obtains work authorization, *none* of his or her Social Security-covered earnings count toward qualifying for benefits.

Assignment of Social Security Numbers to Noncitizens

The treatment of earnings based on unauthorized work for Social Security purposes differs, depending on whether an individual was assigned an SSN before 2004, or in 2004 or later. The policy with respect to SSN assignment for noncitizens was changed in late 2003. Noncitizens authorized by DHS to work in the United States can be assigned an SSN. Noncitizens not authorized to work can be assigned an SSN for a valid nonwork reason. Following a regulatory change that went into effect in late 2003, the only valid nonwork reason for assignment of an SSN would be if an individual needs an SSN to receive federal, state, or local government benefits to which he or she has otherwise established entitlement (see 20 C.F.R. §422.104). Before the regulatory change, the policy for assignment of nonwork SSNs was less restrictive, and noncitizens could be assigned an SSN for a variety of nonwork purposes, such as to obtain a driver's license.[17] (For more information on the assignment of SSNs to noncitizens, see "Social Security Cards and Noncitizens" section.)

[16] In 2012, the Department of Homeland Security (DHS) issued a memorandum announcing that certain unauthorized individuals brought to the United States as children and meet other criteria would be considered on a case-by-case basis for protection from removal for two years, subject to renewal, under an initiative known as Deferred Action for Childhood Arrivals, or DACA. See section entitled, "A Note About Deferred Action for Childhood Arrivals (DACA)." For more information on DACA, see CRS Report R43747, *Deferred Action for Childhood Arrivals (DACA): Frequently Asked Questions*.

[17] The regulation is available on the SSA website at http://www.ssa.gov/OP_Home/cfr20/422/422-0104.htm.

Special Payment Rules for Noncitizens

Section 202(y) of the Social Security Act requires noncitizens in the United States to be "lawfully present" to receive benefits.[18] If a noncitizen is entitled to benefits, but does not meet the lawful presence requirement, his or her benefits are suspended. In such cases, a noncitizen may receive benefits while residing outside the United States (including benefits based on work performed in the United States without authorization) if he or she meets one of the exceptions to the *alien nonpayment provision* under Section 202(t) of the Social Security Act. Under the alien nonpayment provision, a noncitizen's benefits are suspended if he or she remains outside the United States[19] for more than six consecutive months,[20] unless one of several broad exceptions is met. For example, an alien may receive benefits outside the United States if he or she is a citizen of a country that has a social insurance or pension system that pays benefits to eligible U.S. citizens residing outside that country (a "social insurance country"), or if he or she is a resident of a country with which the United States has a totalization agreement (see **Table 1**). If an alien does not meet one of the exceptions to the alien nonpayment provision, his or her benefits are suspended beginning with the seventh month of absence and are not resumed until he or she returns to the United States lawfully for a full calendar month.

In addition, to receive payments outside the United States, alien *dependents and survivors* must have lived in the United States for at least five years previously (lawfully or unlawfully), and the family relationship to the worker must have existed during that time (see **Table 2**). The law provides several broad exceptions to the five-year U.S. residency requirement for alien dependents and survivors. For example, an alien is exempt from the five-year U.S. residency requirement if he or she is a citizen of a "treaty obligation" country (i.e., if nonpayment would be contrary to a treaty between the United States and the individual's country of citizenship), or if he or she is a citizen or resident of a country with which the United States has a totalization agreement (see **Table 3**).

[18] 42 U.S.C. §402(y). The definition of "lawfully present" is provided in **Appendix B**. The lawful presence requirement was added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208). For more information, see the section of the report titled "Legislative History of Payment Rules for Noncitizens."

[19] "Outside the United States" means outside the territorial boundaries of the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

[20] The six-month period of absence begins with the first full calendar month following the period in which the individual has been outside the United States for more than 30 consecutive days. If the individual returns to the United States for any part of a day during the 30-day period, the 30-day period starts over.

Table 1. Exceptions to the Alien Nonpayment Provision for Workers and Dependents/Survivors

An alien's benefits are suspended if he or she is outside the United States for more than six consecutive months, unless one of the following exceptions is met:

- The individual is a citizen of a country that has a social insurance or pension system under which benefits are paid to eligible U.S. citizens who reside outside that country (see **Appendix A** for a complete list of countries).
- The individual is entitled to benefits on the earnings record of a worker who lived in the United States for at least 10 years or earned at least 40 quarters of coverage under the U.S. Social Security system (exception does not apply if the individual is a citizen of a country that does not provide social insurance or pension system payments to eligible U.S. citizens who reside outside that country).
- The individual is entitled to benefits on the earnings record of a worker who had railroad employment covered by Social Security.
- The individual is outside the United States while in the active military or naval service of the United States.
- The individual is entitled to benefits on the earnings record of a worker who died while in the U.S. military service or as a result of a service-connected disease or injury.
- The nonpayment of benefits would be contrary to a treaty obligation of the United States in effect as of August 1, 1956 (i.e., the individual is a citizen of a treaty obligation country; see **Appendix A** for a list of countries).
- The individual is a resident of a country with which the United States has a totalization agreement[a] (see **Appendix A** for a list of countries).
- The individual was eligible for Social Security benefits as of December 1956.

Source: Section 202(t) of the Social Security Act; 42 U.S.C. §402(t).

a. Under the agreement with Australia, the United States pays Social Security benefits to an Australian citizen who resides in the United States, Australia, or a third country with which the United States has a totalization agreement. If an Australian citizen resides elsewhere, he or she is subject to the alien nonpayment provision. The agreement with Denmark contains a similar provision.

Table 2. Additional Residency Requirement for Alien Dependents/Survivors Outside the United States

In addition to the requirements in **Table 1**, to receive payments outside the United States, an alien dependent/survivor must have lived in the United States for at least five years (lawfully or unlawfully) under one of the following circumstances:

A spouse, divorced spouse, widow(er), surviving divorced spouse, or surviving divorced mother or father

must have resided in the United States for at least five years and the spousal relationship to the worker must have existed during that time.

A child

must have resided in the United States for at least five years as the child of the worker; or
the worker and the child's other parent (if any) each must have either resided in the United States for at least five years or died while residing in the United States.

An adopted child

must have been adopted in the United States; *and*
lived in the United States with the worker; *and*
received at least half of his/her support from the worker in the year before the worker's entitlement or death.

Source: Section 202(t) of the Social Security Act; 42 U.S.C. §402(t).

Table 3. Exceptions to the Additional Residency Requirement for Alien Dependents/Survivors Outside the United States

An alien dependent/survivor living outside the United States is not subject to the five-year U.S. residency requirement if one of the following exceptions is met:

- The individual was eligible for Social Security benefits before January 1, 1985.
- The individual is entitled to benefits on the earnings record of a worker who died while in the U.S. military service or as a result of a service-connected disease or injury.
- The nonpayment of benefits would be contrary to a treaty obligation of the United States in effect as of August 1, 1956 (i.e., the individual is a citizen of a treaty obligation country; see list of countries in **Appendix A**).
- The individual is a citizen or resident of a country with which the United States has a totalization agreement[a] (see list of countries in **Appendix A**).

Source: Section 202(t) of the Social Security Act; 42 U.S.C. §402(t).

a. Under the agreement with Australia, Australian dependents and survivors who do not reside in the United States, Australia, or a third country with which the United States has a totalization agreement must meet the five-year U.S. residency requirement to receive payments abroad. The agreement with Denmark contains a similar provision.

Legislative History of Payment Rules for Noncitizens

When the Social Security program began paying benefits in 1940, there were no restrictions on benefit payments to noncitizens. In 1956, amid concerns that noncitizens were working in the United States for relatively short periods and returning to their native countries where they and their family members would collect benefits for many years, Congress approved restrictions on benefits for alien *workers* living abroad (restrictions did not apply to alien dependents and survivors). The Social Security Amendments of 1956 (P.L. 84-880) required noncitizens to reside in the United States to receive benefits and suspended benefits if the beneficiary remained outside the United States for more than six consecutive months, with broad exceptions (see **Table 1**).

In 1983, Congress placed restrictions on benefit payments to alien *dependents and survivors* living abroad. The Social Security Amendments of 1983 (P.L. 98-21) made dependents and survivors subject to the same residency requirement as workers (described above) and further required that they (or their parents, in the case of a child's benefit) must have lived in the United States for at least five years, with broad exceptions (see **Table 2** and **Table 3**).

Several factors led to the enactment of tighter restrictions on benefit payments to alien dependents and survivors living abroad in 1983, including the large number of dependents who were being added to the benefit rolls (in some cases under fraudulent circumstances) after workers had returned to their native countries and become entitled to benefits, and difficulties associated with monitoring the continued eligibility of beneficiaries living abroad.

At the time, the U.S. General Accounting Office (GAO, now the U.S. Government Accountability Office) estimated that 56,000 of the 164,000 dependents living abroad in 1981 were added to the benefit rolls after the worker became entitled to benefits. Of that number, an estimated 51,000 (or 91%) were noncitizens.[21] Two years earlier, the Social Security Commissioner stated that SSA

[21] U.S. General Accounting Office, *Issues Concerning Social Security Benefits Paid to Aliens*, GAO/HRD-83-32, March 24, 1983, available at http://archive.gao.gov/d40t12/120895.pdf.

investigators had found evidence that some beneficiaries living abroad were faking marriages and adoptions and failing to report deaths in order to "cheat the system." At the time, the Commissioner stated that such problems were particularly acute in Greece, Italy, Mexico and the Philippines, where large numbers of beneficiaries were residing. He stated further that, in some countries, "there is a kind of industry built up of so-called claims-fixers who, for a percentage of the benefit, will work to ensure that somebody gets the maximum benefit they can possibly get out of the system."[22]

In 1996, Congress approved tighter restrictions on the payment of Social Security benefits to aliens residing in the United States. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)[23] prohibited the payment of Social Security benefits to aliens in the United States who are not lawfully present, unless nonpayment would be contrary to a totalization agreement or Section 202(t) of the Social Security Act (the alien nonpayment provision).[24] This provision became effective for applications filed on or after September 1, 1996. Subsequently, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996[25] added Section 202(y) to the Social Security Act. Section 202(y) of the act, which became effective for applications filed on or after December 1, 1996, states, "Notwithstanding any other provision of law, no monthly benefit under [Title II of the Social Security Act] shall be payable to any alien in the United States for any month during which such alien is not lawfully present in the United States as determined by the Attorney General."

Social Security Cards and Noncitizens

All U.S. citizens are eligible for SSNs. In addition, noncitizens (aliens) authorized to work in the United States are eligible for SSNs. Noncitizens eligible to work in the United States include those who are admitted to the United States permanently and are often referred to as immigrants (e.g., legal permanent residents, asylees, refugees), and those who are admitted temporarily (e.g., H-2A– temporary agricultural workers, H-2B– temporary professional workers, J-1– cultural exchange visitors).

Social Security cards issued to noncitizens who are residing permanently in the United States are identical to those issued to U.S. citizens. Social Security cards issued to noncitizens who are in the United States temporarily bear the inscription, "VALID FOR WORK ONLY WITH DHS AUTHORIZATION." SSA also issues SSNs to noncitizens not authorized to work if the noncitizen is legally in the United States and needs an SSN to receive state or federal benefits or services.[26] SSNs issued for this purpose bear the legend, "NOT VALID FOR EMPLOYMENT."

Importantly, the SSN issued to a noncitizen does not change if the noncitizen adjusts status (e.g., a person who is in the United States temporarily may marry a U.S. citizen, become a legal permanent resident, and then naturalize and become a U.S. citizen). Although the noncitizen is supposed to report any change of status to SSA, this does not always occur. As a result, it is

[22] CRS Issue Brief IB82001, *Social Security: Alien Beneficiaries*, 1983 (available to congressional clients by request).

[23] P.L. 104-193, §401(b)(2).

[24] Also, under PRWORA, federal agencies that administer "federal public benefits" are required to report to the Department of Homeland Security (DHS) information on any alien that is known to be unlawfully present in the United States. (P.L. 104-193, §404). Nonetheless, this requirement does not apply to SSA with respect to Title II of the Social Security Act (Old-Age, Survivors, and Disability Insurance Program). *Federal Register*, vol. 65, no. 189, September 28, 2000, pp. 58301-58302.

[25] P.L. 104-208, §503(a).

[26] See 20 C.F.R. §422.104. Prior to late 2003, the policy for assignment of nonwork SSNs was less restrictive, and noncitizens could be assigned an SSN for a variety of nonwork purposes, such as to obtain a driver's license.

possible that some U.S. citizens have Social Security cards with the inscription, "VALID FOR WORK ONLY WITH DHS AUTHORIZATION."

In addition, there are statutory evidentiary requirements to receive an SSN. The Social Security Amendments of 1972 (P.L. 92-603) required SSA to obtain evidence to establish age, citizenship or alien status, and identity of the applicant. SSA requires applicants to present for identification a document that shows name, identifying information, and preferably a recent photograph. SSA also requires that all documents be either originals or copies certified by the issuing agency.

A Note About Deferred Action for Childhood Arrivals (DACA)

In 2012, the Department of Homeland Security (DHS) issued a memorandum announcing that certain unauthorized individuals who were brought to the United States as children and meet other criteria would be considered on a case-by-case basis for protection from removal for two years, subject to renewal, under an initiative known as Deferred Action for Childhood Arrivals, or DACA.[27] (DHS defines deferred action as "a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion.")

On November 20, 2014, DHS announced an expansion of the criteria to qualify for the original DACA initiative and the establishment of another DACA-like process to exercise prosecutorial discretion through the granting of deferred action for the unauthorized alien parents of U.S. citizens and Legal Permanent Residents (LPRs) who meet specified criteria. (This initiative is known as DAPA.[28]) Because of legal challenges, the expanded DACA initiative and DAPA have not been implemented.[29]

Those granted DACA often receive work authorization. As such, they are eligible for Social Security numbers, and, if issued a Social Security number, would be able to count all credits earned (both those earned after they received work authorization and those earned if they worked without authorization) toward a Social Security benefit. In addition, under regulation, those with deferred action are considered lawfully present for the purpose of receiving Social Security benefits in the United States. Notably, persons receiving DACA are not close to retirement age since to qualify for DACA a person had to be under the age of 31 on June 15, 2012. They may however, be able to qualify for a disability benefit if they meet the requirements.

Tax Treatment of Social Security Benefits

Noncitizens who reside outside the United States are subject to different rules regarding federal income tax treatment of Social Security benefits. U.S. citizens and resident aliens[30] pay federal income tax on a portion of their benefit if their income exceeds specified thresholds. Specifically, they pay federal income tax on up to 50% of their benefits if their provisional income is more than $25,000 but no more than $34,000 for a single person, or more than $32,000 but no more

[27] For more on DACA, see CRS Report R43747, *Deferred Action for Childhood Arrivals (DACA): Frequently Asked Questions*.

[28] For a discussion of DAPA, see CRS Report R43852, *The President's Immigration Accountability Executive Action of November 20, 2014: Overview and Issues*.

[29] CRS Legal Sidebar WSLG1442, *The Obama Administration's November 20, 2014, Actions as to Immigration: Pending Legal Challenges One Year Later*.

[30] Resident alien is a term used in tax law. An alien is considered to be a U.S. resident for income tax purposes if he or she (1) is a lawful permanent resident of the United States at any time during the calendar year; (2) meets the requirements of the "substantial presence" test; or (3) makes the first-year election under 26 U.S.C. §7701(b)(4) and 26 C.F.R. §301.7701(b)-4(c)(3). An alien individual meets the substantial presence test if: (1) the alien is present in the United States for at least 31 days during the calendar year and (2) the sum of the number of days on which such individual was present in the United States during the current year and the two preceding calendar years (when multiplied by the applicable multiplier—one for the current year, one-third for the first preceding year, and one-sixth for the second preceding year) equals or exceeds 183 days. Even though an alien individual otherwise meets the requirements of the substantial presence test, there are circumstances when an alien will not be considered a resident of the United States. An alien who does not qualify under either of these tests will be treated as a nonresident alien for purposes of the income tax. [26 U.S.C. §7701(b)].

than $44,000 for a married couple filing jointly.[31] They pay federal income tax on up to 85% of their benefits if their provisional income is more than $34,000 for a single person or more than $44,000 for a married couple filing jointly. These thresholds do not apply to married couples who live together and file separate returns. The Congressional Budget Office (CBO) estimated that 49% of Social Security beneficiaries (25.5 million people) were affected by the income taxation of Social Security benefits in tax year 2014.[32]

Noncitizens who live outside the United States pay federal income tax on their benefits without regard to these thresholds. Section 871 of the Internal Revenue Code imposes a 30% rate of tax withholding on the U.S. income of noncitizens who live outside the country (unless a lower rate is established by treaty) because there is no practical way for the U.S. government to determine the income of such persons (26 U.S.C. §871). Under the withholding, noncitizens who reside outside the United States pay 30% of the maximum taxable amount of Social Security benefits (85%) in federal income taxes. For example, the tax withholding on an annual Social Security benefit of $12,000 would be $3,060 [($12,000 x 0.85) x 0.30].[33]

Totalization Agreements

As shown in **Table 1** and **Table 3**, alien workers and alien dependents/survivors may receive payments while living outside the United States if they are a resident or, in some cases, a citizen of a country with which the United States has a totalization agreement.[34] Section 233 of the Social Security Act authorizes the President to enter into a totalization agreement with a foreign country to coordinate the collection of payroll taxes and the payment of benefits under each country's Social Security system for workers who split their careers between the two countries.[35] For example, without a totalization agreement, an individual who is sent by a U.S. company to work in a foreign country (and his or her employer) must contribute to the Social Security systems in both countries, resulting in dual Social Security coverage and taxation based on the same earnings. With one exception, totalization agreements allow workers (and their employers) to contribute only to the foreign system if the worker is employed in that country for five or more years, or only to the U.S. system if the worker is employed in that country for less than five years.

Totalization agreements also allow workers who divide their careers between the two countries to combine earnings credits under both systems to qualify for benefits if they lack sufficient coverage under either system.[36] Although a worker may combine earnings credits to *qualify* for benefits under one or both systems, his or her benefit is prorated to reflect only the number of

[31] Provisional income equals adjusted gross income (total income from all sources recognized for tax purposes) plus certain otherwise tax-exempt income, including half of Social Security and Railroad Retirement Tier I benefits.

[32] For more information, see CRS Report RL32552, *Social Security: Calculation and History of Taxing Benefits*.

[33] For more information on the taxation of noncitizens, see CRS Report RS21732, *Federal Taxation of Aliens Working in the United States*.

[34] Social Security regulations (20 C.F.R. §404.1928) specify that a totalization agreement "may provide that a person entitled to benefits under title II of the Social Security Act may receive those benefits while residing in the foreign country party to the agreement, regardless of the alien non-payment provision."

[35] Totalization agreements do not include Medicare benefits.

[36] This applies to Social Security retirement and disability benefits. Generally, a minimum of 40 earnings credits (10 years of covered employment) is required to qualify for Social Security retirement benefits. Fewer credits are required to qualify for disability benefits, depending on the worker's age at the onset of the disability. In some cases, a worker may qualify for disability benefits with a minimum of six credits (1½ years of covered employment).

years the worker paid into each system. The same treatment applies to foreign workers in the United States.

Totalization agreements are subject to congressional review. Section 233(e) of the Social Security Act requires the President to submit to Congress the text of the agreement and a report on (1) the estimated number of individuals who would be affected by the agreement and (2) the estimated financial impact of the agreement on programs established by the Social Security Act. Section 233(e)(2) of the Social Security Act specifies that a totalization agreement automatically goes into effect unless the House of Representatives or the Senate adopts a resolution of disapproval within 60 session days of the agreement's transmittal to Congress.

Section 233(e)(2), which allows for the rejection of a totalization agreement upon adoption of a resolution of disapproval by either house of Congress, is functionally identical to the legislative veto provision that was held unconstitutional in *INS v. Chadha*.[37] Because Congress has never rejected a Social Security agreement, the apparent constitutional infirmity of Section 233(e)(2) has not been an issue. Congressional use of the mechanism in Section 233(e)(2) to reject a Social Security agreement could give rise to a judicial challenge.

Since 1978, the United States has entered into totalization agreements with 26 countries.[38] (The effective date for each agreement is shown in **Appendix A**.)

In addition to these 26 totalization agreements, the United States has pending totalization agreements with Mexico (signed June 29, 2004)[39] and Brazil (signed June 30, 2015). After an agreement is signed, officials from SSA and the foreign Social Security agency address implementation issues, formulating operations procedures to be used in administering the agreement. When that process is complete, the agreement is forwarded to the U.S. Secretary of State for review. Following review by the State Department, the agreement is sent to the President for review. The President is required by law to transmit the agreement to Congress for a period of review (60 session days) before the agreement can go into effect.[40]

Although the specific terms of each totalization agreement may differ, the provisions of a totalization agreement must be consistent with the Social Security Act. Section 233(c)(4) of the Social Security Act states, "any such agreement may contain other provisions which are not inconsistent with the other provisions of [Title II of the Social Security Act] and which the President deems appropriate to carry out the purposes of this section." For the month of December 2015, a total of $51 million in Social Security benefits was paid to approximately 221,000 beneficiaries under totalization agreements.[41]

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[37] 462 U.S. 919 (1983).

[38] These countries are Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, South Korea, Luxembourg, the Netherlands, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, and the United Kingdom.

[39] To date, the totalization agreement with Mexico has not been transmitted to Congress for review, and it is unclear whether it will be. For more on the possible impact of a totalization agreement with Mexico, see U.S. Government Accountability Office, *Social Security: Proposed Totalization Agreement with Mexico Presents Unique Challenges*, GAO-03-993, September 30, 2003, http://www.gao.gov/products/GAO-03-993.

[40] The agreement is also subject to ratification in the foreign country.

[41] SSA, *Annual Statistical Supplement, 2016*, Table 5.M1, available at https://www.ssa.gov/policy/docs/statcomps/supplement/2016/5m.pdf. In December 2015, there were 60 million Social Security beneficiaries. Those who received benefits under U.S. Social Security agreements represented 0.4% of total beneficiaries. SSA, *Annual Statistical Supplement, 2016*, Table 5.A1, available at https://www.ssa.gov/policy/docs/statcomps/supplement/2016/5a.pdf. For more detailed information, see SSA, OCACT, Actuarial Note, Number 152, *Totalization Agreements and Totalized Benefits*, May 2013, at http://www.socialsecurity.gov/OACT/NOTES/pdf_notes/note152.pdf.

Perceived Disparate Treatment Under Social Security and Immigration Law

Some believe there is a disconnect between how the Social Security and immigration rules treat unauthorized aliens. Immigration policies are designed to discourage and penalize foreign nationals who work without authorization in the United States. In contrast, under the Social Security program, there are certain circumstances when a foreign national who worked in the United States without authorization can collect Social Security benefits based on taxes paid while the foreign national was working illegally. As a result of this perceived inconsistency, some oppose paying Social Security benefits to unauthorized aliens and others who worked without authorization, arguing that foreign nationals who violate immigration law should not be rewarded by receiving Social Security benefits. Others contend that foreign nationals who work in Social Security-covered employment (i.e., had payroll taxes withheld from their earnings) should be eligible for benefits whether or not they had employment authorization, because they "paid into the system." The following section presents an example of this tension.

No-Match Letters

In 1994, SSA began sending "no-match" letters to employers to inform them of a discrepancy between a W-2 form and SSA records. As discussed above, receipt of a no-match letter does not imply that the employee is using a fraudulent SSN; the discrepancy could be the result of a clerical error. For tax years 1993 through 2000, an employer received no-match letters only if more than 10 employees had discrepancies and the number of employees with mismatches equaled more than 10% of the employer's workforce.[42]

In 2002, SSA implemented a policy change that substantially increased the number of no-match letters sent to employers; it received much attention because of the impact on unauthorized aliens. Under the revised policy, SSA began sending no-match letters to every employer that had at least one employee with discrepancies on his or her W-2 form. The number of no-match letters sent by the agency increased from approximately 110,000[43] to approximately 950,000 for tax year 2001.[44] Employers were not required to respond to or act on the letters; however, under the Immigration and Nationality Act (INA) employers may be subject to penalties for hiring or retaining unauthorized alien workers.[45] In addition, the Internal Revenue Service can penalize employers for providing incorrect information on W-2 forms.[46]

Although SSA maintained that the letters were sent to employers to ensure that workers were properly credited with their earnings, due to the controversy surrounding the increase in the number of no-match letters, SSA quickly altered their policy, reverting to one similar to the previous policy.[47]

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[42] "Social Security No-Match Letter," *Interpreter Releases*, vol. 80, April 7, 2003, pp. 508-509.

[43] Ibid., p. 508.

[44] Mary Beth Sheridan, "Social Security Scales Back Worker Inquiries," *Washington Post*, June 18, 2003, p. A6. No-match letters for tax year 2001 are sent in calendar year 2002.

[45] INA §274A.

[46] 26 U.S.C. §6647.

[47] The policy, which is the current policy, is that SSA sends a no-match letter to an employer only if more than 10 employees have discrepancies and the number of employees affected equals more than 0.5% of the employer's

Some argued that SSA should not have reduced the number of no-match letters that were sent to employers. They contended that SSA should coordinate with other agencies to locate unauthorized alien workers, and that no-match letters can be a tool to help reduce the unauthorized population in the United States. In addition, the no-match letters could have helped employers who do not know that the employees' documents are fraudulent but would be liable if they were caught employing unauthorized aliens.

Others contended that SSA has no immigration-related enforcement powers, and it is not the job of SSA to enforce immigration laws. In addition, some immigration advocates contended that tens of thousands of foreign nationals left their jobs or were fired as a result of the letters.[48] They argued that no-match letters do little to combat unlawful employment as those who use false documents simply find employment in another company, increasing the risk of workplace exploitation. They also contended that some firms may have experienced a loss of revenue caused by worker shortages or by terminated employees who do not have employment authorization moving to competitors. The letters also raised concerns that employers were discriminating based on alienage (i.e., that an employer who received a no-match letter for a noncitizen would fire the noncitizen worker without ascertaining if they have employment authorization).[49]

workforce.

[48] Sheridan, "Social Security Scales Back Worker Inquiries."

[49] In 2007, DHS published a final rule that would have amended the regulations relating to the unlawful hiring or continued employment of aliens who lack work authorization. The regulation would have created "safe-harbor" procedures for employers who receive a no-match letter to follow, to ensure that DHS would not find the employer guilty of knowingly hiring or continuing to employ an alien who lacks work authorization (i.e., that the employer had violated §274A of the Immigration and Nationality Act). Because of litigation resulting in a temporary restraining order, the regulation was never implemented and was ultimately rescinded. Department of Homeland Security, "Safe-Harbor Procedures for Employers Who Receive a No-Match Letter," 72 *Federal Register* 45611, August 15, 2007. See also U.S. Immigration and Customs Enforcement, *Partners: Safe Harbor*. DHS announced its intention to rescind the regulation on July 8, 2009. Department of Homeland Security, "Safe-Harbor Procedures for Employers who Receive a No-Match Letter: Rescission," 74 *Federal Register* 51447-51452, October 7, 2009. The proposed rule rescinding the regulation was published on August 19, 2009. Department of Homeland Security, "Safe-Harbor Procedures for Employers who Receive a No-Match Letter: Rescission," 74 *Federal Register* 41801-41805, August 19, 2009.

Appendix A. Exception Countries

The following lists of countries, which are subject to change periodically, are taken from the *Electronic Code of Federal Regulations* (*e-CFR*) with data current as of November 1, 2016, and the SSA Program Operations Manual System (POMS).[50]

Social Insurance or Pension System Countries

Under the alien nonpayment provision, a noncitizen's benefits are suspended if he or she remains outside the United States for more than six consecutive months, unless one of several broad exceptions is met. For example, an alien may receive benefits outside the United States if he or she is a citizen of a country that has a social insurance or pension system that pays benefits to eligible U.S. citizens residing outside that country. The following countries meet the social insurance or pension system exception in Section 202(t)(2) of the Social Security Act:

> Albania, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Belize, Bolivia, Bosnia-Herzegovina, Brazil, Bulgaria, Burkina Faso, Canada, Chile, Colombia, Costa Rica, Cote D'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Finland, France, Gabon, Grenada, Guatemala, Guyana, Hungary, Iceland, Jamaica, Jordan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Marshall Islands, Mexico, Federated States of Micronesia, Monaco, Montenegro, Nicaragua, Norway, Palau, Panama, Peru, Philippines, Poland, Portugal, Romania, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Samoa, San Marino, Serbia, Slovak Republic, Slovenia, South Korea, Spain, Sweden, Switzerland, The Netherlands, Trinidad-Tobago, Trust Territory of the Pacific Islands, Turkey, United Kingdom, Uruguay, Venezuela.[51]

Treaty Obligation Countries

To receive benefits outside the United States, alien *dependents and survivors* must have lived in the United States previously for at least five years (lawfully or unlawfully), and the family relationship to the worker must have existed during that time. The law provides several broad exceptions to the five-year U.S. residency requirement for alien dependents and survivors. For example, an alien dependent or survivor is exempt from the U.S. residency requirement if he or she is a citizen of a treaty obligation country (i.e., if nonpayment of benefits would be contrary to a treaty between the United States and the individual's country of citizenship). As indicated in the Code of Federal Regulations (20 C.F.R. §404.463), the following countries meet the "treaty obligation" exception in Section 202(t)(3) of the Social Security Act:

> Germany, Greece, Ireland, Israel, Italy, Japan, Netherlands*
>
> *The Treaty of Friendship, Commerce, and Navigation now in force between the United States and the Kingdom of the Netherlands creates treaty obligations precluding the application of the alien nonpayment provision to citizens of that country with respect to monthly survivor benefits only.

[50] The e-CFR is available at http://www.ecfr.gov/cgi-bin/ECFR?page=browse/. The POMS is available at https://secure.ssa.gov/apps10/poms.nsf/aboutpoms.

[51] SSA, POMS, Section RS 02610.015, *Status of Countries for Applying Exceptions Based on Citizenship*, at https://secure.ssa.gov/poms.nsf/lnx/0302610015.

Totalization Agreement Countries

The following countries meet the "totalization agreement" exception in Section 202(t)(11)(E) of the Social Security Act. The effective date is shown for each agreement.

Table A-1. U.S. Social Security Agreements in Force

Australia	October 1, 2002
Austria	November 1, 1991
Belgium	July 1, 1984
Canada	August 1, 1984
Chile	December 1, 2001
Czech Republic	January 1, 2009
Denmark	October 1, 2008
Finland	November 1, 1992
France	July 1, 1988
Germany	December 1, 1979
Greece	September 1, 1994
Hungary	September 1, 2016
Ireland	September 1, 1993
Italy	November 1, 1978
Japan	October 1, 2005
South Korea	April 1, 2001
Luxembourg	November 1, 1993
Netherlands	November 1, 1990
Norway	July 1, 1984
Poland	March 1, 2009
Portugal	August 1, 1989
Slovak Republic	May 1, 2014
Spain	April 1, 1988
Sweden	January 1, 1987
Switzerland	November 1, 1980[a]
United Kingdom	1985/1988[b]

Source: Social Security Administration, Status of Totalization Agreements, available at http://www.ssa.gov/international/status.html.

Note: The agreements with Austria, Belgium, Germany, Sweden and Switzerland permit an individual to receive benefits as a dependent or survivor of a worker while a *resident* in those countries only if the worker is a U.S. citizen or a citizen of the country of residence.

a. On December 3, 2012, U.S. and Swiss officials signed a new U.S.-Swiss agreement, which replaces the original and supplementary U.S.-Swiss agreements of 1979 and 1988. The new agreement entered into force on August 1, 2014.

b. Provisions that eliminate double taxation became effective January 1, 1985; provisions that allow persons to use work in both countries to qualify for benefits became effective January 1, 1988.

Appendix B. Definition of "Lawfully Present"

The following is the definition of the term *lawfully present* aliens for purposes of applying for Title II Social Security benefits under P.L. 104-193 (the Personal Responsibility and Welfare Reform Act) as defined in 8 C.F.R. §103.12.

An alien who is lawfully present in the United States includes

(1) A "qualified alien" as defined by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA);[52]

(2) An alien who has been inspected and admitted to the United States and who has not violated the terms of his status;

(3) An alien who has been paroled[53] into the United States pursuant to Section 212(d)(5) of the act for less than one year, except: (i) Aliens paroled for deferred inspection or pending exclusion proceedings under Section 236(a) of the act; and (ii) Aliens paroled into the United States for prosecution pursuant to 8 C.F.R. §212.5(b)(3);

(4) An alien who belongs to one of the following classes of aliens permitted to remain in the United States because the Attorney General has decided for humanitarian or other public policy reasons not to initiate deportation or exclusion proceedings or enforce departure: (i) Aliens currently in temporary resident status pursuant to Section 210 or 245A of the INA; (ii) Aliens currently under Temporary Protected Status (TPS);[54] (iii) Cuban-Haitian entrants, as defined in Section 202(b) P.L. 99-603, as amended; (iv) Family Unity beneficiaries pursuant to Section 301 of P.L. 101-649, as amended; (v) Aliens currently under Deferred Enforced Departure (DED); (vi) Aliens currently in deferred action status pursuant to Service Operations Instructions at OI 242.1(a)(22); (vii) Aliens who are the spouse or child of a United States citizen whose visa petition has been approved and who have a pending application for adjustment of status;

(5) Applicants for asylum and applicants for withholding of removal under Section 241(b)(3) of the act or under the Convention Against Torture who have been granted employment

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[52] PRWORA created the term "qualified alien," a term which does not exist in immigration law, to encompass the different categories of noncitizens who were not prohibited by PRWORA from receiving federal public benefits. Qualified aliens (noted in P.L. 104-193 §431; 8 U.S.C. §1641) are defined as:

(1) Legal Permanent Residents (an alien admitted for lawful permanent residence (LPRs));

(2) refugees (an alien who is admitted to the United States under §207 of the Immigration and Nationality Act (INA));

(3) asylees (an alien who is granted asylum under INA §208);

(4) an alien who is paroled into the United States (under INA §212(d)(5)) for a period of at least one year;

(5) an alien whose deportation is being withheld on the basis of prospective persecution (under INA §243(h) or §241(b)(3));

(6) an alien granted conditional entry pursuant to INA §203(a)(7) as in effect prior to April 1, 1980; and

(7) Cuban/Haitian entrants (as defined by P.L. 96-422).

For a discussion of the different categories of noncitizens, see CRS Report RS20916, *Immigration and Naturalization Fundamentals*. Additionally, victims of trafficking (T-visa holders) are treated as refugees for the purpose of receiving benefits.

[53] "Parole" is a term in immigration law which means that the alien has been granted temporary permission to enter and be present in the United States. Parole does not constitute formal admission to the United States and parolees are required to leave when the parole expires, or if eligible, to be admitted in a lawful status.

[54] For more information on TPS, see CRS Report RS20844, *Temporary Protected Status: Current Immigration Policy and Issues*.

authorization, and such applicants under the age of 14 who have had an application pending for at least 180 days.

An alien may not be deemed to be lawfully present solely on the basis of the Service's decision not to, or failure to, issue an Order to Show Cause or solely on the basis of the Service's decision not to, or failure to, enforce an outstanding order of deportation or exclusion.

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