

List of Individuals with “Lawfully Present” Status for Eligibility and Enrollment Purposes in the Exchange Individual Market

One of the eligibility requirements for enrollment in a QHP through the Exchange is to be a US citizen, national, or lawfully present. (45 C.F.R. § 155.305(a)(1).) The categories of aliens who are considered “lawfully present” for the purposes of eligibility for and enrollment in a QHP through the Exchange, as specified in 45 C.F.R. § 152.2, are listed below.

- A qualified alien as defined in section 431 of the Personal Responsibility and Work Opportunity Act (PRWORA) (8 U.S.C. § 1641), which includes:
 - Aliens lawfully admitted to the US for permanent residence under the Immigration and Nationality Act (INA, 8 U.S.C. § 1101 et seq.);
 - Aliens granted asylum pursuant to 8 U.S.C. § 1158;
 - Aliens admitted as refugees pursuant to 8 U.S.C. § 1157;
 - Aliens paroled into the US temporarily pursuant to 8 U.S.C. § 1182(d)(5) for a period of at least one year, or for less than one year, except for aliens paroled for prosecution, deferred inspection, or pending removal proceedings;
 - Aliens whose deportation has been withheld pursuant to 8 U.S.C. § 1253(h);
 - Aliens granted conditional entry pursuant to 8 U.S.C. § 1153(a)(7);
 - An alien who is a Cuban and Haitian entrant;
 - An alien who has been battered or subjected to extreme cruelty in the US by a spouse or parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, such battery or cruelty, and who has been approved (or has a petition pending) for (1) status as a spouse or a child of a US citizen, (2) classification pursuant to 8 U.S.C. § 1154(a)(1)(B)(ii) or (iii), (3) suspension of deportation, or (4) cancellation of removal;
 - An alien whose child has been battered or subjected to extreme cruelty in the US by a spouse or a parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse or parent's family residing in the same household as the alien, and the spouse or parent consented or acquiesced to such battery or cruelty, and who has been approved (or has a petition pending) for (1) status as a spouse or a child of a US citizen, (2) classification pursuant to 8 U.S.C. § 1154(a)(1)(B)(ii) or (iii), (3) suspension of deportation, or (4) cancellation of removal;
 - An alien child who resides in the same household as a parent who has been battered or subjected to extreme cruelty in the US by that parent's spouse or by a member of

- the spouse's family residing in the same household as the parent and the spouse consented or acquiesced to such battery or cruelty, and who has been approved (or has a petition pending) for (1) status as a child of a US citizen, (2) classification pursuant to 8 U.S.C. § 1154(a)(1)(B)(ii) or (iii), (3) suspension of deportation, or (4) cancellation of removal; or
- An alien granted nonimmigrant status under 8 U.S.C. § 1101(a)(15)(T)¹ or who has a pending application that sets forth a prima facie case for eligibility for such nonimmigrant status;
 - Aliens in nonimmigrant status who have not violated the terms of the status under which they were admitted or to which they have changed after admission;
 - Aliens currently in temporary resident status pursuant to 8 U.S.C. § 1160 or 8 U.S.C. § 1255a;
 - Aliens currently under Temporary Protected Status (TPS) pursuant to 8 U.S.C. 1254a, and pending applicants for TPS who have been granted employment authorization;
 - Aliens granted employment authorization under 8 C.F.R. § 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);
 - Aliens who are Family Unity beneficiaries pursuant to section 301 of Public Law 101-649 as amended;
 - Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;
 - Aliens currently in deferred action status²;
 - Aliens whose visa petitions have been approved and who have a pending application for adjustment of status;
 - A pending applicant for asylum under 8 U.S.C. § 1158 or for withholding of removal under 8 U.S.C. § 1231 or under the Convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days;
 - Aliens granted withholding of removal under the Convention Against Torture; or

¹ 8 U.S.C. § 1101(a)(15)(T) relates to a nonimmigrant alien who: (1) is or has been a victim of a severe form of trafficking in persons, as defined in section 7102 of Title 22; (2) is physically present in the US, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking; (3) has (a) complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking, (b) is unable to cooperate with a request described in item (3)(a) due to physical or psychological trauma, or (c) has not attained the age of 18; and (4) would suffer extreme hardship involving unusual and severe harm upon removal.

² However, an individual with deferred action under the Department of Homeland Security's deferred action for childhood arrivals process, as described in the Secretary of Homeland Security's June 15, 2012, memorandum, shall not be considered to be lawfully present.

- A child who has a pending application for Special Immigrant Juvenile status as described in 8 U.S.C. § 1101(a)(27)(J).