

Immigration Eligibility Guide

NEBRASKA PUBLIC EMPLOYEES RETIREMENT SYSTEMS

IMMIGRATION ELIGIBILITY GUIDE

According to the current law as interpreted by the Nebraska Attorney General's (NE AG) opinion from August 19, 2022, only US citizens and "qualified aliens" who are lawfully present in the US may participate in the retirement systems.

ESTABLISHING ELIGIBILITY FOR US CITIZENS AND LAWFUL PERMANENT RESIDENTS (LPRs)

US CITIZENS. US citizens [are eligible](#) to participate in the retirement plans. If requested by NPERS, US citizens may prove their citizenship by providing a copy of their:

- Birth certificate showing birth in the US,
- Form N-560, Certificate of Citizenship,
- Form N-550, Certificate of Naturalization,
- Form FS-240, Consular Report of Birth Abroad, or
- Valid, unexpired US passport.

LAWFUL PERMANENT RESIDENTS (LPRs). LPRs [are eligible](#) to participate in the retirement plans. If requested by NPERS, LPRs may prove their status by providing a copy of their valid, unexpired Form I-551, Permanent Resident Alien Card.

ESTABLISHING ELIGIBILITY FOR THOSE WHO ARE NOT US CITIZENS OR LPRs

GENERAL REQUIREMENTS. Individuals who are not US citizens or LPRs must prove their eligibility to participate in the retirement systems by providing documentation showing they are:

- Lawfully present in the US;
- A qualified alien [according to the law and NE AG's opinion, examples of qualified aliens include, but are not limited to, anyone who is an asylee, a refugee, paroled into the US under certain provisions of law, or a visa holder whose presence in the US under the visa that is tied to their employment]; and
- Required by federal law or regulation to be offered the same types of fringe benefits as US citizens.

ELIGIBLE CATEGORIES. Individuals in the following categories who provide documentation showing their status [are eligible](#) to participate in the retirement systems as of the date the eligibility determination is made:

- **Holders of the following visas:** H-1B, H-4, L-2, TN, J-1 (only Teacher Category) and E-32 (when they are to be treated as a LPR).
- **Individuals with the following Employment Authorization Document (EAD) categories:** A05 (asylee), A12 (temporary protected status), C08 (pending asylum application), C09 (pending permanent resident application), C11, (public interest parolees), and C31 (Violence Against Women Act covered).
- **Individuals in compliance with Compact of Free Association** (Micronesia and Marshall Islands)

PROCESS FOR ESTABLISHING ELIGIBILITY FOR INDIVIDUALS WHO ARE NOT US CITIZENS OR LPRs:

1. Obtain documentation from the employee.

- The **best documentation** individuals who are not US citizens or LPRs can provide is a copy of their valid, unexpired Form I-766, Employment Authorization Document (EAD).
- Individuals who do not have an EAD may provide a copy of their valid, unexpired visa and foreign passport.
 - The visa must show the visa type and the specific employer for whom the individual is authorized to work, as applicable.
 - Depending on the type of visa, additional documentation may be required to establish eligibility.
 - For J-1 visa holders, they must provide a Certificate of Eligibility indicating their category, sponsorship entity, and employment location.

2. Obtain a ShareFile secure link from NPERS to upload the documentation.

3. NPERS reviews the documentation and provides an eligibility determination.

4. Contributions start upon determination of eligibility. Employers should ensure the process is timely followed to allow potential plan members to be enrolled in retirement on their date of hire, if possible.

State Plan Specific Rules. Employers covered by the State Plan should select the appropriate category in the payroll/HR system related to the employee's status. The following categories in the current State payroll/HR system (Workday) allow retirement system participation: "Citizen," "Lawful Permanent Resident," and "Retirement Eligible Alien."

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Important Note: Recently, a bill was introduced in the Nebraska Legislature to change the documentation requirements to prove eligibility to participate in the retirement plan based on immigration status. NPERS will monitor the progress of this legislation and update guidance as appropriate.

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IMPORTANT

Statutory Disclaimer. This guidance document is advisory in nature but is binding on NPERS until amended by NPERS. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

Order of Precedence. If this document conflicts with the governing law and/or rules and regulations, the governing laws and/or rules and regulations supersede this document.

Summary. This guidebook provides instruction to employer reporting agents and potential plan members on the process for obtaining a determination on a potential plan member’s eligibility to participate in the retirement systems based on the potential plan member’s immigration status.

IMMIGRATION ELIGIBILITY GUIDE

MULTI-PART TEST FOR ELIGIBILITY

NE AG Opinion 22-006 laid out a multi-part test that must be satisfied for an individual who is not a United States (US) citizen or Lawful Permanent Resident (LPR) to be eligible to participate in the retirement plans. The criteria are:

1. The classification of visa holder is a nonimmigrant under the INA,
2. The classification of visa is related to the individual's employment, or the individuals are work authorized,
3. The federal statutes and regulations governing the type of visa held requires the individual to receive the same fringe benefits as the employer's other workers, and
4. The individual is lawfully present in the US.

MEMBER REQUIREMENTS

Potential plan members who are a US citizen or LPR are eligible to participate in the retirement systems. If requested by NPERS:

- A US citizen may provide a copy of the following documents to show their status:
 - Birth certificate showing birth in the US,
 - Form N-560, Certificate of Citizenship,
 - Form N-550, Certificate of Naturalization,
 - Form FS-240, Consular Report of Birth Abroad, or
 - Valid, unexpired US passport.
- A LPR may provide a copy of their valid, unexpired Form I-551, Permanent Resident Alien Card (a.k.a. Green Card) to show their status.

Potential plan members who **are not** a US citizen or LPR must provide valid, unexpired documentation showing their immigration status to establish eligibility to participate in the retirement systems. Such potential plan members should consult the "Establishing eligibility for those who are not a US citizen or LPR" section below.

If NPERS determines make-up contributions are required, the member must timely follow the make-up contribution protocols, complete all necessary paperwork, and make-up the missed contributions for the applicable plan. Members should consult with their employer and NPERS regarding makeup contribution protocols.

EMPLOYER REQUIREMENTS

The employer must coordinate with the potential plan member to provide NPERS the necessary documentation to make an eligibility determination and, when appropriate, ensure eligible individuals are timely enrolled in retirement.

Employers should consult the "Establishing eligibility for those who are not a US citizen or LPR" section below to facilitate the determination for potential plan members.

If NPERS determines make-up contributions are required, the employer must timely follow the make-up contribution protocols, complete all necessary paperwork, and make-up the missed contributions for the applicable plan. Employers should consult with NPERS regarding the make-up contribution protocols.

State Plan Specific Rules

State plan covered employers should select the appropriate category in payroll/HR system related to the employee's status. The following categories in the current State payroll/HR system allow retirement system participation: "Citizen," "Lawful Permanent Resident," and "Retirement Eligible Alien."

ESTABLISHING ELIGIBILITY FOR THOSE WHO ARE NOT A US CITIZEN OR LPR

Determination Process

1. Obtain documentation from the employee.

- a. The *best documentation* individuals who are not US citizens or LPRs can provide is a copy of their valid, unexpired Form I-766, Employment Authorization Document (EAD).
- b. Individuals who do not have an EAD may provide a copy of their valid, unexpired visa and foreign passport.
 - i. The visa must clearly show the visa type and, as applicable, the specific employer for whom the individual is authorized to work.
 - ii. Depending on the type of visa, additional documentation may be required to establish eligibility.

2. Obtain a ShareFile secure link from NPERS to upload the documentation.

3. NPERS reviews the documentation and provides an eligibility determination.

4. Contributions start upon the determination of eligibility. Employers should ensure the process is timely followed to allow potential plan members to be enrolled in retirement on their date of hire.

State Plan Specific Rules

State plan covered employers should select the appropriate category in payroll/HR system related to the employee's status. The following categories in the current State payroll/HR system allow retirement system participation: "Citizen," "Lawful Permanent Resident," and "Retirement Eligible Alien."

Eligible Categories

The following categories of individuals have been deemed eligible to participate in the retirement systems by the NPERS Director:

- US citizens,
- Lawful Permanent Residents (LPRs),
- Holders of the following visas:
 - H-1B,
 - H-4
 - L-2,
 - TN,
 - J-1 with Teacher Category and
 - E-32,
- Individuals with the following EAD categories:
 - A05 – asylees,
 - A12 – those with temporary protected status,
 - C08 – those with a pending asylum application,
 - C09 – those with a pending permanent residency application,
 - C11 – public interest parolees, and
 - C31 – Violence Against Women Act covered individuals.
- Individuals in compliance with Compact of Free Association (Micronesia and Marshall Islands)