

17. Social Security

Note: This section does not apply to immigrants who are undocumented.

For immigrants who are noncitizens, whether Preparing Immigrants or Supervised Immigrants in the face of Voluntary Departure, there are steps you can take to determine your eligibility for U.S. Social Security Benefits. The section is only relevant to a small subset of immigrants: either Insured Workers or dependents or survivors of Insured Workers. It addresses both the legal and practical considerations. “Insured Workers” are any individual immigrants who have a Social Security Number (SSN) and contribute to Social Security while working for U.S. employers or foreign affiliates under certain circumstances. This section will answer these questions:

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Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

Understanding Social Security – Basic Definitions

“Dependents and Survivors Benefits” include: (i) Wife’s / Husband’s Insurance Benefits; (ii) Child’s Insurance Benefits; (iii) Widow’s / Widower’s Insurance Benefits; (iv) Mother’s and Father’s Insurance Benefits; (v) Parent’s Insurance Benefits; and (vi) Lump-Sum Death Payments.

“Insured Workers” are any individual immigrants who have a SSN and contribute to Social Security while working for U.S. employers or foreign affiliates under certain circumstances. Undocumented immigrants do not fall under this category.

“Preparing Immigrants” are immigrants who are in the process of immigrating to the U.S. and obtaining lawful immigrant status.

“Retirement Benefits” are Old-Age Insurance Benefits.

“Social Security Benefits” are the following U.S. Social Security Benefits: Retirement Benefits, Dependent and Survivor Benefits, Social Security Disability Benefits (“SSD Benefits”), or Supplemental Security Income Benefits (“SSI Benefits”).

“SSA” is the abbreviation for the Social Security Administration.

“SSD Benefits” are Social Security Disability Benefits. The Social Security disability insurance program is designed to help people who can’t work because they have a medical condition that’s expected to last at least 1 year or result in death.

“SSI Benefits” are Supplemental Security Income Benefits. A federal income supplement program designed to help aged, blind, and persons with disabilities who have little or no income. Supplemental Security Income Benefits can never be received by dependents

“SSN” is the abbreviation for Social Security Number.

“Supervised Immigrants” are immigrants that are awaiting a court hearing or final deportation order. They are not detained and are allowed to walk free, live, and work in the U.S. under certain conditions.

“Voluntary Departure” is an option that may be granted by either the Department of Homeland Security or an immigration court judge to immigrants facing deportation, often during removal proceedings, who meet the following requirements:

(i) Presence in the U.S. for at least 1 year immediately prior to the date notice to appear was served;

(ii) Person of good moral character for at least 5 years immediately preceding application for voluntary departure;

(iii) Not accused of an aggravated felony; and

(iv) Not deportable for public safety or national security reasons.

Immigrants granted Voluntary Departure are not deemed “deported” or “removed” and may be able to receive Retirement Benefits and SSD Benefits once back in Mexico.

“Voluntary Return” is a type of departure that only takes place at the border and can only be granted by U.S. Customs and Border Protection officers through the completion of Form I-826. It is less formal than a voluntary departure, and occurs when an individual is detained at the border and offered a chance to “turn around” without a hearing.

Which Noncitizens Are Eligible to Receive Social Security Benefits?

Note: Undocumented immigrants are not eligible to receive Social Security benefits either directly as a worker or as a dependent or survivor. The information below only applies to immigrants who are lawfully present in the U.S.

Insured Workers

Insured Workers are any individual immigrants who are authorized to work in the U.S. and therefore have a Social Security Number and contribute to Social Security while working for U.S. employers or foreign affiliates under certain circumstances.

If you are an Insured Worker, to be eligible to receive Social Security Benefits you must meet the following criteria:

- You can receive Retirement Benefits if you have worked and paid Social Security taxes for at least 10 years and have reached retirement age (at least 62 or between the full retirement ages of 66 and 67);
- You can receive [Social Security Disability \(SSD\) Benefits if you have a disability, are not able to work](#), and typically worked at least 5 of the last 10 years;
 - [If you are under the age of 24, you may be able to receive SSD Benefits with fewer years of work.](#)

Additionally, you can receive Supplemental Security Income (SSI) Benefits [if you meet the criteria to be considered a “qualified alien,” have limited income and resources, and are either aged 65 or older, blind or have](#) disabilities. You can learn more about SSI benefits for noncitizens and “qualified alien” requirements on the SSA website: <https://www.ssa.gov/ssi/spotlights/spot-non-citizens.htm>.

Family Benefits & Dependents

If you are an Insured Worker, your dependents, for example your spouse or child, must meet the following criteria to be eligible to receive Social Security Benefits:

- Your spouse (including former) is age 62 or older;
- Your spouse is taking care of a child under 15 or a child with disabilities (Spouses who have never worked or have low earning get up to half of a retired worker's full benefit);
- Some valid non-marital legal relationships may be eligible;
- Children are eligible if they are unmarried, 17 years or under or ages 18-19 and in school full time who have not graduated high school; or
- Any child with a disability that developed at age 21 or younger is eligible.

Survivors

If you are a survivor of an Insured Worker, to be eligible to receive Social Security Benefits, you must meet the following criteria:

- If you are a surviving spouse, you are age 60 or older (or age 50-59 if with disability), you were married for at least 9 months before their death, and you did not remarry before age 60 (or age 50, if with disability);
- If the Insured Worker was your former spouse before their death, you must have been married for at least 10 years;
- Some valid non-marital legal relationships may be eligible;
- Children are eligible if they are 17 years or under or ages 18-19 and in school full time who have not graduated high school; or
- Any surviving children with a disability that developed at age 21 or younger.

What Should You Do if You are Already Receiving Social Security Benefit Payments?

If you are an Insured Worker planning to stay in the U.S.

- Continue contributing to the Social Security Administration (SSA).
- Check with the SSA to see if you or any of your family members are eligible to apply for Social Security Benefits by answering a few questions on the SSA website at <https://www.ssa.gov/prepare/check-eligibility-for-benefits>. Have Social Security Numbers (SSNs) and birth certificates readily available.
- Inform your family members that they may be entitled to Dependent and Survivors Benefits if you pass away and confirm that they know how to apply for these benefits at <https://www.ssa.gov/apply>.

If you are an Insured Worker Considering a Voluntary Departure to Your Home Country

(Note: This is not the same as a grant of Voluntary Return which occurs only when someone is detained at the border and offered the chance to “turn around” by U.S. Customs & Border Patrol officers.)

You may continue receiving Social Security Benefits payments while you are outside the U.S. depending on the destination country.¹⁷

- Confirm with the SSA that payments can be sent to your destination country.
- Report any change of address promptly to avoid lost or delayed payments and mail. This includes:
 - Your new country, home address, and ZIP or postal code.
 - The names of all family members moving to the new address.
- If your destination country is eligible, once you are outside the U.S. you must:
 - Complete an annual questionnaire sent by the SSA between May and June; and

¹⁷ For more information, see: <https://www.ssa.gov/international/payments.html>

- Report any changes such as:
 - Address changes.
 - Employment status.
 - Improvement in disability.
 - Marriage, divorce, annulment, or adoption.
 - A child leaving the care of a spouse.
 - If a child nearing age 18 is a full-time student or disabled.
 - Death.
 - Inability to manage funds.
 - Deportation or removal from the U.S.
 - Changes in parental circumstances.
 - Eligibility for a pension from work.

→ Consider signing up for direct deposit to avoid problems with lost checks.

Note: SSI Benefits can never be received if you are outside of the U.S. for more than 1 month.

If You Are a Dependent or Survivor Considering a Voluntary Departure to Your Home Country

You may continue receiving Social Security Benefits payments while outside the U.S. depending on your destination country. If the country is eligible, you must meet the following requirements to continue receiving benefits:

- **Residency Requirement:** Show that you lived in the U.S. for at least five years.
- **Family Relationship Requirement:** During those five years, the family relationship on which the benefits are based must have continued to exist.

Exception: If your entitlement is based on a worker who died during U.S. military service or as a result of a service-connected disease or injury.

Note: These requirements are automatically met for a child who has not lived in the U.S. for 5 years if the Insured Worker and other parent meet both requirements. However, Social Security Benefits will not be paid to a child that is adopted outside of the U.S. while they are residing outside of the U.S., even if they meet the residency requirement.

- Complete the SSA's annual questionnaire and be sure to notify the SSA of any changes, as outlined above to stay in compliance.

Are Immigrants Facing Deportation Eligible for Social Security Benefits?

If you are an immigrant who has qualified for Social Security Benefits in the past, but have since had your legal status revoked and face deportation, you may be eligible to make claims for Social Security Benefits only if you meet the following criteria:

- Lawfully admitted for permanent residence; and
- Granted non-citizen classification within the last 7 years through a withholding of deportation or removal.

If you are detained and are already receiving Social Security Benefits, the government may suspend your Social Security Benefits while you are in detention. Nevertheless, you may appeal a decision by the SSA to suspend your Social Security Benefits while you are in immigration detention. While you are in detention you should take the following steps:

1. Designate a trusted person to make copies of all letters you receive from the SSA.
2. Create a log of every communication with the SSA, the date of the communication, the content of it, and the follow up steps the SSA or you will make.
3. Add copies of your checks from the SSA to the log. Also, watch your bank account (or have the person you designated do it) if you are receiving direct deposit.
4. If the SSA sends a letter telling you that your Social Security Benefits have been suspended because you are in detention, you should be prepared to appeal. You will then follow the steps outlined below.

My Social Security Benefits Have Been Suspended Since I Have Been in Detention, What Should I Do?

If the SSA sends a letter telling you that your Social Security Benefits have been suspended because you are in detention, you should be prepared to appeal. You should follow the steps outlined below:

1. The first step in the appeal process is a request for reconsideration. The request should be made in writing within 60 days of receipt of the original letter from the SSA suspending your Social Security Benefits. Try to have someone outside (not in detention) send it in, since mail in detention facilities can be unreliable.
2. You may fill out Form SSA-561 at <https://www.ssa.gov/forms/ssa-561.html>, which must include:
 - o the name of the wage earner (you);
 - o the Social Security Number of the wage earner (your SSN);
 - o the type of decision on which you wish reconsideration (e.g., suspension of retirement benefits); and
 - o why you disagree with the determination.
3. If your request for reconsideration has been denied, the next step is to request a hearing in front of an administrative judge.
4. The next step is to request a review of the decision by the Appeals Council.
5. The next step after that would be to request a hearing in the federal District Court.

At these stages, you will have to proceed “pro se” (on your own without a lawyer) unless you can afford a lawyer or can obtain the services of a free legal services agency. There is no filing fee at the administrative level. There is a filing fee at the District Court level, but you can file “in forma pauperis,” which means the court will waive the filing fee.

What Happens to Social Security Benefits If You Are Deported?

If You Are an Insured Worker and Are Deported

If you are a non-U.S. citizen Insured Worker, you cannot receive any Social Security Benefits for any month after the SSA receives notice of your deportation from the Secretary of the Department of Homeland Security or the Attorney General.

Exception: If you are later lawfully readmitted to the U.S. for permanent residence after being deported, any unpaid Social Security Benefits may become payable upon your readmission.

If You Are a Dependent Who Is Deported and the Insured Worker Is Not

If you are a dependent (such as a child or spouse) and are deported, but the Insured Worker is not deported, the Insured Worker may continue to receive Social Security benefits on your behalf. However, you will not receive these benefits directly.

Exception: If the Insured Worker is a non-citizen and leaves the U.S. for any part of a month, they will not receive Social Security benefits for that month.

What Happens to Social Security Benefits If the Insured Worker Is Deported but You Remain in the U.S.?

If You Are a Dependent of the Deported Insured Worker:

If you are a dependent and the Insured Worker is deported but you remain in the U.S., you may continue receiving Retirement Benefits and SSD Benefits only if:

- You are a U.S. citizen; or
- You were lawfully present in the U.S. for the entire month.

However, if you are a dependent and a non-U.S. citizen, you are not entitled to receive any Social Security Benefits during any period where you are not present in the U.S.

If You Are a Survivor of the Insured Worker:

If you are a survivor and the Insured Worker was deported prior to their death but you remained in the U.S., you may continue receiving Retirement Benefits and SSD Benefits only if:

- You are a U.S. citizen; or
- You were lawfully present in the U.S. for the entire month.

If the Insured Worker died during or after the month the SSA receives notice of their deportation, you cannot receive a standard lump-sum death payment based on the Insured Worker's earnings unless the Insured Worker was lawfully readmitted for permanent residence after deportation or removal, but before death.

What Should Preparing and Supervised Immigrants Do Before Leaving the U.S.?

If you are an Insured Worker with dependents, including both Preparing Immigrants and Supervised Immigrants, and you face the possibility of future removal from the U.S., you should take measures to obtain U.S. citizenship for your dependents.

- If your dependents cannot obtain U.S. citizenship, they should understand that if they leave the U.S. for any period after you are deported, they will waive their rights to Social Security Benefits while outside the country.

If you are an Insured Worker and your dependents are deported but you are not, you should arrange for the means to wire or otherwise transfer the benefits to your dependent to their home countries, if necessary.

If you are a Preparing or Supervised Immigrant and already received a notice of hearing on removal, consider asking for “Voluntary Departure”.¹⁸ Immigrants granted Voluntary Departure are not deemed “deported” or “removed” and may be able to receive Social Security Benefits once back in their home country.

To qualify for Voluntary Departure, the following criteria must be met:

- (i) presence in the U.S. for at least 1 year prior to the date notice to appear was served;
- (ii) person of good moral character for at least 5 years directly before applying for Voluntary Departure;
- (iii) not accused of an aggravated felony;
- (iv) not deportable for public safety or national security reasons; and
- (v) established by clear and convincing evidence of having the means to depart the U.S. and the intention to do so.

¹⁸ Immigrants granted Voluntary Departure have to pay for their own expenses to leave and post a bond. If they fail to leave within the specified timeframe, there is a large fine, the bond is lost, and the immigrant will face a 10-year bar to lawful re-entry.

Checklist: Social Security

- Determine whether you are an Insured Worker. Insured Workers are any individual immigrants who have a Social Security Number and contribute to Social Security while working for U.S. employers or foreign affiliates under certain circumstances. Note that undocumented immigrants are not eligible for Social Security benefits.

- If you are an Insured Worker or the dependent or survivor of an Insured Worker and you are eligible to receive Social Security Benefits, to obtain those Social Security Benefits, you must apply (at the website www.socialsecurity.gov or in person) with the following documentation and information:¹⁹
 - Your SSN;
 - Your birth certificate;
 - Your W-2 forms or self-employment tax return for last year;
 - Your military discharge papers if you had military service;
 - Your spouse's birth certificate and SSN if they are applying for Social Security Benefits;
 - Your children's birth certificates and SSN, if you are applying on your children's behalf;
 - Proof of U.S. citizenship or lawful noncitizen status if you (or a spouse or child applying for Social Security Benefits) were not born in the U.S.; and
 - The name of your financial institution, the routing number, and your account number for direct deposit. If you don't have an account at a financial institution, or prefer to do so, you can sign up to get your Social Security Benefits on a prepaid card.

¹⁹ If you disagree with a decision made on your claim, you can appeal it.

KEY TAKEAWAYS

- Deportation of an immigrant Insured Worker or their dependents or survivors can affect Social Security Benefits.
- If you were an Insured Worker in the U.S. and received Social Security Benefits, your children and other dependents can continue receiving Social Security Benefits if they are U.S. citizens.
- If you were an Insured Worker in the U.S. and received Social Security Benefits and your dependents do not have legal status in the U.S., you and they should understand that they cannot receive Social Security Benefits for any month that they are outside the U.S. for any length of time.
- You will not be able to receive Social Security Benefits once the SSA is notified that you have been deported or removed. However, if you are lawfully admitted to the U.S. for permanent residence after being deported, any Social Security Benefits that were unpaid because of your deportation may be payable when you are readmitted.
- If you are an Insured Worker, a lump sum death payment cannot be made to your survivor on your record if you died after the SSA received notice of your removal and before you were thereafter lawfully admitted.
- If you receive Social Security Benefits as the dependent of an Insured Worker, and you are deported but the wage earner is not, the Insured Worker may continue to receive Social Security Benefits on your behalf (unless the Insured Worker is a noncitizen and leaves the U.S. for any part of a month, in which case the Insured Worker will not receive Social Security Benefits for that month), but you will not receive such Social Security Benefits directly.