

An Advocate's Guide to the New and Temporary SSI Extension Law for Humanitarian Immigrants *Effective October 1, 2008*

Supplemental Security Income (SSI) provides income assistance to low-income seniors and persons with disabilities. Since 1996, SSI benefits for refugees and certain other humanitarian immigrants have been available only during a seven-year period. A new law, "The SSI Extension for Elderly and Disabled Refugees Act" (Public Law 110-328), extends SSI eligibility for these immigrants, allowing them to receive at least two more years of SSI.

The Social Security Administration (SSA) has issued an internal policy explaining how this law should be administered. This policy is called Emergency Message 08105 SEN (referred to here as "EM"). This EM is contained in POMS SI 00502.107, but is not available on SSA's public website as of this writing.

This paper answers some of the more commonly asked questions about the new law. It includes citations to the EM where appropriate.

1. I lost my SSI because of the seven-year limit. Will I benefit from this law? (If you have never applied for SSI before, see question 6)

You may benefit if you meet **one** of the following conditions:

a) You are under 18 or over 70 years old.

For example: a person who came to the U.S. on September 1996 lost her SSI in October 2003 after receiving it for seven years. If she is now over 70 years old she may be eligible to receive SSI for two more years, starting October 2008. She could receive a third year of SSI if she has applied for citizenship but has still not received it as of October 2010.

b) You have been a lawful permanent resident (green card holder) for less than six years.

For example: a person who was granted asylum in October 1998, started receiving SSI for disability in November 1998 but stopped in November 2005, seven years after asylum was granted. He applied for lawful permanent residence in November of 1999 and, after a long delay, finally received his green card in January 2004. He may be eligible for up to two additional years of SSI starting October 2008 and could receive a third year as long as he has applied for citizenship by October 2010.

c) You applied to become a lawful permanent resident (get a green card) within four years after you started receiving SSI.

For example: a refugee who came to the U.S. in February 1999 started receiving SSI at age 55 in 2000. In 2003, she applied for a green card and received it. (Her LPR status will be effective from February 1999, that is, when she entered the U.S.) In March 2006, her SSI benefits were terminated due to the seven-year rule. She is now 63 and can receive up to two years of SSI starting October 2008. She can receive a third year as long as she has applied for citizenship by October 2010.

d) You are a Cuban or Haitian Entrant.

For example: a person received his status as a Cuban Haitian Entrant in May 1997. He was granted SSI in 2000 on the basis of disability and received SSI until June 2004 when

it was terminated. He can now receive up to two additional years of SSI starting October 2008 and may receive a third year if he has applied for citizenship by October 2010.

e) You have been granted withholding of deportation or removal.

For example: a person was granted withholding of deportation in December of 1996. She was eligible for SSI in January of 1997 on the basis of disability but it was terminated in January 2003. She can receive up to two additional years of SSI starting October 2008. She will not be eligible for a third year since she is not able to apply for citizenship.

f) You have a naturalization petition pending or are waiting for your swearing in ceremony.

For example: a person came to the U.S. as a refugee in December 1998 and began receiving SSI in January 2000 when he turned 65. His SSI was terminated in January 2006 due to the seven-year limit. He applied for citizenship in December 2005 and had an interview in December 2006. Although he was approved for citizenship, he has still not received his certificate due to delays in the background check. He is eligible for up to two additional years of SSI starting in October 2008 and may receive an additional third year if he has still not received his citizenship by that time. (NOTE: this person also qualifies under category (a).)

See [EM §B(3)-(4)]

2. Are all of the people who lost SSI due to the seven-year limit eligible for more benefits under this SSI extension?

No. Humanitarian immigrants who do not qualify for any of the categories above may not be eligible for the additional two years. For example: a refugee who came to the U.S. in October 1998 at age 33 and received lawful permanent residence in 1999 (one year after she arrived) and later started receiving SSI at age 35 due to disability. She lost her SSI in November 2005 and is currently 43 years old. She has not yet applied for citizenship. Until she does, she will not be eligible for the extension because she has been an LPR for more than six years.

3. How many more years of SSI may I receive if I was cut off?

If you are eligible, you may receive SSI for another two years beginning October 1, 2008. If, after that time, you are still not a citizen, but have an application for citizenship pending, you may receive SSI for an additional third year until September 30, 2011. *[EM §B(4)]*

4. What do I need to do to start my SSI benefits again?

SSA has announced that they will automatically reinstate eligible humanitarian immigrants who have lost their SSI because of the seven-year limit. However, at this time, we do not know when SSA will do this. **Therefore, we recommend that you immediately go to your local Social Security district office in person to ask that your SSI be reinstated.** You may also call SSA at 1-800-772-1213. If you are deaf or hard of hearing, call the toll-free TTY number at 1-800-325-0778.

If your SSI benefits were stopped in October or November 2008, and you go into the office to ask that they be reinstated, SSA should reinstate you right away. *[EM §D]* Beginning in December 2008, immigrants who are eligible for the extension should not lose SSI due to the seven-year limit. Their benefits will continue for at least two additional years.

If your SSI benefits were stopped before October 1, 2008, SSA will need proof of financial eligibility for any month after October 1, 2008 and may want proof that you have pursued LPR or citizenship

status. If you do not have proof that your immigration status meets the law's requirements, SSA will ask you to sign a statement and will check your immigration status. [EM § E(4)-(12)] SSA will also check your financial eligibility during the months beginning October 1, 2008. [EM § E(12)] If you can prove eligibility back to that date, SSA will put you on retroactively to October 1, 2008 no matter when you go in. Otherwise you will receive SSI for only those months that you can show eligibility. [EM § D(12)] See question 7 for more information about new applicants.

5. I used to receive SSI due to disability but it was terminated due to the seven-year limit. Will I have to show that I am disabled to start receiving SSI again?

No. SSA usually requires that disabled individuals who have not been receiving SSI for more than one year prove their disability before SSI can be reinstated. However, at the present time, SSA is not requiring that individuals re-prove their disability in order to be reinstated for SSI. [EM § C] NOTE: New applicants for SSI on the basis of disability will still be required to prove that they are disabled.

6. I am still receiving SSI benefits, but the seven-year limit applies to me. Do I need to do anything to make sure that I get two additional years of SSI?

No. If the seven-year limit applies to you but you are still receiving SSI, you currently do not need to do anything more. Later, SSA may ask you to sign a statement that you are making a "good faith effort to pursue United States citizenship." But otherwise, if you are eligible for the extension, you do not need to do anything. SSA will automatically extend your SSI. Your SSI should continue for a total of nine years. If your nine-year limit ends before October 2011, you may continue to receive SSI until October 2011 only if you have a pending application for naturalization.

Some people who are scheduled for cut off in October 2008 and November 2008 may have their benefits interrupted. They should be reinstated soon. Contact SSA if you need your SSI benefits reinstated immediately. You may also need to contact your state agency if your Medicaid benefits are mistakenly interrupted. You should appeal any attempt to cut off your Medicaid benefits.

7. I recently turned 65 or became disabled. I was told that I could not get SSI because my seven-year limit had expired. I have never received SSI before. Does the new law help me?

Asylees, refugees, and certain other humanitarian immigrants who are applying for SSI for the first time on or after October 2008, may be eligible to receive SSI, depending on the year that they first attained their status as a refugee, asylee or other humanitarian immigrant:

- If you attained your status after October 2002, you may be able to get benefits until October 2011.
- If you attained your status between October 1999 and October 2002, you can receive SSI from the date of SSI application until the nine-year anniversary of receiving your refugee, asylee, or humanitarian immigrant status. After this period ends, you can continue to receive SSI until October 2011 only if you have a pending application for naturalization or have become a U.S. citizen.
- If you attained your status before October 1999, you do not qualify for the SSI extension.

Remember: these special rules only apply to immigrants who are applying for SSI for the first time on or after October 2008.

8. What should I do if I am still not a citizen after nine years?

If you are still not a citizen after receiving SSI for two additional years, you may continue to receive SSI for a third additional year if you applied to become a citizen and are still waiting. However, no

benefits will be payable after September 30, 2011. You must become a citizen by then in order to continue receiving SSI benefits, unless Congress passes a new law.

9. Social Security stopped my SSI in the past because of the seven-year limit. Will I get SSI back to the time that I lost it?

No, but you may be eligible for up to two additional years of SSI starting on October 2008. If your SSI stopped because of the seven-year limit, you may receive SSI retroactive to October 2008 and continuing through October 2010. However, SSA will not give you SSI benefits for any months before that date.

10. I went to my local SSA office to reinstate my SSI benefits, but they told me I am not eligible. Based on the information in this paper, I believe I am eligible. What should I do?

Contact your local legal services office immediately. Someone there may be able to help you.

11. Will I still need to take the English and citizenship tests to become a U.S. citizen?

The new law does not change the requirements to become a U.S. citizen. Unless you are under 18 years old, Social Security will require you to sign a statement that you are making a “good faith effort to pursue United States citizenship.” to the best of your physical and mental abilities. If you have a disability that affects your ability to learn English, talk with an immigration specialist. The government may be able to excuse you from taking the English language, history and government tests.

12. It’s been over six months since I applied to become a lawful permanent resident (green card holder) or U.S. citizen. Is there anything I can do to make the U.S. Citizenship and Immigration Services (CIS) process my application faster?

Yes. As a result of a recent lawsuit called Kaplan v. Chertoff, immigrants who are subject to the seven-year limit are still eligible to receive “expedited” (fast) processing of their applications. If you have been waiting for more than six months, call CIS at 1-800-889-4369 and ask for your application to be expedited. This expedited processing still applies even after passage of this new law.

If you have not yet applied for a green card or citizenship, tell CIS when you apply that your application should be expedited because you are in the “Kaplan class.”

13. I can’t afford to apply for a green card or citizenship. Is there any help available for me?

Yes. As a result of a recent lawsuit called Kaplan v. Chertoff, immigrants whose SSI has a time limit are likely to be excused from application fees if they ask. When applying for a green card or citizenship, be sure to ask for a “fee waiver,” and tell the U.S. Citizenship and Immigration Services that you are in the “Kaplan class.”

Please contact your local legal services, legal aid office or advocacy organization to assist you with any additional questions you have.